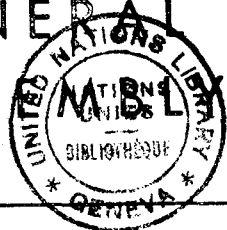




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RESPECT FOR HUMAN RIGHTS
IN ARMED CONFLICTS

Report of the Secretary-General

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INTRODUCTION

1. In the course of its consideration, at the twenty-third regular session, of the item entitled "International Year for Human Rights", the General Assembly examined the Proclamation and the resolutions contained in the Final Act of the International Conference on Human Rights, held at Teheran in April/May 1968. One of the resolutions unanimously adopted under that item was resolution 2444 (XXIII) on respect for human rights in armed conflicts.

2. In the preambular part of resolution 2444 (XXIII) the General Assembly recognized "the necessity of applying basic humanitarian principles in all armed conflicts", took note of resolution XXIII on human rights in armed conflicts, 1/ which had been adopted on 12 May 1966 by the International Conference on Human Rights, and affirmed that the provisions of that resolution needed to be "implemented effectively as soon as possible".

3. Resolution XXIII of the International Conference on Human Rights contained in its preambular part a number of important statements and in its operative part a number of requests addressed respectively to the General Assembly, to the Secretary-General and to all States. In the preambular part the Assembly affirmed that "peace is the underlying condition for the full observation of human rights and war is their negation". Recalling the purposes of the United Nations "to prevent all conflicts and to institute an effective system for the peaceful settlement of disputes", the Conference noted that armed conflicts continued to plague humanity. It stated that "the widespread violence and brutality of our times, including massacres, summary executions, tortures, inhuman treatment of prisoners, killing of civilians in armed conflicts and the use of chemical and biological means of warfare, including napalm bombing, erode human rights and engender counter-brutality". It expressed its conviction "that even during the periods of armed conflicts, humanitarian principles must prevail".

4. As regards existing international instruments relating to obligations assumed by States in time of armed conflicts, the Conference noted that "the provisions of the Hague Conventions of 1899 and 1907 were intended to be only a first step in the provision of a code prohibiting or limiting the use of certain methods of warfare and that they were adopted at a time when the present means and methods of warfare did not exist". Concerning the Geneva Protocol of 1925 prohibiting the use of "asphyxiating, poisonous or other gases and of all analogous liquids, materials and devices", the Conference noted that its provisions "have not been universally accepted or applied and may need a revision in the light of modern development". With regard to the Red Cross Geneva Conventions of 1949, the Conference considered that they were "not sufficiently broad in scope to cover all armed conflicts". The Conference also referred to certain responsibilities of the States parties under the Red Cross Geneva Conventions to ensure the respect of their provisions in all circumstances and pointed in particular to the executions and inhuman treatment of those who struggle against minority racist or colonial régimes which refuse to comply with the decisions of the United Nations and the principles of the Universal Declaration of Human Rights and to the importance of the protection of such persons against inhuman or brutal treatment.

1/ Final Act of the International Conference on Human Rights, United Nations publication, Sales No. E.68.XIV.2, chapter III.

5. The Conference requested the General Assembly to invite the Secretary-General to study:

"(a) Steps which could be taken to secure the better application of existing humanitarian international conventions and rules in all armed conflicts;

"(b) The need for additional humanitarian international conventions or for possible revision of existing Conventions to ensure the better protection of civilians, prisoners and combatants in all armed conflicts and the prohibition and limitation of the use of certain methods and means of warfare".

The Secretary-General was directly requested, "after consultation with the International Committee of the Red Cross, to draw the attention of all States Members of the United Nations system to the existing rules of international law relating to armed conflicts, to ensure that in all armed conflicts the inhabitants and belligerents are protected in accordance with 'the principles of the law of nations derived from the usages established among civilized peoples, from the laws of humanity and from the dictates of the public conscience'". The Conference also called upon all States which had not yet done so "to become parties to the Hague Conventions of 1899 and 1907, the Geneva Protocol of 1925, and the Geneva Conventions of 1949".

6. After consulting the International Committee of the Red Cross, the Secretary-General gave effect to the request addressed to him directly by the International Conference on Human Rights, and by a communication dated 29 October 1968 transmitted a copy of resolution XXIII to all Members of the United Nations and members of the specialized agencies, drawing their special attention to the existing rules of international law on the subject of human rights in armed conflicts and urging them, pending the adoption of new rules of international law relating to armed conflicts, to ensure that in all armed conflicts the inhabitants and belligerents are protected in accordance with all the principles of the law of nations derived from the usages established among civilized peoples, from the laws of humanity and from the dictates of the public conscience, as stated in the preamble of the Hague Convention of 1907 respecting the laws and customs of war on land.

7. In paragraph 5 of resolution 2444 (XXIII), the General Assembly in its turn called upon all States which had not yet done so to become parties to the Hague Conventions of 1899 and 1907, the Geneva Protocol of 1925 and the Geneva Conventions of 1949. ^{2/} In paragraph 1 the Assembly affirmed resolution XXVIII of the twentieth International Conference of the Red Cross held at Vienna in 1965 by which the Conference, noting inter alia that "indiscriminate warfare constitutes a danger for civilian populations and for the future of civilization", solemnly declared that every Government and every other authority which has the responsibility of conducting military operations in the course of armed conflicts should at least observe certain basic principles. Three of these principles were specifically reaffirmed by the General Assembly:

"(a) That the right of the parties to a conflict to adopt means of injuring the enemy is not unlimited;

^{2/} In a note verbale of 19 May 1969, the Secretary-General reminded Member States of this provision of General Assembly resolution 2444 (XXIII) (see paragraph 10 below).

"(b) That it is prohibited to launch attacks against the civilian populations as such;

"(c) That distinction must be made at all times between persons taking part in the hostilities and members of the civilian population to the effect that the latter be spared as much as possible."

8. In paragraph 2 of resolution 2444 (XXIII) the General Assembly invited the Secretary-General, in consultation with the International Committee of the Red Cross and other appropriate international organizations, to undertake the study requested by the International Conference on Human Rights and referred to in paragraph 5 above. ^{3/} In operative paragraph 4 the Assembly requested Member States to extend all possible assistance to the Secretary-General in the preparation of the study. In paragraph 3, the Secretary-General was requested to take all other necessary steps to give effect to the provisions of the resolution and to report to the General Assembly at its twenty-fourth session on the steps he had taken.

9. In connexion with the subject of this report, it may be recalled that the Secretary-General has had frequent occasion for concern with humanitarian questions in connexion with armed conflicts. To the extent made possible by the means and resources at his disposal, the action he is called upon to take is inspired by concerns consistent with the spirit and the purposes of General Assembly resolution 2444 (XXIII). Among specific initiatives taken by the Secretary-General in recent years may be mentioned the submission by the Secretary-General to the members of the General Assembly and of the Security Council of reports on humanitarian problems resulting from hostilities. In co-operation with the executive heads of the competent specialized agencies and other United Nations bodies, the Secretary-General endeavoured in several instances to alleviate to the extent possible the hardships suffered by persons affected or displaced by warfare. In messages sent to the Governments concerned, the Secretary-General repeatedly expressed his concern for the needs of civilian victims of the hostilities. In one recent case, with the agreement of the Government, he appointed an official as his representative to assist in the relief and humanitarian activities for the civilian victims of hostilities. The Secretary-General's representative was later given the additional task of visiting the war-affected areas of the country to observe the situation of the population in those areas, to take assessment of the relief needs, and to recommend ways and means for expediting the distribution of relief supplies. Appealing "in the name of the most fundamental humanitarian principles", the Secretary-General urged both sides to the conflict to give immediate consideration to the opening of land and river corridors for the distribution of supplies in the areas afflicted by the war. The Secretary-General stressed that notwithstanding the passions and the bitterness inherent in every war, and most particularly civil war, there must be shown by those directly concerned a degree of magnanimity and humanity which is required to ensure that the civilian population is spared the misery of hunger and the ravages that come in its wake. In issuing regulations for the United Nations Emergency Force in the Middle East, the United Nations forces

^{3/} In paragraph 2 (b) of resolution 2444 (XXIII) the words "the need for ... other appropriate legal instruments ..." replaced the words "the need ... for possible revision of existing Conventions ..." in the corresponding passage of the International Conference on Human Rights resolution.

in the Congo and the United Nations forces in Cyprus, identical provisions were included, stipulating that the forces should "observe the principles and spirit of the general international conventions applicable to the conduct of military personnel".

10. Early in 1969 the Secretary-General initiated the research activities and consultations required for the preparation of the study requested in paragraph 2 of resolution 2444 (XXIII). By a note dated 19 May 1969 addressed to all Member States the Secretary-General referred to the Assembly's request for assistance and stated that he would be grateful to receive any information, suggestions or comments which Member States might consider relevant and useful for the preparation of the study. Replies received from the Governments of Member States have been reproduced for the information of the General Assembly in annex I to the present report.

11. As regards the International Committee of the Red Cross, liaison was maintained to the extent possible and consultations took place on several occasions with the President and the members of the International Committee as well as with experts consulted by the International Committee on questions referred to in resolution 2444 (XXIII). The Secretary-General was represented by the Director-General of the United Nations Office in Geneva and the Director of the Division of Human Rights at the twenty-first International Conference of the Red Cross held at Istanbul in September 1969, the agenda of which included several items of relevance to his study. In reply to the request for information, suggestions and observations likely to assist in the preparation of the study, the President of the International Committee of the Red Cross transmitted for such use as the Secretary-General might consider appropriate as the contribution of the International Committee of the Red Cross, reports which that Committee submitted to the XXIst International Conference of the Red Cross entitled Reaffirmation and Development of the Law and Instruments Applicable in Armed Conflicts and The Protection of Victims of Non-International Conflicts, 4/ together with certain additional observations. The letter of the President of the International Committee of the Red Cross is reproduced in annex I and the texts of resolutions XIII to XVIII of the XXIst International Conference of the Red Cross concerning the development of humanitarian law which were transmitted to the Secretary-General by the President of the International Committee of the Red Cross, are reproduced in annex I.

12. The Secretary-General also addressed himself to the specialized agencies, United Nations bodies, and to a number of non-governmental organizations likely to have a special interest in the subject. The replies from UNESCO, WHO, the High Commissioner for Refugees and UNICEF are also reproduced in annex I.

13. The examination of the material received and the consultations held since the adoption of resolution 2444 (XXIII) confirmed indications given on behalf of the Secretary-General to the Third Committee during the consideration of that resolution as to the complexity of the issues involved and the fact that their study and consideration would require a relatively long-term United Nations endeavour. The material to be dealt with is of a very comprehensive character and, as this report will probably show, the problems to be examined are numerous and difficult.

4/ Reports submitted by the International Committee of the Red Cross, Geneva, May 1969.

Although authoritative analyses and studies may be found of the existing situation, constructive suggestions for specific remedial action are relatively few. As most of the comments and materials have been received by the Secretary-General only very recently and the most important international meetings outside the United Nations on the subject took place only shortly before the opening of the twenty-fourth session of the General Assembly, it has not been possible to prepare for that session a comprehensive study covering the whole field. This preliminary report reviews only a limited number of questions and certain areas of interest have not been examined. The Secretary-General is ready to continue the study of the important questions raised by resolution 2444 (XXIII) and after consulting recognized experts in the field, to present more detailed reports to future sessions.

14. The purpose of the present preliminary report is essentially, therefore, to provide data to the General Assembly on the issues involved which it is hoped will prove useful; these include a brief survey of the origin and nature of United Nations concern in the question of human rights in armed conflicts, a short historical review of relevant international instruments, and observations on some of their provisions in their relation to the human rights activities of the United Nations. This part of the report is followed by a survey of some of the more specific issues pertaining to the better application of existing humanitarian conventions and rules in armed conflicts and to the question of the need for additional humanitarian conventions or other instruments. The views which the General Assembly and Member States may express on the matters raised in this report will assist the Secretary-General in the continuation of his study, which would be pursued in close co-operation with the International Committee of the Red Cross and other appropriate international organizations.

I. RESPECT FOR HUMAN RIGHTS IN ARMED CONFLICTS IN THE
CONTEXT OF UNITED NATIONS PURPOSES AND ACTION IN
THE FIELD OF HUMAN RIGHTS

15. As has often been pointed out, the Charter of the United Nations is the first international instrument which solemnly expresses the concern of the world community for human rights for all, sets up as one of its main purposes the promotion and encouragement of their respect and establishes organs specially entrusted with the task of contributing to their realization.

16. It is well known that the inclusion in the Charter of explicit provisions on human rights was to a great extent due to the events which occurred during and immediately before the Second World War and reflected the reaction of the international community to the horrors of that war and of the régimes which unleashed it. The Second World War gave conclusive proof of the close relationship which exists between outrageous behaviour of a Government towards its own citizens and aggression against other nations, thus, between respect for human rights and the maintenance of peace.

17. Humanity's concern with serious denials of human rights and with the application of humanitarian principles in all circumstances was also evident in the action taken at the end of the Second World War to bring before courts of justice such as those which sat in Nürnberg and Tokyo persons accused of violations of the laws of war and of other cruel and inhuman acts. The London Charter of the Nürnberg International Military Tribunal of 1945 listed for purposes of punishment and defined "crimes against peace", "war crimes" and "crimes against humanity". Similar definitions were also used in the Tokyo Charter of the International Military Tribunal for the Far East of 1946 and in many national statutes and regulations adopted by the allied countries. The "principles of international law recognized by the Charter of the Nürnberg Tribunal and the judgement of the Tribunal" were affirmed by the General Assembly in 1946 in resolutions 3 (I) and 95 (I) and subsequently formulated at the request of the General Assembly by the International Law Commission. A definition of crimes against humanity also appears within the context of article I (b) of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.

18. The essential reason for establishing the United Nations was the recognized need of an international institution of a permanent character responsible for taking effective collective measures for the maintenance of international peace and security. As stated in the preamble to the Charter, the acceptance of Charter principles and the institution of Charter methods is to ensure "that armed force shall not be used except in the common interest". It may be recalled, however, that in conferring on the Security Council primary responsibility for the maintenance of peace and security with specific powers laid down in chapters VI, VII, VIII and XII, the Charter provides that the Security Council shall act in accordance with "the purposes and principles of the United Nations". One of these purposes, as stated in Article 1, paragraph 3, of the Charter, is to achieve international co-operation in solving international problems of a humanitarian character, and "in promoting and encouraging respect for human rights and for

fundamental freedoms for all without distinction as to race, sex, language or religion". ^{5/} As regards the General Assembly, it may also be noted that among its other powers under Article 14 of the Charter it may, subject to the provisions of Article 12, recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations, "including situations resulting from a violation of the provisions of the present Charter setting forth the purposes and principles of the United Nations".

19. The fact that the prevention and removal of threats to the peace and suppression of acts of aggression or other breaches of the peace is the principal responsibility of the United Nations undoubtedly explains the reluctance shown over the years by United Nations organs to become seized of questions which presuppose the persistence of war or even the occurrence of hostilities. As regards armed conflicts which are not of an international character, the attitude of the Organization tended to be influenced by the provisions of Article 2, paragraph 7, of the Charter which states in part that nothing contained in the Charter shall authorize the United Nations to intervene in matters "which are essentially within the domestic jurisdiction of any State". ^{6/}

20. The Security Council and the General Assembly, in the exercise of their powers and responsibilities under the Charter, and various subsidiary bodies acting within the field of their competence, have of course repeatedly concerned themselves with concrete questions involving respect for human rights in armed conflicts. This concern, however, was manifested within the framework of the consideration of certain broad problems, such as disarmament, or of specific issues relating to the maintenance of peace in various parts of the world. Resolution 2444 (XXIII) is the first pronouncement and decision by a principal organ of the United Nations which endorses general standards and initiates comprehensive United Nations studies as regards the application of basic humanitarian principles in armed conflicts.

21. Resolution 2444 (XXIII) refers to "all armed conflicts", thus avoiding certain traditional distinctions as between international wars, internal conflicts, or conflicts which although internal in nature are characterized by a degree of direct or indirect involvement of foreign Powers or foreign nationals. Confirming certain principles laid down by the 1965 International Conference of the Red Cross which were themselves a reflection of principles laid down in earlier international

^{5/} One of the principles of the Organization set forth in Article 2, paragraph 4, of the Charter is that all Members are to "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations".

^{6/} For the relationship which may exist between the application of Article 2, paragraph 7, of the Charter and the implementation of Charter provisions relating to human rights see, inter alia, Repertory of Practice of United Nations Organs, vol. I, chapter I, Article 2 (7), pp. 55-159.

instruments, 7/ it manifests the concern of the United Nations for the initiation of constructive international action with a view to safeguarding basic human rights even during periods of armed hostilities.

22. As the deliberations of the Teheran International Conference on Human Rights and those of the Third Committee of the General Assembly fully confirm, resolution 2444 (XXIII) is thus solely based on humanitarian grounds, on feelings of compassion for all persons affected by armed conflicts of any type. The confirmation of still valid international legal rules, the elaboration and adoption of new provisions and the search for other measures which may alleviate the sufferings of those who become involved in armed conflicts are to be undertaken with the sole purpose of attenuating to the extent possible the adverse impact of armed hostilities still persisting in the world.

23. It may be useful to emphasize that the human rights provisions of the Charter make no distinction in regard to their application as between times of peace on the one hand and times of war on the other. Each of the relevant provisions refers to the promotion and encouragement of respect for human rights and fundamental freedoms for all. 8/ These texts seem to cover all persons living in countries which are at peace as well as inhabitants of countries engaged in, or affected by, armed conflicts. The phraseology of the Charter would apply in its generality to civilian as well as military personnel; it would encompass persons living under the jurisdiction of their own national authorities and persons living in territories under belligerent occupation.

24. The Universal Declaration of Human Rights does not refer in any of its provisions to a specific distinction between times of peace and times of armed conflict. It sets forth the rights and freedoms which it proclaims as belonging to "everyone", to "all", and formulates prohibitions by the phrase that "no one" shall be subjected to acts of which the Declaration disapproves. The Declaration proclaims that the "universal and effective recognition and observance" of the rights and freedoms shall be secured. In article 29, paragraph 2, however, it provides that in the exercise of his rights and freedoms everyone shall be subject only to such limitations as are determined by law solely for the purpose of, inter alia, meeting the just requirements of public order and the general welfare in a democratic society. An emergency consisting of a State being involved in an armed conflict might justify therefore certain temporary limitations on the exercise of some of the human rights proclaimed in the Declaration.

7/ The principle listed in paragraph 1 (a) of General Assembly resolution 2444 (XXIII) is based on article 22 of the Regulations Respecting the Laws and Customs of War on Land annexed to the Fourth Hague Convention of 1907 which reads as follows: "The right of belligerents to adopt means of injuring the enemy is not unlimited". It may be interesting to note that the principle cited in paragraph 1 (a) of resolution 2444 (XXIII) substitutes the words "the parties" for the word "belligerents" which were used in the 1907 Regulations, thus avoiding another distinction based on the traditional concept of belligerency.

8/ Under Articles 55 and 56, the United Nations is to promote universal respect for, and observance of, human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion, and all Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of this purpose.

25. The situation as to derogations from the rights set forth therein under the International Covenant on Economic, Social and Cultural Rights is similar to that under the Universal Declaration of Human Rights. Article 4 of that Covenant provides that the rights may be subjected only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society. The implication may be that involvement of a State in an armed conflict may make it necessary and permissible to provide by law for the limitation of certain economic, social or cultural rights if the general welfare requires it.

26. When the International Covenant on Civil and Political Rights was being prepared by the Commission on Human Rights, earlier drafts of what now is article 4 of that Covenant provided that derogations from the obligations of States Parties should be admissible "in time of war or other public emergency" or "in time of war or other public emergency threatening the interests of the people". 9/ In the course of the proceedings in the Commission on Human Rights it was recognized that one of the most important public emergencies was the outbreak of war. It was felt, however, that the Covenant should not envisage, even by implication, the possibility of war. For this reason the express reference to war was omitted from the text of the draft Covenant at the sixth session of the Commission on Human Rights in 1950. 10/ Two delegations proposed the reinstatement of an express reference to war and the inclusion in the article dealing with the right to life of an exception in respect of deaths resulting from lawful acts of war. 11/ These were, however, not included in the text. 12/

27. In the International Covenant on Civil and Political Rights (article 4, paragraph 1), as eventually drafted by the Commission and adopted by the General Assembly, it is provided:

"In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin".

9/ Official Records of the Economic and Social Council, Sixth Session, Supplement No.1 (E/6000), annex B, article 4; Ibid, Seventh Session, Supplement No.2 (E/8000), annex B, article 4; Ibid, Ninth Session, Supplement No. 10 (1371), annex I, article 4.

10/ Ibid, Eleventh Session, Supplement No. 5 (E/1681), annex I, article 2.

11/ Ibid, annex II, article 2; Ibid., Thirteenth Session, Supplement No. 4, annex II B, article 2.

12/ A consideration similar to that which prevailed in the Commission on Human Rights led the majority of the International Law Commission, at its first session in 1949, to the decision not to select the laws of war as a topic for codification. (Official Records of the General Assembly, Fourth Session, Supplement No.10 (A/925), para. 18; also in Yearbook of the International Law Commission (1949), p. 281.)

Article 4, paragraph 2, provides nevertheless that no derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision. Thus even in time of public emergency no derogations from the following rights would be admissible: (1) The right to life (article 6); (2) Freedom from torture or cruel, inhuman or degrading treatment or punishment (article 7); (3) Freedom from slavery and from being held in servitude (article 8, paragraphs 1 and 2); (4) Freedom from being imprisoned merely on the ground of inability to fulfil a contractual obligation (article 11); (5) The right not to be held guilty of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed, and the right not to receive a heavier penalty than the one that was applicable at the time when the criminal offence was committed (article 15); (6) The right to recognition everywhere as a person before the law (article 16); (7) The right to freedom of thought, conscience and religion (article 18).

28. When article 4 of the Covenant was being considered by the Third Committee of the General Assembly, one delegation drew attention to a difficulty which the article presented. If the words "public emergency" should be interpreted as including a state of war, it was not possible to state that there should be no derogation from article 6, which protected everyone's right to life. Attention was drawn in this connexion to the European Convention on Human Rights of 1950, where that problem was dealt with by stipulating that there should be no derogation from the article on the right to life "except in respect of deaths resulting from lawful acts of war" (article 15, paragraph 2). The delegation which had raised the question assumed that that would be the understanding with regard to article 4 of the Covenant, but would be interested to hear the views of others. ^{13/} The record does not disclose any other observations having been made on this question.

29. The correct solution to this problem need not be examined for the purposes of the present preliminary report, although the General Assembly may wish to devote attention to the matter at an appropriate time. It is clear, in any event, that the provisions set forth in the International Covenant on Civil and Political Rights apply in time of public emergency, which term includes the state of an armed conflict. Subject to the conditions set forth in article 4, paragraph 1, States Parties may in time of public emergency take measures derogating from their obligations under the Covenant to the extent strictly required by the exigencies of the situation in regard to some, but not all, of the rights which they have committed themselves to respect and to ensure.

30. It is relevant in this connexion to recall that another convention approved and proposed for signature and ratification or accession in the early years of United Nations history, the Convention on the Prevention and Punishment of the Crime of Genocide ^{14/} confirms what appears to be the United Nations position that the protection of human rights through the instruments prepared under the auspices of the Organization shall apply both in time of peace and in time of war. Previous to the adoption by the General Assembly of that Convention, acts of genocide not connected with crimes against peace or war crimes committed in time of peace were held not to be "crimes against humanity". The Convention adopted on 9 December 1948 provides however in article I that "the Contracting

^{13/} Official Records of the General Assembly, Eighteenth Session, Third Committee, 1260th meeting, para. 7.

^{14/} General Assembly resolution 260 A (III) of 9 December 1948.

Parties, confirm that genocide whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish". It has been noted that in this case the General Assembly, and the Contracting Parties, brought about a substantial change as in its judgement of 1946 the International Military Tribunal sitting at Nürnberg had ruled that, to constitute crimes against humanity, acts committed before the war must have been in execution of, or in connexion with, crimes against peace or war crimes. 15/

31. The principle that human rights shall be protected not only in peace time but also under conditions of armed conflict was significantly repeated more recently by the Security Council when, in its resolution 237 (1967) of 14 June 1967, it stated that "essential and inalienable human rights should be respected even during the vicissitudes of war". That resolution was welcomed with great satisfaction by the General Assembly in its resolution 2252 (ES-V) of 4 July 1967.

15/ Judgment of the International Military Tribunal for the Trial of German Major War Criminals (London, 1946), Cmd. 6964.

II. HISTORICAL SURVEY OF INTERNATIONAL INSTRUMENTS OF A HUMANITARIAN CHARACTER RELATING TO ARMED CONFLICTS

32. In order to facilitate the consideration of issues raised in resolution 2444 (XVIII) this chapter will furnish a short historical survey of relevant international instruments of humanitarian character which pertain to the conduct of military operations. Only the most important features of the instruments listed can be referred to in this preliminary report and the survey does not analyse customary law not yet codified in international agreements or declarations.

33. The idea of regulating the conduct of hostilities is not an entirely new one. It may probably be said that all societies observed to some degree usages which lessened the horrors of battle and mitigated the treatment of the defeated enemy and population after battle. Accepted practices, which originally may have been motivated by the mutual interest of belligerents in limiting destructions, progressively acquired in some cases a quasi-legal basis under the impact of religious and philosophical trends imposing respect for human life and human personality. Through the Middle Ages in Europe there were few attempts at codifying these rules. ^{16/} Norms pertaining to the conduct of hostilities eventually began to have an important role in the early developments of international law. These norms remained, however, customary law until the beginning of the codification process which took place as from the middle of the last century.

34. Among the earliest multilateral treaties on the conduct of hostilities and the treatment of those who were victims of armed conflicts were the Declaration of Paris on Maritime Law, 1856; the Geneva Convention on the Amelioration of the Conditions of the Wounded of Armies in the Field, 1864, and the Declaration of St. Petersburg, 1868. The latter two are of direct relevance to the present survey.

Geneva Convention of 1864

35. The Convention of 1864 was due to a large extent to the efforts of two Swiss citizens (Gustave Moynier and Henri Dunant) and a Swiss society which took up their ideas and became the nucleus of what now is the International Committee of the Red Cross. The Swiss Federal Council summoned an international conference in 1864 to consider the subject of the treatment of the sick and wounded in time of war. The Convention which resulted provided, in particular, that military ambulances and hospitals are recognized as neutral and, as such, must be protected and respected; that military wounded or sick must be cared for,

^{16/} One of the earliest relevant sets of regulations on the conduct of hostilities appears to have been the Ordinance for the Government of the Army, published in 1386 by Richard II of England.

whatever their country; and that wounded who are captured must be sent home if they are incapable of further military service. 17/

Declaration of St. Petersburg. 1368

36. In the preamble to this instrument the parties proclaimed, inter alia, that the progress of civilization should have the effect of alleviating as much as possible the calamities of war; that the only legitimate object which States should endeavour to accomplish during a war is to weaken the military forces of the enemy; that this object would be exceeded by the employment of arms which uselessly aggravate the suffering of disabled men, or render their death inevitable, and that the employment of such arms would therefore be contrary to the laws of humanity. The operative part of the Declaration prohibited the employment in wars among the Parties of any projectile of a weight below 400 grammes which is either explosive or charged with fulminating or inflammable substances. The Parties reserved to themselves to come thereafter to "an understanding whenever a precise proposition shall be drawn up in view of further improvements which science may effect in the armament of troops, in order to maintain the principles which they have established, and to conciliate the necessities of war with the laws of humanity."

Declaration of Brussels. 1874

37. In 1874 an international conference was convened in Brussels to examine a draft of international rules to cover the whole field of the laws and usages of war. The delegates agreed on a Declaration which was drafted in the form of an international convention. Although the Declaration did not obtain the necessary ratifications, the work done at the Brussels Conference of 1874 proved of considerable value. The provisions on which the Conference had agreed found their way into some of the field manuals and instructions to military officers in the field which were issued by Governments. The texts adopted at Brussels also proved helpful to the First and Second Hague Peace Conferences (1899 and 1907) which were successful in codifying large parts of the law of armed conflicts.

National and non-governmental texts

38. Before referring to the results of the Hague Peace Conferences of 1899 and 1907, it is necessary to mention two nineteenth century documents which did not emanate from intergovernmental conferences, but nevertheless exercised a very great influence upon the development of international law relating to armed conflicts. They are the so-called Lieber Code, issued by the Government of the United States in 1863, and the so-called Oxford Manual prepared in 1880 by the Institute of International Law, an international non-governmental institution.

Instructions for the Government of the Armies of the United States in the Field

39. These "Instructions" were promulgated by the United States Army during the American Civil War as General Orders No. 100, dated 24 April 1863. They were

17/ According to information published by the International Committee of the Red Cross, the 1864 Geneva Convention is no longer in force as all the parties to it are now parties to the 1949 Geneva Conventions.

prepared by Dr. Francis Lieber, a professor at Columbia College in New York, and became the first Code relating to the laws and usages of war to be issued by a Government to its armed forces. The "Lieber Code" had a great impact on the subsequent development of the law of armed conflicts, both as regards national codifications in other countries and as regards the work of subsequent international codification conferences. It may be noted that the Lieber Code was a body of instructions addressed to a national army fighting a civil war.

Oxford Manual

40. In 1879, the Institute of International Law took the initiative to elaborate a "Manual" which could serve as a model for internal legislation on the laws and customs of war. The Manual was approved at the meeting of the Institute at Oxford in September 1880. Because of the high level and authority of the experts who had prepared it, it exercised considerable influence on the legislation of several countries.

Hague Peace Conferences of 1899 and 1907

41. On the initiative of the Russian Government, an International Peace Conference was convened in the Hague in 1899. Originally envisaged as a Conference which would deal with the maintenance of peace in general and a reduction of the excessive armaments "which were burdening all nations", it was agreed that the agenda of the Conference would also include, among other items, the revision of the unratified Declaration of Brussels of 1874 concerning the laws and customs of war and the application to naval warfare of the principles of the Geneva Convention of 1864 for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. In addition to the Convention for the Peaceful Settlement of International Disputes and other international instruments, the 1899 Hague Conference elaborated the "Convention concerning the Laws and Customs of War on Land" with attached "Regulations of the Laws and Customs of War on Land", a Convention for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 22 August 1864, an International Declaration respecting expanding bullets, an International Declaration respecting Asphyxiating Gases and a Declaration prohibiting the Discharge of Projectiles and Explosives from Balloons. 18/

18/ G. Fr. de Martens, Nouveau recueil général de traités et autres actes relatifs aux rapports de droit international, 3ème série, tome XXVI, 1910, p. 920. An English translation of the texts of the 1899 and 1907 Hague Conventions may be found in The Law of War on Land, being part III of the Manual of Military Law (The War Office, Her Majesty's Stationery Office, London, 1958), appendices I-X.

42. A second peace conference was held at the Hague in 1907. It elaborated fifteen international instruments. 19/

43. Of these fifteen instruments, the Fourth Convention concerning the Laws and Customs of War on Land, with the annexed "Regulations respecting the Laws and Customs of War on Land" is of special relevance to the subject-matter of the present report. Also of relevance are Convention 9 concerning Bombardments by Naval Forces in Time of War; Convention 10 for the Adaptation of the Principles of the Geneva Convention to Maritime War and the Declaration prohibiting the Discharge of Projectiles and Explosives from Balloons. 20/

44. The Fourth Hague Convention of 1907 replaced as between the Contracting Powers the corresponding Hague Convention respecting the Laws and Customs of War on Land of 1899; the Convention of 1899 remained in force as between the Powers which were bound by it, but which did not ratify the 1907 Convention. The Declaration prohibiting the Discharge of Projectiles and Explosives from Balloons extended "to the close of the Third Peace Conference" the prohibition of the discharge of projectiles and explosives from balloons "or by other new methods of a similar nature agreed" upon in 1899. The projected Third Peace Conference was not convened.

45. In concluding the Fourth Hague Convention, the Contracting Parties affirmed that they were animated by the desire to serve, even in the extreme case of armed conflicts, "the interests of humanity and the ever progressive needs of civilization". They stated that it was important, with this object in mind, to

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- (1) Convention for the Pacific Settlement of International Disputes;
 - (2) Convention respecting the Limitation of the Employment of Force for the Recovery of Contract Debts;
 - (3) Convention relative to the Opening of Hostilities;
 - (4) Convention concerning the Laws and Customs of War on Land;
 - (5) Convention respecting the Rights and Duties of Neutral Powers and Persons in War on Land;
 - (6) Convention relative to the Status of Enemy Merchant-ships at the Outbreak of Hostilities;
 - (7) Convention relative to the Conversion of Merchant-ships into Warships;
 - (8) Convention relative to the Laying of Automatic Submarine Contact Mines;
 - (9) Convention respecting Bombardments by Naval Forces in Time of War;
 - (10) Convention for the Adaptation of the Principles of the Geneva Convention to Maritime War;
 - (11) Convention relative to Certain Restrictions on the Exercise of the Right of Capture in Maritime War;
 - (12) Convention relative to the Establishment of an International Prize Court;
 - (13) Convention respecting the Rights and Duties of Neutral Powers in Maritime War;
 - (14) Declaration Prohibiting the Discharge of Projectiles and Explosives from Balloons;
 - (15) Draft Convention relative to the Creation of a Judicial Arbitration Court.

20/ G. Fr. de Martens, Nouveau recueil général de traités et autres actes relatifs aux rapports de droit international, 3ème série, tome VII, 1910, p. 461.

revise the general laws and customs of war in order, on the one hand, to define them with greater precision and, on the other hand, confine them within limits intended to mitigate their severity as far as possible. The Preamble to the Fourth Hague Convention further noted that it had not been found possible to agree on "stipulations governing all the circumstances which arose in practice". The Contracting Parties also stated that they did not "intend that unforeseen cases should, in default of written agreement, be left to the arbitrary opinion of military commanders". The Preamble of the Convention further contained the so-called Martens Clause, (named for the Russian jurist, Fedor Fedorovich Martens) which reads as follows:

"Until a more complete code of the laws of war can be drawn up, the High Contracting Parties deem it expedient to declare that, in cases not covered by the rules adopted by them, the inhabitants and the belligerents remain under the protection and governance of the principles of the law of nations, derived from the usages established among civilized peoples, from the laws of humanity, and from the dictates of the public conscience".

In these paragraphs of the Preamble the Contracting Parties made it therefore clear that the code of the Laws of War which they had adopted was not complete, and that apart from that code there existed rules to be applied in the interests of humanity and of civilization which must be respected even if they were not put down in treaty form. 21/

46. In section I, "Of Belligerents", the Hague Regulations define the scope of the Regulations as regards the persons to whom they apply and contain specific rules for the treatment of prisoners of war. In its section II "Of Hostilities", the Regulations contain the provision that belligerents do not have an unlimited right as to the choice of means of injuring the enemy (article 22). The Regulations also prohibit, *inter alia*, the use of poison or poisonous weapons, the killing or wounding of an enemy who, having laid down his arms, or no longer having means of defence, has surrendered at discretion, the declaration that no quarter will be given, and the employment of arms, projectiles or material

21/ It may be appropriate to recall that the Geneva Conventions of 1949 proceeded from the same premise by providing in their denunciation clauses (article 63 of the Convention I; article 62 of Convention II; article 142 of Convention III and article 158 of Convention IV) that a denunciation of any of these Conventions will in no way impair the obligations which the parties to the conflict shall remain bound to fulfil by virtue of the principles of the law of nations as they result from "the usages established among civilized peoples, from the laws of humanity and the dictates of the public conscience". The same consideration underlies also article 43 of the Vienna Convention on the Law of Treaties of 23 May 1969, which deals with obligations imposed by international law independently of a treaty. It provides that the invalidity, termination or denunciation of a treaty, the withdrawal of a party from it or the suspension of its operation shall in no way impair the duty of any State to fulfil any obligation embodied in the treaty to which it would be subject under international law independently of the treaty.

calculated to cause unnecessary suffering. The Regulations further prohibit the destruction or seizure of enemy property "unless such destruction or seizure be imperatively demanded by the necessities of war" (article 23). Under article 25, the attack or bombardment by any means whatever of undefended towns, villages, dwellings or buildings is forbidden. The officer in command of an attacking force must do all in his power to warn the authorities before commencing a bombardment, except in cases of assault (article 26). Pursuant to article 27, in the event of siege and bombardment, all necessary steps must be taken to spare, as far as possible, buildings dedicated to public worship, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick or wounded are collected, subject to the proviso that they are not being used at the time for military purposes. Article 27 of the Regulations forbids pillage of a town or place, even when taken by assault.

47. Section III of the Hague Regulations (Military authority over the Territory of the Hostile State) is the nucleus of a system of protection for inhabitants of occupied territories. It contains a series of general provisions circumscribing the authority of an occupying Power and imposing upon the occupying Power the obligation to do all in its power to restore and ensure as far as possible public order and safety, respecting at the same time, unless absolutely prevented, the laws in force in the country (article 43). The Regulations provide, *inter alia*, that family honour and rights, individual life and private property, as well as religious convictions and worship, must be respected. Private property may not be confiscated (article 46). Pillage is expressly forbidden (article 47). No collective punishment, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which it cannot be regarded as collectively responsible (article 50).

48. For several decades the Hague Regulations of 1899 and 1907 remained the main norms governing the humanitarian aspects of the law of armed conflict. These Regulations continue to be in force while supplemented and modified by subsequent international instruments. 22/

49. An important pronouncement of the International Military Tribunal sitting at Nürnberg must however be recalled at this point. The Tribunal stated in its judgement of 10 October 1946 that "by 1939 the rules of land warfare laid down in the 1907 Convention had been recognized by all civilized nations and were regarded as being declaratory of the laws and customs of war". 23/ The International Military Tribunal for the Far East, in its judgement of 1948, ruled

22/ Information received from the Government of the Netherlands, depository of the Hague Conventions, indicates that thirty-two ratifications have been received. This figure does not take into account the effects of State succession.

23/ Judgement of the International Military Tribunal for the Trial of Major War Criminals (London, 1946), Cmd. 6964, p. 64.

that the Hague Convention of 1907 was "good evidence of the customary law of nations to be considered by the Tribunal, along with all other available evidence, in determining the customary law to be applied in any given situation". 24/

50. Thus, highly authoritative pronouncements have recognized that the provisions of the Hague Regulations have become rules of customary international law binding on all members of the international community. A particular importance may be attached to these pronouncements in view of the fact that the Fourth Hague Convention of 1907 provided (in the so-called "general participation clause" or clause "si omnes") that the rules contained in it and in the annexed regulations did "not apply except between Contracting Powers and then only if all the belligerents are parties to the Convention". If the Hague Regulations became part of customary international law, the general participation clause may be viewed as having lost its limiting effect. 25/

International Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field, Geneva 1906

51. One year before the Second Hague Peace Conference on 6 July 1906, an International Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field was concluded at Geneva. Its purpose was to improve and to complete the arrangements agreed upon in the Geneva Convention of 1864. Article 31 of the Geneva Convention of 1906 provides that it shall replace the Convention of 1864 in the relations between the Contracting Parties. The Convention of 1864 remained in force between the Parties who signed the 1864 Convention without ratifying the 1906 Convention. The provisions of these two Conventions were however superseded by those of the Geneva Conventions of 1929 and 1949. 26/

Draft Air Warfare Rules proposed in 1923

52. The 1899 and 1907 Peace Conferences adopted Declarations prohibiting the discharge of projectiles and explosives from balloons. 27/ With a view to

24/ Judgement of the International Military Tribunal for the Far East of 1948, United Nations War Crimes Commission, Law Reports of Trials of War Criminals, vol. 15 (1949), p. 13.

25/ The Declaration of St. Petersburg of 1868 also contained a general participation clause by providing that it was binding only "upon the Contracting or Acceding Parties thereto in case of war between two or more of them and that it was not applicable to non-Contracting Parties". The Declaration went on to provide that it would also "cease to be obligatory from the moment in a war between contracting or acceding Parties, a non-Contracting Party or a non-Acceding Party should join one of the belligerents".

26/ According to information published by the International Committee of the Red Cross, the Geneva 1906 Convention is still in force as regards Costa Rica.

27/ The "general participation clause" in the Declaration of 1907 is considered to have made these Declarations inoperative in the First and Second World Wars.

regulating "the use of aircraft against the armed forces, the maritime commerce and military objectives of the enemy", and to protecting the civilian population from the damages of indiscriminate bombardment, the States represented at the Washington Conference of 1922 on the Limitation of Armaments appointed a Commission of Jurists charged with the task of proposing a draft code of air warfare rules. In 1923 the Commission proposed a comprehensive set of rules. ^{28/} which aimed at "a compromise between the necessities of war and the requirements of the standards of civilization". These have not been incorporated in an international agreement.

Geneva Protocol of 1925 for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases and of Bacteriological Methods of Warfare

53. At the Conference for "the Supervision of the International Trade in Arms and Ammunition and any Implements of War" held in Geneva in 1925, one of the delegations represented expressed the view that an amendment to the draft Convention on International Trade in Arms which was before the Conference was necessary "so as to deal with the traffic in poisonous gases with the hope of reducing the barbarity of modern warfare". ^{29/} Another delegation proposed that "any decision taken by the Conference concerning the materials used for chemical warfare should apply equally to the materials employed for bacteriological warfare". ^{30/} The Conference eventually decided to deal with the question of chemical and bacteriological warfare, not in the form of an amendment to the draft Convention for the Supervision of International Trade in Arms, but in a separate instrument, the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases and of Bacteriological Methods of Warfare.

54. Under the Geneva Protocol the Parties accepted the prohibition of the use in war of "asphyxiating, poisonous or other gases, and of all analogous liquids, materials or devices" and agreed to extend that prohibition "to the use of bacteriological methods of warfare". It may be noted that under the terms of the Protocol, the Parties agreed to be bound as between themselves "according to the terms of this Declaration", without attributing any influence on this binding undertaking to the entry into the armed conflict of a State not bound by the Protocol. It may also be observed that while the Contracting Parties to the Declaration concerning Asphyxiating Gases of 1899 had agreed to abstain from the use of projectiles - the sole object of which had been the diffusion of asphyxiating or deleterious gases - and while the employment of poison or poisonous weapons in land warfare had been prohibited by the Hague Convention of 1907 (article 23 (a) of the Hague Regulations of 1907), the Geneva Protocol of 1925 is the only multilateral instrument expressly prohibiting bacteriological warfare. ^{31/}

^{28/} Cmd. 2201 (London, Her Majesty's Stationery Office, 1963); 17 American Journal of International Law, Supp. 1923, pp. 245-260.

^{29/} League of Nations, Proceedings of the Conference for the Supervision of the International Trade in Arms and Ammunition and Any Implements of War, A13.1925.IX (1925), p. 739.

^{30/} Ibid., p. 779.

^{31/} Information received from the Government of France, depository of the Geneva Protocol, indicates that sixty-eight ratifications, adhesions or accessions have been received up to 30 October 1969 (see annex II, A).

1929 Conventions on the wounded and sick and on prisoners of war

55. The experience of the First World War rendered necessary a review and extension of the Geneva Convention of 1906 referred to above, as well as of the provisions relating to prisoners of war contained in the Regulations concerning the Laws and Customs of War on Land of 1907. This was effected by two conventions concluded at Geneva in 1929, namely, the 1929 Convention for the Relief of the Wounded and Sick in Armies in the Field and the 1929 Geneva Convention relative to the Treatment of Prisoners of War. 32/ The two 1929 Conventions replaced or supplemented the corresponding provisions of the Conventions of 1906 and 1907 between the Parties to the later Conventions, while the earlier Conventions remained in force between the Parties to them which did not become Parties to the 1929 Conventions. The provisions of the 1929 Conventions were also superseded by those of the 1949 Geneva Conventions. 33/

Geneva Conventions of 1949

56. The development of the humanitarian law of armed conflicts was continued, account being taken of the experience of the Second World War, at the Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War. The Conference was convened by the Swiss Federal Council and was held in Geneva from 21 April to 12 August 1949. The Conference prepared the texts of the following four Conventions, which were signed on 12 August 1949 and entered into force on 21 October 1950: (1) Geneva Convention for the Amelioration of the Conditions of the Wounded and Sick in Armed Forces in the Field (hereinafter referred to as Geneva Convention I); 34/ (2) Geneva Convention for the Amelioration of the Conditions of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (hereinafter referred to as Geneva Convention II); 35/ (3) Geneva Convention Relative to the Treatment of Prisoners at War (hereinafter referred to as Geneva Convention III); 36/ (4) Geneva Convention Relative to the Treatment of Civilian Persons in Time of War (hereinafter referred to as Geneva Convention IV). 37/

32/ The French and English texts of the Conventions may be found in the Handbook of the International Red Cross, 10th ed. (Geneva, 1953).

33/ According to information available to the International Committee of the Red Cross, the 1929 Geneva Conventions for the Relief of the Wounded and the Sick is still in force between Burma, Bolivia and Ethiopia. Bolivia and Burma are still parties to the Convention Relative to the Treatment of Prisoners of War.

34/ United Nations Treaty Series, vol. 75 (1950), No. 970.

35/ Ibid., No. 971.

36/ Ibid., No. 972.

37/ Ibid., No. 973.

57. Geneva Convention I replaces the conventions of 1864, 1906 and 1929 in relations between the Contracting Parties (article 59). Geneva Convention II replaces the Tenth Hague Convention of 1907 for the Adaptation to Maritime Warfare of the Geneva Convention of 1906 in relations between the High Contracting Parties (article 58). Geneva Convention III replaces the Geneva Prisoners of War Convention of 1929 in relations between the High Contracting Parties. In the relations between the Powers which are bound by the Hague Conventions relating to the Laws and Customs of War on Land, whether of 1899 or 1907, and which are Parties to Geneva Convention III, Geneva Convention III is complementary to chapter 2 of section I of the Hague Regulations of 1899 and 1907 dealing with prisoners of war (articles 134 and 135). Geneva Convention IV protects civilians who find themselves in cases of a conflict or occupation in the hands of a State Party of which they are not nationals. In the relations between the Powers which are bound by the Hague Conventions respecting the Laws and Customs of War on Land of 1899 and 1907 and which are Parties to Geneva Convention IV, Geneva Convention IV is supplementary to sections II and III of the Hague Regulations (article 154). 38/

58. Several provisions are common to all four Geneva Conventions. They are contained in what are usually referred to as the "common articles". These "common articles" cover, among others, the following matters: the unilateral undertaking by States Parties to respect and to ensure respect for the Conventions in all circumstances (common article 1); this obligation is not subject to what in earlier treaties had been referred to as "military necessity", unless the relevant 1949 Convention itself makes allowance for such a consideration in specific provisions. The Conventions have to be applied in all cases of declared war or of any other armed conflict between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them, and in cases of partial or total occupation. There is no "general participation clause" in the 1949 instruments; the States Parties are bound to apply the Conventions also in relation to a non-party if the latter accepts and applies the provisions of the Conventions. All four Conventions prohibit the renunciation of the rights set forth in the Conventions both by the protected persons and by the States on whom they depend (article 7 of Conventions I, II and III; article 8 of Convention IV). The common provisions of the four Conventions relate also to the function and role of the protecting Power in securing the application of the Conventions and in relation to disputes as to their interpretation (articles 8, 9 and 11 of Conventions I, II and III; articles 9, 10, 11 and 12 of Convention IV). The Conventions provide for the dissemination of the texts of the Conventions and the inclusion of the study of these texts in courses of military and, if possible, of civil instruction (article 49, Convention I; article 48, Convention II; article 127, Convention III; article 144, Convention IV).

59. The States Parties have further undertaken to legislate for the repression of what are defined as grave breaches of the Conventions, to search for and try persons who have committed them or, alternatively, to hand them over to other Contracting States (articles 49 and 50, Convention I; articles 50 and 51, Convention II; articles 127 and 130, Convention III; articles 146 and 147, Convention IV).

38/ According to information received from the Swiss Government up to 15 October 1969 there have been 126 ratifications, accessions or declarations of continuity as regards the 1949 Geneva Conventions (see annex II, B).

60. The denunciation clauses are of special interest. While providing that the denunciation shall take effect one year after notification, the Conventions limit this right of denunciation by providing that a denunciation of which notification has been made at the time when the denouncing Power is involved in a conflict shall not take effect until peace has been concluded and only after operations connected with the release, repatriation and re-establishment of the persons protected by the Conventions have been terminated. A denunciation in no way "impairs the obligations which the Parties to the conflict shall remain bound to fulfil by virtue of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity and the dictates of the public conscience".

61. The four Geneva Conventions of 1949 apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, i.e. to all international conflicts, even if the state of war is not recognized by one of them (common article 2). Common article 3 of the four Conventions is however of particular interest for it extends the scope of international rules also to conflicts not of an international character by imposing upon the Parties to such a conflict the duty to observe a minimum standard of conduct. It provides, inter alia, that persons taking no active part in the hostilities, including members of armed forces, who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth, or wealth, or any other similar criteria. Violence to life and person, in particular murder, cruel treatment and torture, taking of hostages, outrages upon personal dignity, the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples, are and shall remain prohibited at any time and in any place whatsoever

Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954

62. In 1954 the Convention for the Protection of Cultural Property in the Event of Armed Conflict ^{39/} was prepared at an intergovernmental conference convened by UNESCO at the Hague together with Regulations for the execution of the Convention and a Protocol to the Convention. Like the Geneva Conventions of 1949, the Convention of 1954 applies in international armed conflicts (article 18) and, on the lines of article 3 of the Geneva Conventions, it makes provision for the application in conflicts not of an international character, as a minimum, of those of its provisions which relate to respect for cultural property (article 19). The Convention, Regulations and Protocol create, among other things, machinery for their implementation and provide for the function of protecting Powers, for conciliation procedure and assistance of UNESCO. As soon as a Party is engaged in an armed conflict a Commissioner-General for Cultural Property is to be appointed from an international list of qualified persons. The 1954 Convention and Regulations are in force among fifty-eight States; the Protocol is in force among fifty-four States.

^{39/} United Nations, Treaty Series, vol. 249 (1956), No. 3511.

Recent international instruments relevant to the present study,
which were adopted or endorsed by the General Assembly of the
United Nations

63. Before completing this brief historical survey, it may be useful to list resolutions and international instruments of relevance to the present report which in recent years have been adopted by the General Assembly or have been endorsed by it.

64. At its sixteenth session, the General Assembly adopted a Declaration on the Prohibition of the Use of Nuclear and Thermo-Nuclear Weapons. ^{40/}

65. The Treaty Banning Nuclear-Weapon Tests in the Atmosphere, in Outer Space and Under Water was signed in Moscow on 5 August 1963 and entered into force on 10 October 1963. ^{41/} At its eighteenth session, the General Assembly, noting with approval the Treaty, urged Member States to become parties to it and to abide by its spirit and provisions and at the twenty-third session the Assembly urged all States which had not done so to adhere without further delay to the Treaty. ^{42/} As of 30 June 1969, there were 103 ratifications, accessions or successions.

66. The Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies was commended by the General Assembly in resolution 2222 (XXI) of 19 December 1966; ^{43/} it was signed on 27 January 1967 and entered into force on 10 October 1967. As of 30 June 1969, the Treaty had received thirty-four ratifications or accessions.

67. The Treaty on the Non-Proliferation of Nuclear Weapons was signed on 1 July 1968; it is not yet in force. It had been commended by the General Assembly in resolution 2373 (XXII) of 12 June 1968. The Assembly expressed the hope for the widest possible adherence to the Treaty by both nuclear-weapon and non-nuclear-weapon States.

^{40/} General Assembly resolution 1653 (XVI) of 24 November 1961, adopted by 55 votes to 20, with 26 abstentions.

^{41/} United Nations, Treaty Series, vol. 480, 1963, No. 6964.

^{42/} Resolution 1910 (XVIII) of 27 November 1963 adopted by 104 votes to 1, with 3 abstentions; and resolution 2455 (XXIII) of 20 December 1968 adopted by 108 votes to none, with 5 abstentions.

^{43/} The resolution was adopted unanimously; the text of the Treaty is annexed to the resolution.

68. Reference may also be made to the declaration on the denuclearization of Africa, ^{44/}adopted by the Assembly of Heads of States and Government of the Organization of African Unity at its first regular session held in Cairo from 17 to 21 July 1964. It was endorsed by the General Assembly in its resolution 2033 (XX) of 3 December 1965.

69. The Declaration on the Denuclearization of Latin America of 29 April 1963 of the Presidents of five Latin American Republics which led to the conclusion of the Treaty for the Prohibition of Nuclear Weapons in Latin America (A/6663) ^{45/}should also be mentioned. The Treaty itself was opened for signature at Tlatelolco, Mexico, and entered into force on 22 April 1968. The General Assembly welcomed the Treaty with special satisfaction, in resolution 2286 (XXII) of 5 December 1967. As of 30 September 1969, the Treaty had received fifteen ratifications or accessions.

^{44/} See Official Records of the General Assembly, Twentieth Session, Annexes, agenda item 105, document A/5975.

^{45/} For the printed text, see United Nations, Treaty Series, vol. 634 (1968), No. 9068.

III. OBSERVATIONS ON SOME ASPECTS OF THE GENEVA CONVENTIONS OF 1949 IN THEIR
RELATION TO UNITED NATIONS INSTRUMENTS IN THE FIELD OF HUMAN RIGHTS

1949 Geneva Conventions, the Universal Declaration of Human Rights and the
International Covenants on Human Rights

70. Before surveying issues raised by the two subjects of study entrusted to the Secretary-General in paragraph 2 of resolution 2444 (XXIII) it may be useful to make certain comparisons between the provisions of the four Geneva Conventions of 1949, which represent a relatively recent codification of a large part of the humanitarian law relating to armed conflicts, with the main international instruments in the field of human rights elaborated by the United Nations, the Universal Declaration of Human Rights and the two International Covenants on Human Rights. The comparisons which follow are of a general character and are not meant to be exhaustive.

71. Article 5 of the Universal Declaration provides that no one shall be subjected to torture or to cruel, inhuman or degrading punishment. Article 7 of the International Covenant on Civil and Political Rights also contains this prohibition and adds that, in particular, no one shall be subjected without his free consent to medical or scientific experimentation. Article 13 of Geneva Convention III provides, *inter alia*, that no prisoner of war may be subjected to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical, dental or hospital treatment of the prisoner concerned and carried out in his interest. Similarly, article 32 of Convention IV prohibits not only murder, torture, corporal punishment, mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person, but also any other measures of brutality.

72. Article 6 of the Universal Declaration and article 16 of the International Covenant on Civil and Political Rights guarantee to everyone the right to recognition everywhere as a person before the law. Article 14 of Geneva Convention III is to the effect that prisoners of war shall retain the full civil capacity which they enjoyed at the time of their capture. A similar provision concerning the full civil capacity of civilian internees is contained in article 80 of Convention IV.

73. Article 8 of the Universal Declaration states that everyone has the right to an effective remedy by the competent national tribunals, and article 2, paragraph 3, and articles 9 and 14 of the Covenant contain more specific provisions in this regard. Geneva Convention III contains a comprehensive section (articles 78 to 108) on relations between prisoners of war and the authorities, with provisions relating to complaints by prisoners of war, to prisoners of war representatives as well as elaborate procedural safeguards in regard to penal and disciplinary sanctions against prisoners. Corresponding provisions guaranteeing to the civilian populations of occupied territories remedies against

measures such as internment or assigned residence, and providing for certain procedural safeguards for civilians interned in the territory of a party to the conflict and in occupied territory, can be found in Geneva Convention IV (articles 41 to 43, 78 and 101).

74. The prohibition contained in the Declaration and the Covenant against arbitrary arrest and detention (articles 9 of both instruments) tends in times of armed conflict and occupation to be subject to far-reaching exceptions. The detaining Power may subject prisoners of war to internment. Subject to the provisions of Convention III relative to penal and disciplinary sanctions, prisoners of war may not, however, be held in close confinement except where necessary to safeguard their health (article 21). The internment or the placing in assigned residence of protected persons is permitted under Convention IV only if the security of the detaining Power makes it absolutely necessary (articles 42 and 78).

75. The provision of article 9 of the Declaration prohibiting arbitrary exile is reflected in article 49 of Convention IV which prohibits, regardless of their motive, individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the occupying Power or to that of any other country, whether occupied or not. The Convention admits exceptions to this prohibition if the security of the population or imperative military reasons so demand.

76. The right to a fair trial set forth in article 10 of the Declaration and in article 14 of the Covenant is given emphasis in Conventions III and IV: article 104 of Convention III provides for the notification of the protecting Power of a decision to institute proceedings against a prisoner of war; article 105 defines the rights of the defence; and article 106 deals with the right of appeal. Provisions under articles 71 to 76 of Convention IV concern the trial of civilians in occupied territory and proceedings against internees who are in the national territory of the detaining Power (article 126). The prohibition of double jeopardy (the principle *ne bis in idem*) contained in article 14, paragraph 7, of the International Covenant on Civil and Political Rights; is laid down in article 86 of Geneva Convention III and in article 112 of Convention IV. Similarly the principle of article 14, paragraph 3 (g), of the Covenant that nobody must be compelled to testify against himself or to confess guilt is contained in article 99, paragraph 2, of Geneva Convention III.

77. The prohibition of retroactive penal legislation (article 11 (2) of the Declaration and article 15 of the Covenant) finds its application in Geneva Conventions III (article 99) and IV (articles 67 and 126).

78. Common article 3 of the Geneva Conventions, which sets forth minimum human rights standards for conflicts not of an international character, requires for the passing of sentences and the carrying out of executions a previous judgement pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

79. All four Geneva Conventions contain a number of provisions designed to safeguard some of the social and economic rights set forth in the Declaration and in the International Covenant on Economic, Social and Cultural Rights in

time of armed conflicts, among others the right to health (article 12 of that Covenant). These provisions apply to the wounded and sick (Convention I), to wounded, sick and shipwrecked members of armed forces at sea (Convention II), to prisoners of war (Convention III) and to civilians (Convention IV).

80. The Charter of the United Nations emphatically rejects distinctions as to race, sex, language, or religion. The prohibition of discrimination on these and related grounds permeates the Universal Declaration of Human Rights (articles 1, 2 and 7) and both covenants on human rights. The prohibition of discrimination is repeatedly expressed throughout the four Geneva Conventions. Common article 3 (on armed conflicts not of an international character) requires humane treatment of persons taking no active part in hostilities "without any adverse distinctions founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria". Article 12 of Convention I and article 12 of Convention II explicitly prohibit adverse distinctions on grounds of nationality and political opinion. Article 16 of Convention III prohibits adverse distinctions among prisoners of war based on race, nationality, religious belief or political opinions, or any other distinction founded on similar criteria. Article 27 of Convention IV prohibits adverse distinctions among protected persons based, in particular, on race, religion or political opinion, while article 13, which covers the whole of the populations of the countries in conflict, prohibits adverse distinctions based, in particular, on race, nationality, religion or political opinion.

81. Articles 7 of Geneva Conventions I, II and III and article 8 of Convention IV provide that protected persons may in no circumstances renounce in part or in entirety the rights secured them by the Conventions or by special agreements envisaged in the Conventions. It may be recalled in this connexion that the Universal Declaration of Human Rights refers in its preamble to the "inalienable rights" of all members of the human family.

82. The United Nations human rights instruments as well as the Geneva Conventions of 1949 appear to belong to the category of treaties setting forth "absolute obligations" where, as stated by a Special Rapporteur of the International Law Commission on the Law of Treaties, "neither juridically nor from the practical point of view, the obligation of any party is dependent on a corresponding performance by the others. The obligation has an absolute rather than a reciprocal character - it is, so to speak, an obligation towards all the world rather than towards particular parties".^{46/} This view is evidenced by the fact that the Universal Declaration of Human Rights proclaims that everyone is entitled to all the rights and freedoms set forth in it without distinction of any kind and that no distinction shall be made on the basis of the political, jurisdictional or international status of country or territory to which a person belongs. Under the International Covenant on Civil and Political Rights each State Party undertakes to respect and to ensure to all individuals

^{46/} Second report on the Law of treaties (1957) by Sir Gerald Fitzmaurice, then Special Rapporteur of the International Law Commission, Yearbook of the International Law Commission, 1957, vol. II (United Nations publication, sales No.: 59.V.5. vol. II), p. 54, paras. 125-126, where treaties on human rights and the 1949 Geneva Conventions are listed as examples of treaties setting forth absolute obligations.

within its territory and subject to its jurisdiction the rights recognized in the Covenant. In article 1 of each of the Geneva Conventions the High Contracting Parties undertake to respect and to ensure respect for the Conventions in all circumstances. It would appear therefore that the application of these instruments is not conditional upon reciprocity.

Some of the provisions of the Geneva Conventions which are of relevance to the present study

83. The paragraphs which follow contain a brief analysis of certain provisions of the Geneva Conventions which may be of special relevance within the context of the study requested by the General Assembly.

84. Article 1 of each of the Geneva Conventions, previously referred to, may justify the inference that the rights of the protected persons under these Conventions may not, except when it is otherwise provided, be over-ridden by requirements of military necessity.

Geneva Convention relative to the Treatment of Prisoners of War (Convention III)

85. Article 4 of Geneva Convention III contains a basic definition of the term "prisoners of war". The requirements established by this definition are identical with those formulated at the Brussels Conference in 1874 and in the Hague Regulation of both 1899 and 1907, with one addition: Geneva Convention III expands the scope of the definition by including persons who are members of organized resistance movements, provided however the latter meet certain conditions as indicated below.

86. Under Geneva Convention III (article 4) prisoners of war are persons belonging to one of the following categories who have fallen into the power of the enemy:

(a) Members of the armed forces of a party to the conflict as well as members of the militia and volunteer corps forming part of such armed forces;

(b) Members of other militias and members of other volunteer corps, including those of organized resistance movements belonging to a party to the conflict provided that such militias, volunteer corps and organized resistance movements fulfil the following conditions:

- (i) That of being commanded by a person responsible for his subordinates;
- (ii) That of having a fixed distinctive sign recognizable at a distance;
- (iii) That of carrying arms openly;
- (iv) That of conducting their operations in accordance with the laws and customs of war.

These provisions exclude therefore members of resistance movements and similar groups which do not belong to a party to the conflict and do not meet all four conditions.

(c) Under article 4 of Convention III, various other groups, such as civilian members of military aircraft crews, war correspondents, members of crews of the merchant marine, and the crews of civil aircraft are also treated as prisoners of war.

87. One of the additional categories of persons who are traditionally, and also under Geneva Convention III, to be treated as prisoners of war comprises inhabitants of an unoccupied territory who, on the approach of the enemy, spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units provided they carry arms openly and respect the laws and customs of war (*levée en masse*). The provision relating to the *levée en masse* is restricted however to those who take up arms before the territory is occupied and the provision is not applicable once the occupation of an area has taken place.

88. One of the requirements of the acquisition of prisoner of war status is that the persons concerned must "have fallen into the power of the enemy". The view has been expressed that persons who defect from their own forces and give themselves up to the enemy and therefore do not have prisoner of war status, are not subject to the provisions of Geneva Convention III and are therefore neither entitled to the rights nor bound by the obligations of prisoners of war.

89. Among the basic general provisions for the protection of prisoners of war, article 12 of Convention III provides that "Prisoners of war are in the hands of the enemy Power but not of the individuals or military units who have captured them. Irrespective of the individual responsibilities that may exist, the detaining Power is responsible for the treatment given them". Article 12 further provides that prisoners of war may only be transferred by the detaining Power to a Power which is a Party to the Convention and only if the detaining Power has satisfied itself of the willingness and ability of the transferee Power to apply the Convention. If the transferee Power fails to carry out the provisions of the Convention in any important respect, the Power by whom the prisoners of war were transferred shall take effective measures to correct the situation or shall request the return of the prisoners of war. Such requests must be complied with.

90. Article 13 stipulates that prisoners of war must at all times be humanely treated. Any unlawful act or omission by the detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited and constitutes a serious breach of the Convention. The Convention prohibits the subjection of prisoners of war to physical mutilation or to medical or scientific experiments, provides for their protection against acts of violence or intimidation and against insults and public curiosity and absolutely prohibits measures of reprisal against them. Prisoners of war are entitled in all circumstances to respect for their persons and their honour. Women shall be treated with all the regard due to their sex (article 14). The detaining Power

is bound to provide free of charge for the maintenance of prisoners of war and for the required medical attention (article 15). All prisoners of war shall be treated alike without any adverse distinction based on race, nationality, religious belief or political opinions or any other distinction founded on similar criteria (article 16).

Geneva Convention relative to the Protection of Civilian Persons in Time of War (Convention IV)

91. Existing provisions in force for the protection of civilians against the consequences of military operations are essentially still those of the 1907 Hague Regulations which prohibit the attack or bombardment of undefended towns, villages, dwellings or buildings or which require the commanding officer of an attacking force to warn the authorities before commencing a bombardment (articles 25 and 26 of the Hague Regulations).

92. The scope of Convention IV, while not extending specifically to dangers to civilians resulting from military operations, is nevertheless very broad. Some of its provisions, namely those of its part II entitled "General Protection of Populations against Certain Consequences of War", cover all the populations of the countries in conflict, without any adverse distinction based, in particular, on race, nationality, religion or political opinion. They deal with hospital and safety zones and localities, neutralized zones, the wounded and sick, as well as the infirm, and expectant mothers and their evacuation where appropriate; with the protection of hospitals and the status of hospital staff, means of transport by land, sea and air of wounded and sick civilians, the infirm and maternity cases; and with medical supplies, food and clothing, child welfare, transmission of family news and other problems of dispersed families (articles 14 to 26).

93. In respect of matters other than those listed in part II, the Convention protects only those persons who find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or occupying Power of which they are not nationals. Nationals of a State which is not bound by the Convention are not protected by it. Nationals of neutral States who find themselves in the territory of a belligerent State, and nationals of co-belligerent States are not regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are (article 4). The reason of the latter restriction is the consideration that if there are normal diplomatic relations between their home State and the belligerent State in which they find themselves, such persons benefit from the diplomatic protection of the State of which they are nationals and are not therefore in need of the protection afforded by Convention IV.

94. The Convention contains a set of provisions which are applicable to both the territories of the parties to the conflict and occupied territories, as well as groups of provisions which are separately applicable to the territory of the parties to the conflict and occupied territories only. Among the provisions common to the territories of the parties to the conflict and to occupied territories there is the provision that protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family

rights, their religious convictions and practice and their manners and customs. They shall at all times be humanely treated and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity. Women shall be especially protected against any attack against their honour, in particular against rape and forced prostitution, or any form of indecent assault. Without prejudice to the provisions relating to their state of health, age and sex, all persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion (article 27).

95. Article 31 of Geneva Convention IV prohibits physical or moral coercion against protected persons in the territories of the Parties to the conflict as well as in occupied territories. Prohibited are also corporal punishment and any measures of such a character as to cause the physical suffering or extermination of protected persons. This prohibition applies not only to murder, torture, corporal punishment, mutilation and medical or scientific experiments, but also to any other measures of brutality whether applied by civilian or military agents (article 32). No person protected by the Convention may be punished for an offence he or she has not personally committed. Collective penalties and, likewise, all measures of intimidation or of terrorism are prohibited. Pillage is prohibited, as well as reprisals against protected persons and their property (article 33). The taking of hostages is also prohibited (article 34).

96. A special section of Convention IV is devoted to aliens in the territory of a Party to the conflict, their right to leave the territory and to questions relating to their repatriation (articles 35 and 36). Special provisions deal with fundamental standards of the treatment of persons in confinement and basic rights of non-repatriated persons, such as medical attention and hospital treatment, practice of religion, protection from dangers of war, preferential treatment for children, pregnant women and mothers of young children (article 38), means of existence and employment (articles 39 and 40).

97. The Convention provides for certain guarantees against the internment or placing in assigned residence of persons protected by it. These measures may be ordered only if the security of the detaining Power makes it absolutely necessary (articles 41 and 42). Their application is subject to control by appropriate courts or administrative boards to be designated by the detaining Power. The Convention provides also for various functions of the protecting Power in this regard (article 43). The institution of the protecting Power is discussed elsewhere in this study.

98. The detaining Power shall not treat as enemy aliens, exclusively on the basis of their nationality de jure of an enemy State, refugees who do not, in fact, enjoy the protection of any Government (article 44). This provision is parallel to that of article 8 of the Convention relating to the Status of Refugees of 1951 which provides that, with regard to exceptional measures which may be taken against the person, property or interests of nationals of a foreign State, the Parties to this latter Convention may not apply such measures to a refugee who is formally a national of the said State solely on account of such nationality.

99. Protected persons may not be transferred to a Power which is not a Party to the Convention. They may be transferred to a Power which is a Party only after the detaining Power has satisfied itself of the willingness and ability of the transferee Power to apply the Convention (article 45).

100. The section on occupied territories of Convention IV specially reflects the experience of the Second World War. Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive. The occupying Power may, however, undertake total or partial evacuation of a given area if the security of the population or imperative military reasons, so demand (article 49).

101. The Convention prohibits the compulsory service of protected persons in the armed or auxiliary forces of the occupant (article 51). The authority of the occupying Power to compel protected persons to work is circumscribed. The occupying Power may not alter the status of public officials or judges in the occupied territories while judges and public officials may not be coerced if they wish to resign for reasons of conscience. The occupying Power may, however, remove public officials from their posts. The penal laws of the occupied territories are to remain in force; they may, however, be repealed or suspended by the occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the Convention.

102. The Convention prohibits retroactive penal legislation and requires that penal legislation introduced by the occupying Power be in accordance with general principles of law, in particular the principle that the penalty shall be proportionate to the offence (article 67). The penal provisions promulgated by the occupying Power may impose the death penalty on a protected person only in cases where the protected person is guilty of very serious offences listed in the second paragraph of article 68, and only on condition that such offences were punishable by death under the law of the occupied territory in force before the occupation began. The Convention provides concrete safeguards of the protection afforded by penal procedures and of the right of defence (paragraphs 72 and 73). Representatives of the protecting Power have the right to attend the trial of any protected person unless the hearing has, as an exceptional measure, to be held in camera.

103. A separate section of Convention IV contains regulations for the treatment of internees whose rights are protected by various safeguards.

The humanitarian law applicable in conflicts not of an international character.

104. In situations of armed conflict which occurred in recent times the determination whether the conflict was or was not of an international character was often difficult to make. While, from the point of view of other branches of international law, e.g. from the point of view of the rights and obligations of neutral Powers, this distinction may be of great importance, this may not be so as far as the questions under consideration are concerned, i.e. the securing of minimum humanitarian standards under circumstances of armed conflict.

105. For purposes other than securing minimum humanitarian standards the Conventions do not purport to change the rules of international law relating to such questions as the recognition of insurgents as belligerents and the relations between the parties to the internal conflict on the one hand and Powers not involved in it on the other. Common article 3 specifically states that the provisions "shall not affect the legal status of the Parties to the conflict". ^{47/} The article does not contain a definition of the concept of a conflict not of an international character. In the years after 1949, internal armed conflicts have occurred which, in the view of the Governments concerned, did not come under the provision of article 3. In other cases the article was applied with the co-operation of the parties to the conflict, and the services of the International Committee of the Red Cross were accepted.

106. Pursuant to article 3, in the case of armed conflicts not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the provisions set forth in sub-paragraphs 1 and 2. It may be noted, however, that article 3 specifically recommends to the parties to the conflict, as regards internal conflicts, that they should endeavour to bring into force, by means of special agreements, all or part of the other provisions of the Convention.

107. The minimum standards are formulated as follows:

"(1) Persons taking no active part in the hostilities, including members of armed forces which have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

"To this end, the following acts are, and shall remain, prohibited at any time and in any place whatsoever with respect to the above mentioned persons:

(a) Violence to life and person, in particular, murder of all kinds, mutilation, cruel treatment and torture;

(b) Taking of hostages;

(c) Outrages upon personal dignity, in particular, humiliating and degrading treatment;

^{47/} In its resolution 10, the Geneva Conference of 1949 declared that it "considers that the conditions under which a Party to a conflict can be recognized as a belligerent by Powers not taking part in this conflict, are governed by the general rules of international law on the subject and are in no way modified by the Geneva Conventions".

(d) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

"(2) The wounded and sick shall be collected and cared for."

108. Article 3 also states that an impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the parties to the conflict.

IV. STEPS TO SECURE RESPECT OF HUMANITARIAN PRINCIPLES IN ALL ARMED CONFLICTS THROUGH THE BETTER APPLICATION AND REAFFIRMATION OF EXISTING INTERNATIONAL CONVENTIONS AND THE ADOPTION OF ADDITIONAL LEGAL INSTRUMENTS AND OTHER MEASURES

A. Better application and reaffirmation of existing humanitarian international conventions and rules

109. In paragraph 5 of resolution 2444 (XXIII) the General Assembly referred specifically to the Hague Conventions of 1899 and 1907, the Geneva Protocol of 1925 and the Geneva Conventions of 1949, and called upon all States which had not yet done so to become parties to these instruments. It appears therefore that, while recognizing the necessity of envisaging the elaboration of new international legal instruments and the taking of other appropriate steps to fulfil the objectives of resolution 2444 (XXIII), the General Assembly recognized the value of international instruments at present in force and wished to reaffirm their validity with a view to securing their better application. The existing humanitarian conventions, whatever may be their shortcomings and imperfections, or the degree of past compliance with their provisions, are therefore to provide a foundation upon which the updating or revision of existing rules, or the elaboration of new ones, should be made to rest. Accordingly, the effort to strengthen respect for human rights in armed conflicts may be viewed as comprising two tasks: first, to capitalize on the progress achieved up to the present by retaining in force, and seeking the widest possible acceptance of the norms which are incorporated in existing international instruments and which have maintained their relevance; second, to effect improvements by formulating new standards or adapting old ones to new or changing situations.

Ratification of conventions

110. One of the steps leading to the better application of existing humanitarian instruments is the endeavour to persuade as many members of the international community as possible, to become formally bound by them. The General Assembly has acted along these lines by calling, in resolutions 2162 B (XXI), 2454 A (XXIII) and 2444 (XXIII), upon States which have not yet done so to become parties to the Hague Conventions of 1899 and 1907, the Geneva Protocol of 1925 and the Geneva Conventions of 1949.

111. As regards the Hague Conventions of 1899 and 1907, it will be recalled that some of their provisions, in particular the Regulations respecting the Laws and Customs of War on Land annexed to the Fourth Hague Convention of 1907, are now considered on the basis of authoritative pronouncements as forming part of customary international law. Nevertheless, having regard to the unequivocally binding character and the greater precision of obligations deriving from treaties, it would appear desirable and worthwhile, as the General Assembly has done, to induce non-parties to ratify or to accede to these conventions and regulations.

112. The Geneva Protocol of 1925 has been the subject of repeated recommendations by the General Assembly. For instance, in its resolution 2162 B (XXI), the Assembly called for strict observance by all States of the principles and objectives of the Protocol, condemned all actions contrary to those objectives and invited all States to accede to the Protocol. These provisions were reaffirmed and reiterated in General Assembly resolution 2454 A (XXIII). In the foreword to his report on Chemical and Bacteriological (Biological) Weapons and the Effects of their Possible Use, ^{48/} the Secretary-General felt it incumbent upon him to "renew the appeal to all States to accede to the Geneva Protocol of 1925".

113. Taking into account the number of Parties to the Geneva Conventions of 1949, it would appear that relatively little remains to be accomplished to ensure their legal acceptance on a practically universal scale. ^{49/} However, until that goal is fully attained, appeals for ratifications would retain their usefulness. The wide degree of acceptance of the 1949 provisions gives them a particular weight in international law which would suggest that any efforts at obtaining a better observance of humanitarian principles in armed conflicts should not be such as would cast doubts on the binding character of these provisions, at least until the 1949 provisions which have retained their usefulness have been reaffirmed and others have been amended by international instruments of equal validity.

114. In comments submitted in connexion with the preparation of the study envisaged under resolution 2444 (XXIII), the International Committee of the Red Cross expressed the hope that the United Nations may, "by regular accession or by a decision of the General Assembly, formally undertake to ensure the application of the Geneva Conventions and the other provisions of a humanitarian character each time forces of the United Nations are engaged in military operations. Such a gesture would have value as an example which would without doubt have a favourable effect" (see annex I). In this connexion it has already been indicated, in paragraph 9 above, that the regulations promulgated by the Secretary-General as regards the United Nations forces in the Middle East, in the Congo and in Cyprus provided that the forces were to observe the principles and spirit of the general international conventions applicable to the conduct of military personnel. Since in United Nations peace-keeping forces the responsibility for the training and discipline of troops has thus far rested with each national contingent rather than with the Organization, it is suggested that improved legal protection of human rights in such operations is likely to come from wider acceptance and application of the humanitarian conventions by contributing States than it is from having the United Nations undertake obligations whose discharge would involve the exercise of an authority it has not yet been granted.

^{48/} United Nations publication, Sales No. E.69.I.24.

^{49/} As of 1 June 1969, 126 ratifications or accessions have been deposited with the Swiss Federal Council. It would appear from the available list that only twelve Members of the United Nations have not adhered to these Conventions.

115. A conclusion which may emerge, therefore, from the studies which are envisaged may be that the objectives of General Assembly resolution 2444 (XXIII) might best be accomplished by a review of the existing rules, followed by a firm reaffirmation of those whose value in present conditions is still clear; by the improvement through additional international instruments of those parts of the humanitarian law the implementation of which has given rise to special problems or difficulties; and by the elaboration of new instruments to fill the gaps in the humanitarian law which have been revealed by experience, or which may be brought to light by a study of contemporary conditions.

Reservations to the humanitarian conventions

116. In connexion with the question of a better application of the humanitarian conventions at present in force, it might be considered whether it would be useful to appeal to States which have made reservations to those conventions to consider whether they can now withdraw the reservations in order to promote more effective and uniform application.

Publicity, dissemination and teaching

117. The wide dissemination of and publicity for international instruments of a humanitarian character and for the corresponding rules and regulations adopted at the national level would appear to be a particularly significant measure to ensure their better application. 50/ Dissemination of the relevant provisions should be accompanied by a more intensive use of educational methods directed at government officials and others who may be responsible for their implementation. Special emphasis should of course be placed on the dissemination of the Conventions to military personnel at all levels of authority and on the instruction of such persons as to the principles of the Conventions and the application of those principles. National systems of education not directed at military personnel in particular might also usefully include a larger degree of teaching of the substance of the humanitarian instruments that is the case at present. This may take place in secondary schools and institutions of higher learning, including law schools, medical schools, teachers' colleges and

50/ All four 1949 Geneva Conventions contain undertakings by the Parties, in time of peace as in time of war, to disseminate the texts of these conventions as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population (article 47 of Convention I; article 48 of Convention II; article 27 of Convention III; article 144 of Convention IV). Conventions III and IV further provide that any authorities who in time of war assume responsibilities in respect of protected persons must possess the text of the Convention concerned and be specially instructed as to its provisions.

institutions for study and research in international affairs. Appropriate courses and specialized textbooks might be introduced where these are not at present available. 51/

118. It may be noted that the number of relevant international provisions is great and that the rules are in most cases of a detailed and technical character (the Regulations annexed to the Fourth Hague Convention alone contains fifty-six articles and the 1949 Geneva Conventions consist of over 400 articles of detailed rules). Compilations and indexes of relevant texts and explanatory pamphlets, handbooks and textbooks suitable for the groups concerned, and worded in simple and clear language would thus be especially useful. They would in particular assist those persons, including the military personnel and government officials, who are called upon to apply the Conventions, in the better understanding of the instruments.

119. National organizations, public or private, such as National Red Cross societies and other humanitarian groups, might strengthen their efforts to propagate the Conventions and to make their contents readily available and accessible. They might also encourage appropriate use of informative measures in the Press and other communication media. It may be important to emphasize that all the above-mentioned activities should be undertaken in peace time, as well as in periods of armed conflict.

120. International measures to strengthen national efforts in the educational field might include the preparation of standard handbooks, explanatory manuals and other teaching aids where all the relevant material would be conveniently arranged and clearly presented. Such activities might consist in the preparation of textbooks which national authorities of a large number of States might agree to utilize, thus introducing a measure of desirable world uniformity in the teaching of the subject. A valuable contribution could be made to this end by UNESCO, WHO, the United Nations Institute for Training and Research (UNITAR) and, obviously, by the International Committee of the Red Cross and other private organizations. It may be noted, in this connexion, that the XXist International Red Cross Conference held at Istanbul in 1969, expressed the hope that during 1970, proclaimed as International Education Year, the United Nations and UNESCO, will provide for events devoted to the teaching and the dissemination of the Geneva Conventions.

121. The United Nations programme of advisory services in the field of human rights might offer various possibilities as regards international educational activities. Regional and world-wide seminars, with the participation of qualified

51/ Article 25 of the 1954 UNESCO Convention for the Protection of Cultural Property in the Event of Armed Conflict states that "the High Contracting Parties undertake, in time of peace as in time of armed conflict, to disseminate the text of the present Convention and the Regulations for its execution as widely as possible in their respective countries. They undertake, in particular, to include the study thereof in their programmes of military and, if possible, civilian training, so that its principles are made known to the whole population, especially the armed forces and personnel engaged in the protection of cultural property".

civilian and military experts, might be organized for the purpose of exchanging views at a specialized level; expert assistance in its various forms might be provided; and a certain number of fellowships and scholarships might be awarded to persons whose positions would be likely to have a special bearing on the application of the humanitarian conventions. UNITAR might perhaps be asked to study whether it would be appropriate and feasible to include the humanitarian conventions as a topic for the regional seminars or training courses it organizes within the framework of the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law.

Penal sanctions of violations of humanitarian rules

122. Breaches of the laws and customs of war involve the personal responsibility of those committing them. Because of their vital importance as regards respect for essential human rights, humanitarian instruments relating to armed conflicts should be accompanied on the national level and as far as possible at the international level by strict provisions relating to the imposition of penal sanctions on persons responsible for their non-application. The purpose of such provisions is not only to punish the violators but also to deter and discourage individual acts of commission or omission which would constitute a violation of the rules in question.

123. The Geneva Conventions of 1949 contain identical articles^{52/} relating to penal sanctions. Under these articles the High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches defined, as regards each Convention, in article 50 of Convention I, article 51 of Convention II, article 130 of Convention III and article 147 of Convention IV. ^{53/} Moreover, each High Contracting Party undertakes to take measures for the suppression of all acts contrary to the provisions of the Conventions other than the grave breaches defined in each Convention.

124. In this connexion, it may be recalled that, under the Charter of the International Military Tribunal which sat at Nürnberg, crimes punishable under

^{52/} Article 49 of Convention I; article 50 of Convention II; article 129 of Convention III; article 146 of Convention IV.

^{53/} For example, article 147 of Convention IV defines as grave breaches of that Convention to which article 146 concerning penal sanctions applies "those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly".

international law included war crimes and crimes against humanity which were defined in article 6 (b) and (c) of the Charter of the Tribunal. ^{54/} The General Assembly, in its resolutions 3 (I) and 95 (I), affirmed the principles of international law recognized by the Charter and the Judgment of the Tribunal. A definition of war crimes and crimes against humanity was also contained in the formulation of the principles in question undertaken by the International Law Commission in 1950 pursuant to General Assembly resolution 177 (II) ^{55/} Acts in violation of the laws and customs of war and various inhuman acts were among the acts defined as crimes under international law in the draft Code of Offences against the Peace and Security of Mankind ^{56/} prepared by the International Law Commission in 1951-1954, also pursuant to General Assembly resolution 177 (II).

125. It may be noted that the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity adopted by the General Assembly at its twenty-third session ^{57/} refers to or contains definitions of war crimes and crimes against humanity (article I).

126. It may be relevant to recall further that, at its fifth session in 1950 (resolution 485 (V)) and its seventh session in 1952 (resolution 877 (VII)), the General Assembly made arrangements for the preparation of one or more preliminary draft conventions and proposals relating to the establishment of the Statute of an International Criminal Court. Two committees, the 1951 and the 1953 Committees on International Criminal Jurisdiction, ^{58/} submitted drafts of a statute for an international criminal court. At its ninth session the General Assembly decided in resolution 898 (IX), however, to postpone consideration of the question of an international criminal jurisdiction and has taken no action on that question since that session.

127. Information on penal legislation enacted by States in respect of violations of existing humanitarian rules might be included in reports on measures taken to give effect to humanitarian instruments which might be submitted to appropriate international organs. As regards humanitarian instruments which might be elaborated in the future, their effectiveness would be enhanced if they were to stipulate the adoption of penal sanctions against individuals violating their provisions.

^{54/} The Charter and Judgment of the Nürnberg Tribunal, History and Analysis, United Nations publication, Sales No. 1949.V.7; see also paragraph 17 of the present report.

^{55/} See Yearbook of the International Law Commission, 1950, vol. II, document A/1316, para. 109, principle VI. In its resolution 1186 (XXII) of 11 December 1957, the General Assembly decided to defer consideration of the draft code and has not up to the present time considered it.

^{56/} *Ibid.* 1951, vol. II, document A/1858, chapter IV, and *ibid.*, 1954, vol. II, document A/2693, para. 50.

^{57/} General Assembly resolution 2391 (XXIII).

^{58/} Official Record of the General Assembly, Seventh Session, Supplement No. 11 (A/2136); and *ibid.*, Ninth Session, Supplement No. 12 (A/2645).

Reporting procedures

128. The Geneva Conventions require the Parties to communicate to one another through the Swiss Federal Council and, during hostilities, through the protecting Powers, the laws and regulations which they may adopt to ensure the application of the Conventions. Encouragement might be given by the General Assembly to an extension of this requirement to all the humanitarian Conventions referred to in resolution 2444 (XXIII). It might also be helpful if the reports submitted by States Parties were not limited to legislative and administrative measures in the technical sense, but were extended to include other measures, such as those of an educational character referred to previously. The reporting procedure might also gain in effectiveness if the reports could be channelled to the international organizations concerned.

Appeals to observe international instruments

129. Should an armed conflict break out in the future, the heads of the States concerned as well as the commanders-in-chief should be encouraged to issue solemn and pressing appeals to all combatants to observe the provisions of international regulations and rules relating to the respect for human rights in armed conflicts. The Secretary-General of the United Nations might also be invited to do so, as well as other senior officials heading international organizations active in the humanitarian field. ^{59/} Similar appeals by leaders of religious and humanitarian groups and institutions would also have a beneficial effect.

B. Need of preparing additional international humanitarian instruments and of taking other measures

130. Independently of any measures taken to extend the binding force of existing international humanitarian instruments, to publicize existing international norms, and to instruct those concerned as to the application of these instruments, a major effort should be directed towards a review of the existing provisions in order to adapt them, as may be necessary, to contemporary realities and the internationally expressed hope and desire of achieving the maximum possible respect for human rights of persons affected by armed conflicts.

^{59/} It may be recalled in this connexion that in a number of cases the Director-General of UNESCO has appealed at the time of the outbreak of armed conflict to the States parties to the conflict to take steps to ensure the preservation and protection of cultural property. In the case of States parties to the UNESCO 1954 Convention he called attention to the provisions of the Convention; in the case of States non-parties he referred to resolutions of the General Conference of UNESCO (see press release UNESCO/1827 of 5 June 1967 and UNESCO press release PI/P No. 21 of 18 July 1969).

131. It is hardly necessary to dwell at any length on the changes in methods of warfare which have occurred since the approval of most of the instruments listed in resolution 2444 (XXIII), and in particular since the adoption of the Hague Conventions and Regulations of 1907. At the turn of the century, strategic thinking was still centred on a front-war situation, where national armies were opposing each other in relatively limited portions of their territories. The increased mobility of armed forces and the speed of military operations, the enormous expansion of air warfare and later the addition to several military arsenals of nuclear and thermo-nuclear weapons and of other weapons of mass destruction, have brought major changes which the authors of existing international instruments could not envisage. Fresh issues were raised by the military as well as the national and ideological significance of the resistance movements in German-occupied territories during the Second World War and in other territories, or by the types of hostilities which accompanied certain phases of the process of decolonization. The traditional distinction between international war formally declared and accompanied by a retention of a certain degree of contacts between belligerents internationally recognized as such, and purely internal conflicts, became less clear. Another distinction, that between combatants and non-combatants, which was also enshrined in both the customary and treaty law of armed conflicts has become more precarious in today's armed conflicts where the civilian population is far more exposed to physical dangers of hostilities than was the case in earlier periods of history. In present-day international and national conflicts prisoners risk seeing the protection afforded to them by international instruments rendered more difficult to obtain and the combatants themselves are faced with new methods of destruction which have fundamentally altered earlier forms of individual or small-group combat. The extent of ravages of today's methods of warfare as regards all the categories of persons involved is incomparably greater than it was in the past.

132. The following parts of this report will deal in turn with some issues arising with respect to categories of problems listed in paragraph 2 (b) of resolution 2444 (XXIII), i.e. the better protection of civilians, prisoners and combatants in all armed conflicts and the prohibition and limitation of the use of certain methods and means of warfare. Other relevant questions will also be briefly examined in an order which it is hoped will facilitate the consideration of the subject by the General Assembly.

1. Protection of civilians

133. The three principles affirmed by the General Assembly in paragraph 1 of resolution 2444 (XXIII) are of the greatest importance for the protection of civilians involved in armed conflicts. Principle (c) states that "the distinction must be made at all times between persons taking part in the hostilities and members of the civilian population to the effect that the latter be spared as much as possible". Principle (b) states that "it is prohibited to launch attacks against the civilian populations as such". Principle (a), which is a reformulation of article 22 of the 1907 Hague Regulations, states that "the right of the parties to a conflict to adopt means of injuring the enemy is not unlimited".

134. Existing conventional provisions relating to the protection of civilians, particularly those of the 1949 Geneva Convention, have been briefly described in various parts of sections II and III of this report. It may suffice to recall here that the 1907 Hague Regulations, as well as the Geneva Convention IV, except as provided in its article 3, were intended to apply only to conflicts of an international character. On the other hand, as indicated earlier, the principles included in General Assembly resolution 2444 (XXIII) are meant to be applicable to all armed conflicts. The elaboration of rules aimed at the protection of civilians in conflicts not considered as being of an international character would therefore deserve special attention. The problems, which arise as a result of the fact that the applicability of existing instruments is limited to international wars, are not confined, however, to the question of the protection of civilians, and it appears preferable therefore to deal, elsewhere, with the whole question of the need to extend the scope of certain parts of existing humanitarian law to cover internal armed conflicts. 60/

135. As regards the practical aspects of the protection of civilians in armed conflicts, certain distinctions may probably be drawn between various phases of military conflict. One phase would be that during which hostilities occur and military operations are carried out. Another phase would be that in which combat and armed encounters or attacks have essentially ceased, at least for a time, and enemy armed forces remain in military control or occupation of territories in which civilians live or work.

136. In respect of the latter phase, an examination of the existing rules, and in particular of the relevant provisions of Geneva Convention IV, which were drafted having regard to circumstances which arose during the Second World War, may well support the conclusion that they are still adequate, or that they require little or no modification. Should action to strengthen their effectiveness be deemed advisable, it might assume the form of a reaffirmation by the General Assembly of the importance of their application.

137. The phase of armed conflict involving the actual conduct of hostilities and military operations may comprise a variety of conditions in which civilians may find themselves. First, civilians may be located in the immediate area of fighting, or in close proximity to that area; second, they may be at some distance from sites where armed clashes take place, but may still be in danger of being suddenly drawn into an expanding or shifting battlefield; third, they may live in regions which, although not a scene of battle, contain targets of military importance, inviting enemy attack from the air, or otherwise; and fourth, they may be concentrated in sectors the military significance of which is marginal, or non-existent, and where, therefore, civilians are more likely to be spared the damages inflicted by the use of armed force.

60/ Attention may be drawn to the communication from the Office of the United Nations High Commissioner for Refugees, reproduced in the annex, which states that if in the future any amendments to existing instruments or new international instruments were to be considered, the Office would hope that consideration would be given to including refugees in the class of persons specifically protected by such instruments.

138. As far as the first and second situations are concerned, a strict application of the rules for the protection of civilians from the consequences of military operations may be rendered difficult by the conditions and requirements of modern military operations. The presence of civilians in the midst of or on the fringes of fighting may impede the observance of the relevant norms by those responsible for the conduct of military operations. This difficulty makes it all the more necessary to ensure that all military personnel participating in operations threatening to engulf civilians receive adequate instruction in the rules adopted for their protection, and are clearly ordered to apply these rules strictly.

139. As regards the third situation envisaged, damage to civilians could be reduced to a certain extent if the parties concerned would remove them as far as possible from the vicinity of permissible targets.

140. The question of differentiating between "military" and "non-military" objectives or "legitimate" and "illegitimate" objectives, which is sometimes discussed by experts, may be relevant to the matter now examined. The distinction between military objectives, considered as legitimate, and non-military objectives, considered as illegitimate, continues to be the criterion used by some experts for judging whether a certain military operation is, or is not, in conformity with the laws and customs of armed conflict. In recent and contemporary armed conflicts belligerents have accused each other of having attacked non-military objectives, and the accused parties have denied the facts, without calling in question the cogency of the distinction between military and civilian objectives. There have, however, been differences of opinion in regard to the delimitation of the concepts of military objectives and civilian objectives.

141. The present report cannot enter into a detailed examination of this problem. In scholarly studies of the matter the question has been asked whether the formulation of a general definition of "military objectives" is advisable, or whether it would be preferable to establish a legally binding list of such objectives which would reduce the margin of uncertainty. Another question is whether both military objectives and civilian, non-military objectives should be listed. If the contemplated instrument would list military objectives only, the presumption might be that those not listed are non-military and therefore illegitimate objectives. In any event, the principles that only military objectives are legitimate and that the civilian population is not a legitimate objective, are not challenged, although their application raises a number of practical questions when the population is present in or near the military objectives.

142. The distinction between military and non-military objectives was the subject of a resolution adopted by the Institute of International Law at its session held at Edinburgh in September 1969. The resolution states that objectives which may be considered as military are those which, by their very nature, their destination or their military use, contribute effectively to military action or possess a generally recognized military significance which is such that their total or partial destruction secures, in the circumstances prevailing at the time, a substantial, concrete and immediate advantage to those who are led to destroy them. The resolution provides that, in addition to the civilian population as such and the objects expressly protected by a convention or agreement, the following may not be considered as military objectives: (a) the means which are

indispensable to the survival of the civilian population; (b) the objects which, by their nature or because of their utilization, principally serve relief or peaceful ends, such as religious or cultural needs. It also proclaims that the international law in force prohibits, regardless of distinctions as to the nature of armaments which are utilized, all actions which, for whatever reason, are meant to spread panic in the civilian population.

143. The notion of military objectives has sometimes been interpreted in a very broad sense. This tendency has contributed to justifying the resort, in some cases, to massive air bombing, usually executed from high altitudes. The avowed purpose of this type of bombing was to damage as extensively as possible the enemy's war-making potential and capacity. Nevertheless the effects of bombing as regards the civilian population inherent in this method are obvious. Even if it is assumed that it is intended to be directed against objectives which may be reasonably qualified as military, its lack of precision may frequently cause many civilian casualties. There have been instances in which strategic bombing was used as a means of intimidating, demoralizing and terrorizing civilians by inflicting indiscriminate destruction upon densely populated areas. It would seem that measures to examine the effects of this kind of military operations within their legal context may now be desirable, and the question of defining limits might be usefully studied.

144. In any event, those participating in bombing missions should be required to bring the greatest possible precision to their task, and every effort should be made, as required by existing provisions, to avoid striking civilians. A factor which may serve to discourage "terror" bombing is the realization, brought about by experience and admitted by most concerned, that it is more often than not counterproductive. Far from breaking the will of the population to resist, it seems in many cases to have strengthened its determination to do so, or at least not to have produced decisive military advantages.

145. The difficulties which are attendant on arriving at a practically useful definition of what constitutes a legitimate military objective have led to the consideration of other solutions which might effectively increase the protection afforded to civilians in armed conflicts. One method might be to gather and place under shelter as large a part of the civilian population as possible, especially women, children, the elderly, the sick and those who do not participate in the armed conflict, nor contribute in any way to the pursuit of military operations. This might be achieved by adopting and developing, on a larger scale than provided at present, a system of safety zones which would offer special protection and even immunity from attack.

146. The institution of safety zones established on a firmer basis may be viewed as a development of certain past or existing concepts and practices. For example, article 25 of the Hague Regulations refers to "undefended towns". During the two world wars, some places were declared, in accordance with customary law, to be "open cities" or "open localities". The establishment of "hospital zones and localities" is envisaged in article 23 of Geneva Convention I. Geneva Convention IV provides in article 14 "that in time of peace, the High Contracting Parties and, after the outbreak of hostilities, the Parties thereto, may establish in their own territory and, if the need arises, in occupied areas, hospital and safety zones and localities so organized as to protect from the effects of war, wounded,

sick and aged persons, children under fifteen, expectant mothers and mothers of children under seven". Upon the outbreak and during the course of hostilities, the Parties concerned may conclude agreements on mutual recognition of the zones and localities they have created. They may for this purpose implement the provisions of a draft agreement annexed to Convention IV (annex I), with such amendments as they may consider necessary. The protecting Powers and the International Committee of the Red Cross are invited to lend their good offices in order to facilitate the institution and recognition of these hospital and safety zones and localities. Convention IV also provides in article 15 for the establishment, in the regions where fighting is taking place, of neutralized zones intended to shelter from the effects of war wounded and sick combatants or non-combatants and civilian persons who take no part in hostilities and perform no work of a military character. The Convention contemplates in this case the conclusion of written agreements. A common purpose served by these arrangements is to establish conditions tending to maximize the protection afforded to various categories of persons, especially civilians, against whom attacks are prohibited by existing rules.

147. The 1954 UNESCO convention for the protection of cultural property in the event of armed conflict establishes a far-reaching régime of protection by providing for refuges intended to shelter movable cultural property and for centres containing monuments and other immovable cultural property of very great importance. Detailed measures are provided in the Convention for the transport of cultural property. Cultural property under special protection is to be marked with the distinctive emblem described in the Convention. Special protection is granted to cultural property by its entry in an International Register of Cultural Property under Special Protection. The regulations for the execution of the Convention which constitute an integral part of the Convention contain detailed provisions concerning the procedure of registration and the organization of control by Commissioners General for Cultural Property, inspectors and experts.

148. It would appear that the question of zones of refuge or sanctuaries for civilians not participating in armed conflicts might deserve special study, with a view to envisaging the possible conclusion of an appropriate new international instrument.

149. It is suggested that a number of conditions and requirements would have to be met before a system of safety zones would be likely to be accepted. First, it would seem preferable to bring about the designation and recognition of safety zones in peace time, rather than after the outbreak of hostilities has aroused strong feelings of animosity and suspicion. General multilateral agreements might provide for the conditions for the establishment and for the recognition of security zones which would consequently be respected by the parties. Such zones might then be designated by interested States, formally notified to the other members of the international community and appropriately registered.

150. Second, the demarcation of certain territories for use as safety zones should not entail any strategic advantages and should not secure any military benefits, direct or indirect, for any of the parties to the conflict. The safety zones would merely provide refuge and haven to civilians assembled there to avoid the consequences of armed conflict. The only activities permitted in the zones would be exclusively non-military. The safety zones would have to be completely disarmed

and demilitarized, with the exception of police units solely entrusted with the maintenance of order. The safety zones would not contain large industrial or administrative establishments, would not be centres of important means of communications and transport and would be devoid of installations which may be put to military use. 61/

151. Third, it would be desirable to use special markings and insignia, clearly visible and recognizable, for the purpose of indicating the limits of the safety zones and identifying the personnel serving in them.

152. Fourth, an effective and realistic system of control and verification would have to be devised. The machinery of verification would have to be capable of being activated and put into effect in peace time, as well as in time of armed conflict.

Planning and co-ordination of relief action

153. Both international and non-international armed conflicts create disaster or quasi-disaster situations in which civilian populations and disabled combatants find themselves. The plight of displaced persons is at times extremely severe. Relief on a grand scale by impartial international and national humanitarian organizations is very often urgently needed. Effective co-ordination of such action is essential. Disaster relief should be provided without discrimination and should not be considered an unfriendly act by any of the parties to the conflict. It would be desirable that the authorities concerned should facilitate the transit and distribution of relief supplies upon receipt of appropriate assurances that such an operation would be inspired by purely humanitarian motives, and would not have any direct effect on the conduct of hostilities. All States, which are in a position and willing to do so, should contribute by the use of public funds as well as by appeals to provide funds for the financing and organization of the required relief activities.

154. United Nations organs, such as UNICEF and UNRWA, and specialized agencies, such as FAO and WHO, have carried out relief activities benefiting civilians affected by international as well as non-international conflicts. Appeals by the Secretary-General of the United Nations have in several instances, resulted in increased contributions for relief activities and have facilitated their initiation and organization. It might be useful, nevertheless, to consider the advisability of formulating guidelines aimed at improving the efficiency, strengthening the co-ordination and expanding the scope of relief activities

61/ The 1954 UNESCO convention on the protection of cultural property provides for the following conditions for granting special protection to centres containing monuments and other immovable cultural property of very great importance. These centres must (a) be situated at an adequate distance from any large industrial centre or from any important military objective constituting a vulnerable point, such as, for example, an aerodrome, broadcasting station, establishment engaged upon work of national defence, a port or railway station of relative importance or a main line of communication; and (b) not be used for military purposes.

undertaken in situations of armed conflict by various organizations, public or private. Ways of obtaining the participation of appropriate youth organizations should also be envisaged.

155. It may be noted that the XXIst International Red Cross Conference, held at Istanbul in 1969, adopted a declaration on the principles for international humanitarian relief of civilian populations in disaster situations in which the declaration said, inter alia, that the fundamental concern of mankind and of the international community in disaster situations is the protection and welfare of the individual and the safeguarding of basic human rights. The declaration emphasizes that relief by impartial international humanitarian organizations for civilian populations should, as far as possible, be treated as a humanitarian and non-political matter and should be so organized as to avoid prejudicing sovereign and other legal rights in order that the confidence of the parties to a conflict in the impartiality of such organizations may be preserved. The activities of impartial international humanitarian organizations for the benefit of civilian populations should be co-ordinated. Disaster relief is to be provided without discrimination and the offer of such relief by an impartial international humanitarian organization ought not to be regarded as an unfriendly act. All States and authorities are requested to facilitate the transit, admission and distribution of relief supplies. All authorities in disaster areas should facilitate disaster relief activities by impartial international humanitarian organizations for the benefit of civilian populations.

2. Protection of prisoners

156. As indicated earlier the main instrument regulating the conditions and the modalities of the protection of prisoners of war is Geneva Convention III, of 12 August 1949. In addition to general provisions and definitions, the Convention deals with such matters as those which arise out of the capture and internment of prisoners of war, the relations of prisoners of war with the exterior and with the military authorities in whose power they are, and the termination of captivity, as well as with the functions of information bureaux and relief societies. These provisions are generally considered to be sound and, when effectively applied, as providing a reasonable degree of protection to combatants made captive in the course of military hostilities. From time to time however complaints are heard that this Convention is not adequately respected in a number of cases.

157. The need would, therefore, appear to be for appeals and recommendations to be addressed to the authorities concerned for the full respect and strict application of Geneva Convention III. It would also appear to be necessary to explore the possibilities of an appropriate extension of the Convention to cover those categories of persons to which the provisions at present in force are not clearly applicable (e.g. prisoners belonging to forces considered as "irregular"), and also to make its provisions applicable in cases of conflicts which may be considered as not being of an international character. These two categories of problems will be considered in the following sections.

3. Guerrilla warfare

158. This form of combat is not new, since its very name is drawn from the resistance of the Spanish population to the armies of Napoleon. To resort to guerrilla warfare has, however, been even more frequent in the present century; in particular, several conflicts which have broken out since the adoption of the 1949 Geneva Conventions have involved guerrilla operations. Guerrilla warfare has often been utilized in armed conflicts designated as wars of liberation or national, anti-colonial social and ideological struggles.

159. The problem of guerrillas raises intricate issues within the context of the studies envisaged in General Assembly resolution 2444 (XXIII), as that problem does not easily fall within traditional strategic, political and legal criteria and classifications. Guerrilla warfare is not confined to international conflicts and is encountered even more often in conflicts of an internal character. Various names are applied to what are called guerrillas (partisans, irregulars, members of resistance movements, members of movements of national liberation, members of subversive movements, etc.). Guerrillas do not always hold territory, even if in fact they have a usually safe retreat or a sanctuary. Their method of fighting may be generally characterized as fighting by dispersed and mobile groups, resorting to surprise attacks, ambushes and sabotage, and avoiding, as a rule, pitched battle. Guerrilla warfare is generally a method of fighting employed by those who are weak, in terms of the number of men and material resources they can draw upon. This type of warfare allows the guerrilla to strike at the enemy at the most unforeseeable moments and places while remaining himself elusive; light arms, often the only ones possessed by the guerrilla, are also the only ones which he needs for that type of operation.

160. The traditional categories of lawful or "privileged" belligerents as they were defined and formulated at the Brussels Conference of 1874 and embodied in article 1 of the Hague Regulations comprised the members of the armies and, subject to certain conditions, the members of a militia and of volunteer corps. To these categories Geneva Conventions I, II and III ^{62/} added members of organized resistance movements belonging to a party to the conflict, provided they fulfil the conditions which were also laid down in the Hague and Brussels texts, i.e., that they have a responsible commander, a fixed distinctive sign, carry arms openly and respect the laws and customs of war (see paragraph 86 above).

161. The problem which has arisen is that in many recent or contemporary conflicts, both international and internal, persons have participated who prima facie do not meet the conditions referred to above. Guerrillas do not usually fulfil the conditions of "having a fixed distinctive sign recognizable at a distance" and of "carrying arms openly". They appear often to have difficulty in applying the laws and customs of war, e.g. as regards prisoners whom they take and whom they are not in a position to accommodate and to treat as provided in Convention III. The determination whether the guerrillas "belong to a party to the conflict," is often controversial.

^{62/} The personal scope of the application of these three Conventions is delineated in article 13 of Conventions I and II and in article 4 of Convention III.

162. In international conflicts, members of guerrilla forces in occupied territories would be protected by applicable provisions of Geneva Convention IV. In particular, they would be entitled to a regular trial (article 71). This fact however would not prevent the occupying Power from prosecuting and punishing them subject to certain guarantees, safeguards and instructions set forth in the Convention (articles 68 and the following). 63/

163. In a conflict not of an international character, members of guerrilla forces would be protected by article 3 common to all the Geneva Conventions on condition, however, that they no longer take "active part in the hostilities". Thus, if taken prisoner they would be expressly protected against the passing of sentences and the carrying out of executions "without previous judgements pronounced by a regularly constituted court affording all the judicial guarantees...". While the guerrilla is thus protected against execution without previous judgement, he is not protected under the Conventions against very severe punishment which a regularly constituted court might impose upon him, including, if the national law concerned so provides, capital punishment.

164. Recent action on the part of the General Assembly and of individual Governments appears to indicate that there is an inclination, under certain conditions and in specific situations, to grant to guerrillas certain additional rights. Four resolutions adopted by the General Assembly at its twenty-third session are indicative of this trend. 64/ For example, in resolution 2446 (XXIII) on measures to achieve the rapid and total elimination of all forms of racial discrimination in general and the policy of apartheid in particular, the General Assembly confirmed the views of the Teheran International Conference on Human Rights which recognized and vigorously supported the legitimacy of the struggle of the peoples and patriotic liberation movements in southern Africa and in colonial Territories. The General Assembly also confirmed the decision of the Conference to recognize the right of freedom-fighters in southern Africa and in colonial territories to be treated, when captured, as prisoners of war under the Geneva Conventions of 1949.

63/ The death penalty may be imposed only in cases where the persons guilty of espionage or serious acts of sabotage against the military installations of the occupying Power or of intentional offences which have caused the death of one or more persons, provided that such offences were punishable by death under the law of the occupied territory in force before the occupation began. The death penalty may not be pronounced on a person under eighteen years of age at the time of the offence.

64/ Resolutions 2383 (XXIII) on the question of Southern Rhodesia; 2395 (XXIII) on the question of Territories under Portuguese administration; 2396 (XXIII) on the policies of apartheid of the Government of South Africa; 2446 (XXIII) on measures to achieve the rapid and total elimination of all forms of racial discrimination in general and the policy of apartheid in particular.

165. The question which arises for consideration, therefore, is whether and to what extent and under what conditions, in the future law on the subject, the relevant provisions of the Geneva Conventions, among others, could be modified in order to confer upon guerrillas, or certain guerrillas, the privileges of being cared for under Convention I and of being treated as prisoners of war under Convention III. The problem is a complex and delicate one because, in an international conflict and still more in a conflict which is not of an international character, the fact of participating in the fight against the established authority is, from the point of view of that authority, a penal offence which may be, and very often is, very severely punished.

166. A study by experts might thus be initiated to advise in particular on the complex question whether new rules should be introduced modifying those of the Geneva Conventions in order to confer the status of "protected" combatants upon guerrilla fighters who, for various reasons (not "belonging to a party to the conflict", lacking a fixed distinctive sign recognizable at a distance, not carrying arms openly, not being commanded by a responsible person, not conducting their operations in accordance with the laws and customs of armed conflicts) are not eligible under the Geneva Conventions, if captured, for the status of prisoner of war and the other privileges of "legitimate combatants".

167. The question of recognizing additional protection to guerrilla combatants should probably not be separated from that of a fuller application by the guerrillas themselves of existing humanitarian norms relating to armed conflicts as regards not only those members of armed forces whom the guerrillas fight, but also as regards the civilian population which may be affected by the guerrillas' military operation. The principle adopted by the General Assembly in paragraph 1 (a) of resolution 2444 (XXIII) that the rights of the parties to a conflict to adopt means of injuring the enemy is not unlimited, would also be applicable to guerrillas. Its application by them, and acceptance by them of the other humanitarian rules, might also facilitate the recognition of a status of protection greater than that which the guerrillas enjoy at present.

4. Internal armed conflicts

168. Generally speaking, the international instruments considered in this report reflect traditionally accepted concepts and criteria of international law relating to armed conflicts. The Hague Convention of 1907 refers to "armed conflicts between nations"; the Geneva Protocol of 1925 speaks of "the use in war" of asphyxiating, poisonous or other gases, etc.; the Geneva Conventions of 1949 "apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties even if the state of war is not recognized by one of them". All these instruments relate thus to "international wars". As stated earlier in this report, however, article 3 of the 1949 Geneva Conventions contains a novel element in international law relating to armed conflicts by setting certain minimum standards "in the case of armed conflicts not of an international character".

169. Article 3 does not purport to be a complete code of behaviour for legal authorities and for those who may be considered as insurgents in non-international conflicts. It contemplates that the parties to the conflict should endeavour to bring into force, by means of special agreements, all or part of the other provisions of the Geneva Conventions. The value of this

provision has been recognized recently by the XXIst International Red Cross Conference held at Istanbul in 1969, which adopted a resolution in which it stated that article 3 had already rendered great service in protecting the victims of non-international armed conflicts. The Conference considered however that experience has brought out certain points on the basis of which this article could be made more specific or supplemented.

170. In a special report to the XXIst International Conference, the International Committee of the Red Cross had reported some of the difficulties to which the application of the article gave rise. It stated that "it has happened several times in international conflicts that Governments denied the existence of a conflict to which the common article 3 of the four 1949 Geneva Conventions applied; they claimed that only national law applied to the situation. It has also happened that insurgents refused to consider themselves bound by article 3 and stated that they could not apply some or any provisions of that article, particularly when they resorted to terrorism as a weapon". 65/

171. The International Committee recognized that article 3 does leave considerable discretion to the legal Government, but pointed out that there are elements in this provision binding on the parties, which should exclude purely arbitrary governmental decision. It further pointed out that in accordance with international law, adherence to these Conventions is binding not only on the Government, but also on the population of the State concerned. Its application, when conditions so require, is therefore also compulsory for "insurgents", and its provisions must also be applied by authorities which were not in existence when the State, by ratification or accession, became a party to the Conventions.

172. It was also pointed out by the International Committee of the Red Cross that in several internal conflicts foreign intervention has occurred in many forms, such as the provision of material or financial assistance, of military advisers, of troop contingents, of all-out expeditionary forces or of authorization to volunteer corps to assemble abroad and to go to the country where the conflict takes place to serve one or other of the parties to the conflict. This, in the opinion of the Committee, would be a further element for justifying as broad as possible an application of the laws and customs of war in such conflicts.

173. The main provisions of article 3 common to the 1949 Geneva Conventions have been reproduced in this report in paragraph 107 above. As stated earlier, the minimum principles of protection it contains as regards "persons not taking active part in the hostilities" may be supplemented by means of special agreements which would include certain other provisions of the Convention.

174. Among the areas which may be the object of additional safeguards, the International Committee of the Red Cross points to certain lacunae, such as the fact that article 3 does not refer to the respect due to the sign of the red cross, to hospitals, to military and civilian medical personnel, and to the

65/ "Protection of victims of non-international conflicts", report submitted by the International Committee of the Red Cross to the XXIst International Conference of the Red Cross (document D.S.5 a-b, p. 3).

national Red Cross societies, which makes the activities of Red Cross units and medical personnel more difficult for fear of not being protected against hostilities or of being later blamed for their relief work on behalf of enemy wounded or sick. Another of the points made is that the absence of a distinction between those who fight openly and fairly and those who do not, exposes the former to measures of repression which are similar to those meted out to the latter.

175. Further, it was observed that common article 3 of the Geneva Conventions does not provide for persons detained in an internal conflict the right to receive and send family messages and to receive relief. It was also pointed out that the rule of article 23 of Geneva Convention IV which provides that in an international conflict, Contracting Parties shall allow the free passage of consignments of medical and hospital stores, etc., intended for civilians of another Contracting Party, even if the latter is its adversary and shall likewise permit the free passage of consignments of essential foodstuffs, clothing and tonics, intended for children under fifteen, expectant mothers and maternity cases, does not apply in the absence of a special agreement to conflicts which are not of an international character. Finally, article 3 does not specifically provide for the co-operation either of a protecting Power or a neutral impartial organization in the application of humanitarian provisions. It merely authorizes the International Committee of the Red Cross to offer its services which may be accepted or not.

176. It may be of interest to note that in its report on reaffirmation and development of the laws and customs applicable to armed conflicts the International Committee of the Red Cross deals separately with "non-international conflicts" and "situations of internal disturbances and tension". As regards the former, to which article 3 of the Geneva Conventions would apply, the report recalls a definition proposed by a Committee of Experts which had met in 1962 in Geneva to study the question of assistance to the victims of internal conflicts. In that Committee's opinion, the existence of an armed conflict was undeniable in the sense of article 3, if hostile action against a lawful Government assumed a collective character and a minimum of organization. The duration of the conflict, the number and leadership of rebel groups, their installation or action in parts of the territory, the degree of insecurity, the existence of victims, the means adopted by the lawful government to establish lawful order, all have to be taken into account.

177. The very incorporation of provisions on internal conflicts in instruments entirely oriented to international conflicts may be questioned. The elaboration of a new international instrument providing in particular for a comprehensive system of protection of civilian populations, as well as combatants in internal armed conflicts which may be appropriately defined as being of international concern, might therefore be, as suggested by some Governments, one of the fields of enquiry to which attention should be directed in any future study of human rights in armed conflicts.

5. Protection of combatants

178. As regards the protection of the wounded and sick in armed forces in the field and that of wounded, sick and shipwrecked members of armed forces at sea, detailed provisions are in force and these are contained in the first two Geneva Conventions of 1949. As in the case of the rules concerning prisoners captured in international armed conflicts or those relating to the treatment of civilians in occupied territories, the question appears to be more one of the full application and possible reaffirmation of existing conventions rather than one of a pressing need for modification or amendment of these Conventions.

179. However, as regards combatants who are neither sick, wounded nor prisoners, their destruction or incapacitation may be essential to the attainment of the military objectives of the other side. But the Hague rules, repeated in Assembly resolution 2444 (XXIII), provide that the choice of means of injuring the enemy is not unlimited, and the problem arises of identifying and prohibiting those means which are so needlessly cruel or excessively destructive or so treacherous that they entail useless suffering and shock the conscience of mankind.

180. The basic rules concerning the behaviour between combatants are formulated mainly in articles 22 and 23 (b), (c), (d) and (f) of the Hague Regulations. As recalled earlier, article 22 is the principle reformulated and affirmed by the General Assembly which was mentioned above. Article 23 prohibits the use of poison and of poisoned weapons: to kill or wound an enemy who, having laid down his arms or having no longer means of defence, has surrendered at discretion; to declare that no quarter will be given; to employ arms, projectiles or material calculated to cause unnecessary suffering; to make improper use of a flag of truce, of the national flag or of the military insignia and uniform of the enemy, as well as of the distinctive badges of the Geneva Convention. It would appear that these rules would in any event need re-examination, followed by elaboration and reformulation in a wording better adapted to present conditions.

181. Questions such as the forms by which a combatant can clearly make known his intention to surrender may be better defined. Better protection might be afforded to shipwrecked individuals, to military airmen in distress as well as to enemy personnel isolated after fighting has ended. The rule in article 23 (d) of the Hague Convention that "it is prohibited to declare that no quarter will be given" which does not appear in specific terms in the Geneva Conventions and which, in the opinion of the International Committee of the Red Cross, is very important from the humanitarian viewpoint, might be studied in greater detail.

182. The question of methods of combat as they affect the combatants themselves may therefore be one of those to which further study should be devoted with a view to elaborating international principles and rules more detailed than the ones which are recognized as valid in present law. The final outcome may be the adoption of a declaration or the conclusion of a new convention. The subject matter is of course closely linked with the use of certain types of armaments of mass destruction to which the following paragraphs will be devoted.

6. Prohibition and limitation of the use of certain methods
and means of warfare

183. In expressing its concern for the better protection of civilians, prisoners and combatants in all armed conflicts, the General Assembly in resolution 2444 (XXIII) mentioned in particular the prohibition and limitation of the use of certain methods and means of warfare. As already recalled, the same resolution affirmed certain principles which are relevant to this problem, e.g. that the right of the parties to a conflict to adopt means of injuring the enemy is not unlimited and that the distinction must be made at all times between persons taking part in the hostilities and members of the civilian population to the effect that the latter be spared as much as possible.

184. The methods and means of warfare to which the General Assembly referred would appear to include those weapons which other United Nations resolutions have designated as weapons of "mass destruction" or which sometimes have been called "non-directed" weapons. These means of war, owing to the indiscriminate nature of their effects or their imprecision, strike not only enemy combatants but also those who should be left outside the fighting, for example, the wounded and sick, women, children, etc. They harm civilian populations and combatants without distinction; they escape from the control of those employing them in space or in time and cause unnecessary suffering. Certain other weapons although precise in their effect appear also as entailing unnecessary suffering and some of them have been prohibited for a long time by the international community (see for instance, the Hague Declaration of 1899 which prohibits the use of bullets "which expand or flatten in the human body").

185. Since its inception, much of the activity of the United Nations has been directed at the limitation and prohibition of methods and means of warfare. The problem of the military uses of nuclear and thermo-nuclear energy has preoccupied both the General Assembly and the Security Council in particular. The whole work of the United Nations in the field of disarmament may therefore be considered relevant in giving effect to the objectives of resolution 2444 (XXIII) on respect for human rights in armed conflicts.

186. As regards nuclear and thermo-nuclear weapons, it may be recalled that in its resolution 1653 (XVI) of 24 November 1961, the General Assembly declared, inter alia, that the use of such weapons "would exceed even the scope of war and cause indiscriminate suffering and destruction to mankind and civilization and as such is contrary to the rules of international law and to the laws of humanity". The question of the legal effect of this resolution, which was adopted by a divided vote, has, however, been the subject of discussion. 66/

187. It may also be recalled that in its resolution 2164 (XXI) of 5 December 1966, the General Assembly requested that "the forthcoming world disarmament conference give serious consideration to the question of signing a convention on the prohibition of the use of nuclear and thermo-nuclear weapons".

66/ Official Records of the General Assembly, Sixteenth Session, Annexes, agenda items 73 and 72, document A/4942/Add.3; and ibid., Sixteenth Session, Plenary meetings, 1063rd meeting.

188. Other international conventions which comply with Charter provisions relating to disarmament (e.g. the Treaty banning nuclear weapon tests in the atmosphere, in outer space and in the water; the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies; and the Treaty on Non-Proliferation of Nuclear Weapons) were referred to in section II of the present report. As stated earlier, decisive progress in the field of disarmament and the regulation of armaments will in itself reassure world public opinion as to the achievement of the objectives of General Assembly resolution 2444 (XXIII).

189. It may further be recalled that in resolution 2162 (XXI), also adopted on 5 December 1966, the General Assembly requested the Secretary-General to prepare a concise report on the facts of the possible use of nuclear weapons and on the security and economic implications for States of the acquisition and further development of these weapons. This report, prepared with the assistance of consultant experts appointed by the Secretary-General, was submitted to the Assembly under the symbol A/6858. 67/ The consultant experts' report was submitted by them in their personal capacities and contained their considered and unanimous views. The Secretary-General stated that he was able to endorse their findings.

190. The use of poisons and poisoned bullets has been prohibited by the international law of war for a long time. A prohibition of the use of poisons was contained in the Brussels Declaration of 1874 and embodied, *inter alia*, in the Hague Regulations (article 23 (a) prohibiting the employment of poison or poisoned weapons in warfare). The serious effects of the use of gas in the First World War led eventually to the preparation of the Geneva Protocol of 1925. In the Protocol, the Contracting Parties stated that the use in war of asphyxiating, poisonous or other gases, and of all analogous liquids, materials or devices, has been justly condemned by the general opinion of the civilized world and that the prohibition of such use has been declared in treaties to which the majority of Powers of the world are parties. To the end that this prohibition shall be universally accepted as a part of international law binding alike the conscience and the practice of nations, the Contracting Parties declared that so far as they are not already Parties to treaties prohibiting such use, they accept this prohibition, agree to extend to the use of bacteriological methods of warfare and agree to be bound as between themselves according to its terms.

191. The provisions and principles of the Geneva Protocol of 1925 were repeatedly endorsed in proceedings of principal organs of the United Nations. At its twenty-first session in 1966, the General Assembly, in resolution 2162 (XXI), called for strict observance by all States of the principles and objectives of the Geneva Protocol of 1925, condemned all actions contrary to those objectives and invited all States to accede to the Protocol. At its twenty-third session in 1968, the General Assembly, in resolution 2454 A (XXIII), reaffirmed these recommendations and reiterated its call for strict observance by all States of the principles and objectives of the Protocol. It repeated its invitation to all States to accede to the Protocol, an appeal which is also contained in resolution 2444 (XXIII), under which the present report has been prepared.

192. In resolution 2454 A (XXIII), the General Assembly also requested the Secretary-General to prepare, with the assistance of qualified consultant experts,

67/ United Nations publication, Sales No.: E.68.IX.1.

a report on chemical and bacteriological (biological) weapons and the effects of their possible use. This report was submitted to the twenty-fourth session of the General Assembly and to the Security Council. 68/ Attention is called to this report and to the conclusions contained in paragraphs 371-377. 69/ The Secretary-General decided to accept the consultants' unanimous report in its entirety. The Secretary-General also felt it incumbent upon him, in the hope that further action would be taken to deal with the threat posed by the existence of chemical and bacteriological (biological) weapons, to urge that the Members of the United Nations undertake the following measures in the interests of enhancing the security of the peoples of the world: (1) to renew the appeal to all States to accede to the Geneva Protocol of 1925; (2) to make a clear affirmation that the prohibition contained in the Geneva Protocol applies to the use in war of all chemical, bacteriological and biological agents (including tear gas and other harassing agents) which now exist or which may be developed in the future; (3) to call upon all countries to reach agreement to halt the development, production and stockpiling of all chemical, bacteriological (biological) agents for purposes of war and to achieve their effective elimination from the arsenal of weapons.

193. In his comments made in connexion with the implementation of resolution 2444 (XXIII) and in response to the Secretary-General's request to Governments for any information, suggestions or comments, the Permanent Representative of the United Kingdom drew attention to the revised draft Convention for the Prohibition of Biological Methods of Warfare with the accompanying draft Security Council resolution which were submitted by the United Kingdom at the Conference of the then Eighteen-Nation Committee on Disarmament in Geneva on 26 August 1969. 70/

194. It may also be recalled that the representatives of Bulgaria, the Byelorussian Soviet Socialist Republic, Czechoslovakia, Hungary, Mongolia, Poland, Romania, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics requested the inclusion in the agenda of the twenty-fourth session of the General Assembly of the item entitled "Conclusion of a convention on the prohibition of the development, production and stockpiling

68/ United Nations publication, Sales No.: E.69.I.24.

69/ Paragraph 372 in the conclusions reads as follows: "The present inquiry has shown that the potential for developing an armoury of chemical and bacteriological (biological) weapons has grown considerably in recent years, not only in terms of the number of agents but in their toxicity and in the diversity of their effects. At one extreme, chemical agents exist and are being developed for use in the control of civil disorders; and others have been developed in order to increase the productivity of agriculture. But even though these substances may be less toxic than most other chemical agents, their ill-considered civil use or use for military purposes could turn out to be highly dangerous. At the other extreme, some potential chemical agents which could be used in weapons are among the most lethal poisons known. In certain circumstances, the area over which some of them might exercise their effects could be strictly confined geographically. In other conditions some chemical and bacteriological (biological) weapons might spread their effects well beyond the target zone. No one could predict how long the effects of certain agents, particularly bacteriological (biological) weapons, might endure and spread and what changes they could generate."

70/ A/7741, annex C.

of chemical and bacteriological (biological) weapons and on the destruction of such weapons". At the same time, the representatives of these Member States submitted the text of a draft convention on the subject indicated in the title of the agenda item (A/7655). The item is part of item 104 "Questions of chemical and bacteriological (biological) weapons" under which the sections of the report of the Conference of the Committee on Disarmament which relate to chemical and bacteriological (biological) weapons and the report of the Secretary-General (A/7575/Rev.1) were also to be discussed. The item was referred to the First Committee.

195. It may be borne in mind that, in addition to the weapons specifically referred to above, there are other types of indiscriminate or "blind" weapons, such as land and sea mines, to which consideration might be given in the context of the study envisaged under General Assembly resolution 2444 (XXIII).

The question of napalm

196. In connexion with indiscriminate weapons, in referring to the use of chemical and biological means of warfare, resolution XIII of the International Conference on Human Rights specifically mentioned "napalm bombing".

197. In recent years, reference has often been made to napalm in connexion with weapons causing unnecessary suffering. The report of the International Committee of the Red Cross on the reaffirmation and development of the laws and customs applicable in armed conflict, in explaining the problem states that the Committee's own delegates' observations "have enabled it to realize the burns and frightful harm this weapon can cause, which are all the more cruel when innocent individuals have to suffer from them". The report further states that "of recent years, the employment of this weapon has aroused such reprobation in public opinion that, according to some jurists, the conditions would be favourable for obtaining complete prohibition". "Napalm, however" continues the report, "is also an incendiary weapon which, according to the military experts, can be very effective, while remaining precise in its consequences".

198. Some experts have considered that napalm, like incendiary weapons, is covered by the Geneva Protocol on account of its consequences and as it causes in particular a type of asphyxia. In the view of these experts, napalm and incendiary weapons in general should therefore be assimilated to bacteriological and chemical weapons.

199. Other experts on the contrary consider such an assimilation difficult to make. Without denying the great suffering napalm can cause, they confirm the military effectiveness of napalm in some cases and the possibility of its "discriminating" use. According to the second view, therefore, it is not napalm itself, but the use to which belligerents put this weapon that is important and may appear as contrary or not to law and fundamental humanitarian principles. Current military handbooks, including the handbooks used by the armed forces of some Powers maintaining large military establishments, allow the employment of incendiary weapons, and in particular napalm, with restrictions, (e.g., that these weapons can be employed only against non-human objectives or that they are licit on condition that they are not employed in such a way as to cause unnecessary suffering).

200. Reminders to parties to conflicts that in any event the employment of incendiary weapons, such as napalm, should be accompanied by special precautions to prevent them from unduly affecting members of the civilian population or

disabled members of the armed forces, or causing unnecessary suffering to combatants would therefore appear to be desirable. Moreover, in view of the reference to napalm in the Teheran Conference resolution, the legality or otherwise of the use of napalm would seem to be a question which would call for study and might be eventually resolved in an international document which would clarify the situation.

201. The question of chemical weapons whose effects are not lethal, but simply incapacitating, or the use of substances acting on vegetation, has also been a subject of some controversy. On the one hand, views have been expressed that the use of such arms presents serious dangers of abuse which would fall under the prohibition of the 1925 Geneva Protocol; on the other hand, it has been contended that the use against the enemy of chemical agents involving no serious danger to health, which is admitted on the national level, might be more acceptable than many other means of warfare.

7. International assistance in, and supervision of, the application of humanitarian rules relating to armed conflicts

202. As in other fields of international law, the proper application of international agreements relating to the protection of human rights in armed conflicts depends to a large extent on the good will and good faith of the parties. Other considerations such as reciprocity among parties, fear of reprisals and possible sanctions, may also play a role.

203. However, given the psychological atmosphere and stresses of war, reliance on unilateral interpretations based on good faith may often not be sufficient. Considerations of reciprocity may lead to reprisals which may be themselves contrary to internationally proclaimed objectives of the humane treatment of civilians, prisoners and combatants, and the application of which should therefore be forbidden ^{71/} or, to say the least, strictly circumscribed. Compensations exacted at the end of hostilities from defeated Powers would not in themselves be a solution to the problem of violations of humanitarian rules the primary object of which is to secure proper compliance with their provisions rather than to sanction their violation. Thus, it would appear that the role of the international community should be directed towards finding means of prevailing on parties to armed conflicts to observe internationally agreed standards and providing assistance to the parties in so doing, rather than towards devising new ex post facto punishments, without nevertheless excluding such measures of retribution and deterrence.

204. The traditional method of international participation in ensuring compliance with international instruments relating to armed conflicts is the institution of the protecting Powers, whose application in the context of the law of war is usually traced to the Franco-Prussian War of 1870. The institution was widely accepted during the First World War. It has remained, however, an institution of an essentially customary character. It was referred to for the first time within the context of conventional provisions in the 1929 Geneva Convention relative to the Treatment of Prisoners of War, which stated in its article 86 "that a guarantee of the regular application of the Convention will be found in the possibility of

^{71/} Under the 1949 Geneva Conventions reprisals against protected persons are forbidden.

collaboration between the protecting Powers charged with the protection of the interests of the belligerents".

205. During the Second World War the number of neutral States which could act as protecting Powers was very small. In fact, by the end of the war, Switzerland was representing thirty-five countries, and Switzerland and Sweden together were representing practically all of the belligerents. 72/

206. In the Geneva Conventions of 1949, the system of the protecting Power was extended to all four Conventions. The first paragraph of common article 8 (article 9 in Convention IV) states that "the present Convention shall be applied with the co-operation and under the scrutiny of the protecting Powers whose duty it is to safeguard the interests of the parties to the conflict". The role of the protecting Powers does not appear therefore to be limited to the specific attributions entrusted to them 73/ in the Conventions but extends to all matters relating to their implementation.

207. Many of the matters relating to this institution remain however part of the customary law as, for instance, the conditions of the designation of protecting

72/ It has been pointed out that the Second World War provided a dramatic example of the usefulness and necessity of a system of control when comparison was made between the fate of the prisoners of war to whom the system of the Geneva Convention of 1929 was applied, with that of the prisoners of war to whom it was not applied and who could only benefit from the Hague Regulations, which had no provisions relating to the role of protecting Powers.

73/ For example, under Geneva Convention III, the representatives of the protecting Power may undertake to ensure the conveyance to prisoners of war of relief shipments and correspondence by suitable means (article 75). Prisoners' representatives may send periodic reports on the situation in the camps and the needs of the prisoners of war to the representatives of the protecting Power (article 78). Representatives of the protecting Power may inspect the record of disciplinary punishments of prisoners of war which is to be maintained by the camp commander (article 96). In any case in which the detaining Power has decided to institute judicial proceedings against a prisoner of war, it shall notify the protecting Power as soon as possible and at least three weeks before the opening of the trial (article 104). The representatives of the protecting Power are entitled to attend the trial of the case, unless, exceptionally, this is held in camera in the interest of State security. Under article 126 of the Convention, representatives of delegates of the protecting Power have permission to go to all places where prisoners of war may be, particularly to places of internment, imprisonment and labour, and have access to all premises occupied by prisoners of war; they are also allowed to go to the places of departure, passage and arrival of prisoners who are being transferred. They shall be able to interview the prisoners, and in particular the prisoners' representatives, without witnesses, either personally or through an interpreter. Representatives and delegates of the protecting Power shall have full liberty to select the places they wish to visit. The duration and frequency of these visits shall not be restricted.

(Foot-note continued on following page)

Powers in specific conflicts. This involves a "triangular" arrangement between the protecting Power and each of the belligerents.

208. Common article 10 (article 11 in Convention IV) provides in paragraph 1 that "the High Contracting Parties may at any time agree to entrust to an organization which offers all guarantees of impartiality and efficacy the duties incumbent upon the protecting Powers by virtue of the present Convention". In other words, the belligerents can appoint an organization before or during hostilities to assume the functions of the protecting Power. The organization does not have to be an inter-governmental or even an international organization, but it has to offer "all guarantees of impartiality and efficacy". This means in practical terms that it has to be acceptable to both parties and should have the means of assuming the onerous functions of the protecting Powers.

209. Paragraph 2 of article 10, paragraph 1 (article 11 in Convention IV) provides however that "When persons protected by the present Convention do not benefit or cease to benefit, no matter for what reasons, by the activities of the protecting Power or of an organization provided for in the first paragraph above, the detaining Power shall request a neutral State, or such an organization to undertake the functions performed under the present Convention by a protecting Power designated by the parties to the conflict".

210. Paragraph 3 states that "if protection cannot be arranged accordingly, the detaining Power shall request or shall accept, subject to the provisions of this article, the offer of the services of a humanitarian organization, such as the International Committee of the Red Cross, to assume the humanitarian functions performed by the protecting Power under the present Convention". Thus, whenever no protecting Power or substitute organization is appointed, the detaining Power is under the obligation to request or to accept the services of a humanitarian organization such as the International Committee of the Red Cross. Such an

73/ (continued)

Under Convention IV, the distribution of relief consignments to the population of an occupied territory shall be carried out with the co-operation and under the supervision of the protecting Power (article 61). Representatives of the protecting Power have the right to attend the trial of any protected person, unless the hearing has, as an exceptional measure, to be held in camera in the interest of the security of the occupying Power, which shall then notify the protecting Power. Any judgement involving a sentence of death, or imprisonment for two years or more, shall be communicated, with the relevant grounds, as rapidly as possible to the protecting Power. Any period allowed for appeal in the case of sentences involving the death penalty, or imprisonment of two years or more, shall not run until notification of judgement has been received by the protecting Power (article 74). Under article 76, protected persons who are detained shall have the right to be visited by delegates of the protecting Power (article 76). Under article 143 of the Convention, representatives or delegates of the protecting Power shall have permission to go to all places where protected persons are, particularly to places of internment, detention and work. They shall have access to all premises occupied by protected persons and shall be able to interview the latter without witnesses, personally or through an interpreter.

organization, given its object, character and possibilities, cannot undertake all the functions of the protecting Power. It assumes only those functions of the protecting Power which are of a humanitarian character.

211. Finally, just as in article 88 of the 1929 Geneva Convention on prisoners of war, common article 9 (article 10 in Convention IV) provides that the provisions of the Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organization may, subject to the consent of the parties of the conflict concerned, undertake for the protection of civilian persons and for their relief.

212. Thus, the system of the Geneva Conventions may be summed up by stating that while the primary responsibility for the application of the Conventions rests with the parties themselves, a protecting Power or a substitute humanitarian organization should be available in all cases to co-operate with the parties and to supervise the application of the Conventions.

213. It appears however that, except for the role of the International Committee of the Red Cross and certain international organizations, this system has not functioned as intended, in armed conflicts which erupted since the Second World War. Since the adoption of the 1949 Geneva Conventions advantage has practically never been taken of the institution of protecting Powers. Many reasons have been advanced for this: the relatively small number of States which could be considered as truly neutral by all parties to the armed conflicts; the cumbersome and time-consuming procedure of appointment of protecting Powers which calls for the agreement of the belligerents as to these Powers at the time when hostilities are raging; the fact that the military phases of some of the conflicts were over before protecting Powers could be appointed. The burden in terms of material and human resources which is imposed on States solicited as potential protecting Powers has also been mentioned as a deterrent, as well as the risks of political embarrassment vis-à-vis the parties to the conflict. There have been apparently no requests to neutral States or organizations to undertake the functions of protecting Powers by detaining Powers under paragraph 2 of articles 10 or 11 of the Geneva Convention of 1949.

214. Such humanitarian activities as took place were mostly those of the International Committee of the Red Cross which have amply proved their worth. These activities took the form of representations, interventions, suggestions and practical measures offering the protection afforded under the Convention, the sending of medical and other personnel and equipment, the sending and distribution of relief (food-stuffs, clothing and medicaments) and other contributions to the humane treatment of those to whom the Conventions were applicable.

215. The International Committee of the Red Cross is however admittedly subject to limitations due to its object and character. It is not in a position to undertake all the activities designed to be carried out by a State; it cannot act as an agent of the Power of origin; its human and financial resources are limited; it has no legal right to claim to act in cases of armed conflicts which are not of an international character. The offers of services of the International Committee of the Red Cross were nevertheless accepted in approximately one half of the armed conflicts which occurred since 1949, although in cases of conflicts of an internal character, political sensitivities, and legal considerations proved to be important obstacles to its action. Thus it may be concluded that while the

International Committee of the Red Cross and certain organizations play a most useful role, there would be pressing need for measures to improve and strengthen the present system of international supervision and assistance to parties to armed conflicts in their observance of humanitarian norms of international law. These measures, based on what already exists, should be regarded as complementary rather than competitive.

216. The methods of designation and of functioning of the institution of "protecting Power" should be perfected by widening the effective choices of parties to internal conflicts. The possibilities should be increased of having organizations assume the functions of the protecting Power; intergovernmental organizations might play an appropriate role in this respect. In particular, the establishment of a new organ or organization might be envisaged which would possess the legal right to offer its services in case the Parties do not exercise their choice, on a basis such as that of article 10, paragraph 3, of the 1949 Geneva Conventions (article 11, paragraph 3, of Convention IV). The co-existence of the International Committee of the Red Cross and of the proposed system of protection and relief by intergovernmental organizations should not lead to duplication or competition, but should rather facilitate accommodation to different situations, in which either the International Committee of the Red Cross or the proposed organization, or a combination of intergovernmental and non-governmental organizations working together, would be politically more acceptable to the parties to a specific conflict and, consequently, more effective in accomplishing their mission.

217. As regards the institution of a protecting Power, it has been mentioned earlier that it is referred to only in the 1929 and 1949 Geneva Conventions (not in the 1907 Hague Conventions and Regulations nor in the 1925 Protocol). If acceptable to the Parties, the role of the protecting Powers could be extended to such functions as may be relevant under all of the humanitarian international instruments relating to armed conflicts and, under appropriate conditions, to conflicts of an internal character.

218. In those Conventions where the role of the protecting Powers is specified, their duty is described as being "to safeguard the interests of the parties to the conflict". More modern concepts would probably require that protecting Powers, just like the international organizations which may be substitutes for them, should be considered not only as agents or representatives of the respective belligerents, but also as the agents of the international community which would express through them in a concrete manner its concern for the respect for certain basic human rights. The awareness of this fact might be enhanced by a resolution of the General Assembly or of an International Conference of the Red Cross stressing the fact that the designation of a protecting Power has only humanitarian and not political or legal consequences which may affect the status of the parties to the conflict. This might be an element in overcoming to a certain extent the reluctance of States to serve as protecting Powers.

219. Another reason sometimes given for the occasional willingness of States to accept this function (e.g., that it is based on customs which developed in a very different context) might be countered by the elaboration of an international instrument defining this institution and clarifying its functions. Such an instrument might take the form of a declaration, a resolution or a new Protocol or Convention.

220. As regards the practical difficulties which exist for Parties to the conflict to agree on the appointment of protecting Powers once the armed conflict is under way, these might possibly be remedied by a system of official panels of States willing to act as protecting Powers, established in time of peace. Such panels might be formed on the basis of unilateral declarations by States of their willingness to act as protecting Powers either in armed conflicts which may break out in any part of the world, or in conflicts occurring in certain regions only, or in regard to only certain types of conflicts. These unilateral declarations might be transmitted to the United Nations or alternatively to the International Committee of the Red Cross and appropriately listed and publicized. The system might possibly be accompanied by a corresponding listing of formal acceptances by States of certain other States as protecting Powers in the event that they would be engaged in armed conflict.

221. The recourse to international organizations to act as substitute for protecting Powers may be further developed. These organizations would have to comply with the requirements of the Geneva Conventions to "offer all guarantees of impartiality and efficiency". They might be existing international organizations or a special international agency created for this purpose.

222. The idea of facilitating the implementation of international humanitarian conventions by an independent agency is not new. It was suggested at the time of the adoption of the Geneva Convention on prisoners of war of 1929. At the 1949 Geneva Conference, the French delegation proposed the creation of such a special organization which would act in the absence of a protecting Power. The proposal called for "a high international committee" consisting of thirty members who would be eminent personalities known for their moral authority, their independence of thought and the services they had rendered to humanity. They would be nominated by Governments signatory to the 1949 Geneva Conventions from among eminent political or religious leaders and eminent scientists, senior judges, Nobel Prize laureates, etc., and be elected for three-year terms by the Conference of States participating in the Convention.

223. This proposal was not adopted by the Geneva Conference. The Conference adopted, however, a resolution (resolution II of the Geneva Convention of 1949) in which it recommended "that consideration be given as soon as possible to the advisability of setting up an international body, the functions of which shall be, in the absence of a protecting Power, to fulfil the duties performed by protecting Powers in regard to the application of the Conventions for the protection of war victims". 74/

224. As some experts have pointed out, action by an international independent body would not only overcome many of the obstacles which have been discussed above, but would also be more effective from a technical point of view. The existence of such an organization even as a substitute for the protecting Power would eliminate many of the problems existing at present in relation to that institution. The agency would act as the guarantor of the Conventions as a whole, or merely as an agent of the Power of origin. Since it would not have any national interest, it would have a freer hand in dealing with the parties. Finally, such an agency,

74/ The text of the resolution may be found in the Handbook of the International Red Cross, (Geneva, 1951) 9th edition.

especially if it were intergovernmental, could draw on the large pool of resources, both human and material, which may not be available to a single State or a private organization. While an agency of this type could be established as a subsidiary organ of the General Assembly or the Economic and Social Council, Governments might prefer to set it up by a special Convention or Protocol.

225. An objection which is sometimes voiced against the proposal to create a United Nations organ to act in this field is that it would be subject to political pressures. This objection could be met to a considerable extent by giving to such an agency a large degree of autonomy and by drafting its constitution in such a way as to give overriding priority to humanitarian considerations. It should also be remembered that those organs of the United Nations which have been working in the humanitarian field, or those linked to it, have, by general admission, rendered great services to all concerned without giving rise to political accusations. The role of the International Refugee Organization, UNRWA, UNICEF and the Office of the High Commissioner for Refugees may be mentioned in this respect. A United Nations organ or a humanitarian agency established outside the United Nations would not function only as an organ of protection, but might also act in appropriate cases as a relief organization or as a co-ordinator between various relief organizations. 75/

226. The role of private organizations, should, of course, continue and be strengthened as the expression of world concern for respect for human rights in armed conflicts. The International Committee of the Red Cross is such a private organization and has been, until now, the most effective one in this field. This is in large part due to its history, past experience, and its established and well deserved reputation of impartiality. However, as has been mentioned above, its constitution and its private character impose certain limitations on the resources available to it and the type of activities it may undertake. It is doubtful whether a new private organization could muster in the near future the same amount of moral authority and expertise. In consequence, while encouraging the interest of private international and national organizations in the problems of protection of human rights in armed conflicts, additional resources could usefully be made available to the strengthening of the International Committee of the Red Cross.

227. Resolutions of the International Conference of the Red Cross have recognized the necessity for assuring regular financial support to the Committee. This need remains and could be satisfied by the elaboration of an international scheme of financing which, however, must not jeopardize the independence of the International Committee.

75/ Article 23 of the 1954 UNESCO Convention on the Protection of Cultural Property states that the Contracting Parties may call upon UNESCO for technical assistance in organizing the protection of their cultural property or in connexion with any other problem arising out of the application of the Convention. Article 6 of the Regulations annexed to the Convention provides that "if there is no protecting Power, the Commissioner-General for cultural property appointed under the Convention shall exercise the function of 'protecting Power' as laid down in the Convention".

V. FINAL OBSERVATIONS

228. As stated in the introduction, the purpose of this preliminary report is to place before the General Assembly certain facts and considerations relevant to the implementation of resolution 2444 (XXIII), with the object of obtaining any views the Assembly may wish to express as to the further progress of the study envisaged in the resolution.

229. The information gathered so far indicates the need of different approaches according to the distinct problems to be dealt with. The preliminary survey shows that there exists a number of relatively recent international provisions carefully elaborated in instruments ratified by a very great number of States, which appear to deal satisfactorily with subject matters such as sick and wounded combatants, prisoners of war, and civilians in occupied territories. Appropriate recognition of the importance and value of such provisions might lead to their better application. Other provisions such as those regulating conduct during combat in "conventional types of warfare" may need adaptation to contemporary conditions and reformulation in modern legal language. Problems affecting respect for human rights arising out of the use of weapons of mass destruction are clearly linked to the successful outcome of the effort of the United Nations to bring about the prohibition of these weapons or the limitation of their use.

230. There are areas where it would appear that useful studies might be undertaken. These might relate in particular to additional methods for protecting civilian populations which are not participating in armed conflicts but which are or might become the victims thereof; they would concern the treatment to be extended to those who do not belong to the categories of "regular combatants" as defined and protected by existing conventions; they might pertain to the applicability of international humanitarian norms in conflicts not considered by all parties as being of an international character; they might deal with the possibilities of ensuring a greater degree of assistance by the international community in alleviating the condition of those affected by armed conflicts and of supervising by international methods the application of previously accepted international rules.

231. As stated in the introduction, the Secretary-General is ready to continue the study as requested in resolution 2444 (XXIII). The resources existing in the Secretariat would of course be fully utilized for that purpose. Consultations would be conducted with the International Committee of the Red Cross as to the part which that organization may be able to play in the continuation of appropriate studies, as well as with other competent international organizations. In view of the complexity of the subject-matters involved, the assistance of experts qualified in the relevant branches of international law and possessing knowledge of the conditions of modern warfare would also be required so as to achieve an adequate comprehension of the full range of specialized legal and technical problems. The Secretary-General would hope to be able to present a further report on the subject matter to the General Assembly at its twenty-fifth session.

ANNEX I

REPLIES RECEIVED BY THE SECRETARY-GENERAL FROM MEMBER STATES,
UNITED NATIONS ORGANS, SPECIALIZED AGENCIES AND THE
INTERNATIONAL COMMITTEE OF THE RED CROSS REGARDING THE
PREPARATION OF THE STUDY REQUESTED IN PARAGRAPH 2 OF GENERAL
ASSEMBLY RESOLUTION 2444 (XXIII)

A. MEMBER STATES

Afghanistan

[Original: English]
14 July 1969

1. The Government of Afghanistan acceded to the Geneva Conventions of 1949 on 8 December 1949.
2. The Government of Afghanistan, as a Member of the Organization, has always supported the endeavours of the United Nations for the respect of human rights both at peace-time and in armed conflicts, and will continue to reaffirm its policy in the future. It is the earnest desire of the Afghan Government that all the Members of the United Nations, and humanity as a whole, would co-operate in such a way as to make the endeavours of the United Nations in all fields, and in particular in the human and humanitarian fields, effective and successful.

Austria

[Original: English]
29 July 1969

1. Article 23 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, stipulates that in time of peace, the Contracting Parties and, after the outbreak of hostilities, the parties thereto, may establish in their own territory and, if the need arises, in occupied areas, hospital zones and localities of a certain organizational character. Upon the outbreak and during the course of hostilities, the parties concerned may conclude agreements on mutual recognition of the hospital zones and localities they have established. They may for this purpose implement the provisions of the Draft Agreement annexed to the present Convention, with such amendments as they may consider necessary. According to the provisions of the Draft Agreement (annex I), one or more special commissions may be appointed to exercise control in the zones under discussion.
2. Similar provisions are contained in article 14 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War.
3. It has to be borne in mind that the conventions under consideration provide for the recognition of hospital zones and localities only after the outbreak of hostilities and that, on the other hand, experience has shown that the conclusion of such treaties at that stage meets with considerable difficulties; consequently, it may be advisable to supplement the above-mentioned provisions of the said convention to the effect that the Contracting Parties are given the possibility of mutually recognizing hospital zones and localities prior to the outbreak of a conflict.

Bulgaria

/Original: French/
21 July 1969

1. Bulgaria is a party to the Hague Conventions of 1899 and 1907, the Geneva Protocol of 1925 and the Geneva Conventions of 1949.
2. The Bulgarian Government considers that one of the first steps which could be taken to secure the application of humanitarian international conventions and rules in all armed conflicts, and to ensure better treatment of civilians, prisoners and combatants in all armed conflicts, would be to make an urgent appeal to all States which have not yet done so to become parties to the existing Conventions. Only then could a study be made of the question of formulating additional rules on this subject.

Canada

/Original: English/
15 July 1969

The Canadian Government is pleased to inform the Secretary-General that it is taking a particular interest in the question of human rights in armed conflicts and is sending a voting delegation to the twenty-first International Red Cross Conference in Istanbul, to be held from 6 to 13 September 1969, with definite instructions to participate actively in the discussions on the agenda items of the Conference related to the substance of General Assembly resolution 2444 (XXIII). The Canadian Government, however, being at present engaged in preparations for the Conference, is thus not yet in a position to comment on the resolution.

Denmark

/Original: English/
6 November 1969

1. The Government of Denmark considers it essential that international rules relating to the protection of human rights in armed conflicts should cover threats to the civilian population. To this end, it would be useful to review the existing conventions in order to ascertain on what points there would be a need for strengthening the relevant international laws. In this connexion, the Government of Denmark wishes to draw attention to the resolutions on development of the laws and customs applicable in armed conflicts, adopted by the recent twenty-first International Conference of the Red Cross.
2. The question of the protection of combatants and members of resistance movements who participate in non-international armed conflicts appears to call

for special study. The twenty-first International Conference of the Red Cross agreed to request the International Committee of the Red Cross to undertake a study of the legal status of such persons. The Danish Government would recommend that the legal experts of the United Nations collaborate with the International Committee of the Red Cross in the performance of this task.

3. As a means of securing better application of the Geneva Conventions to non-international conflicts, a conference document prepared by the ICRC points to the possibility of drawing up model agreements to give effect to the provisions of article 3, penultimate sentence, of the four Geneva Conventions, according to which "The parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention". In the opinion of the Danish Government, it would be useful to study this question. Such model agreements should provide for international control with respect to observance of the Geneva Conventions to the same extent as is otherwise prescribed in the Conventions.

4. A factor which, in the opinion of the Danish Government, should not be under-rated is that a general revision of existing humanitarian international Conventions and rules relating to armed conflicts could give rise to difficulties. Many of the areas referred to in General Assembly resolution 2444 (XXIII) must be regarded as being covered to a large extent already by the existing international humanitarian conventions or could, at any rate, be covered through interpretation of these conventions. The four Geneva Conventions thus provide, in their articles 2, that they shall apply to all cases of armed conflict which may arise between two or more States, even if war has not been declared, and to all cases of occupation, even if the occupation meets with no armed resistance. Moreover, all the Conventions provide that certain of their basic provisions shall be observed even if the armed conflict is not of an international character (article 3 (1), (a)-(d)). The provisions in question, prohibiting arbitrary execution, torture or other cruel or degrading treatment, seem to cover exactly the situations which were had in mind in the reference of the Teheran resolution to conflicts of a non-international character (cf. the last preambular paragraph). Finally, it should be mentioned that the International Covenant on Civil and Political Rights applies also to internal and international conflicts. It is true that, pursuant to article 4, States Parties may take measures derogating from their obligations under the Covenant in time of public emergency which threatens the life of the nation, but no derogation may be made from the fundamental rules prohibiting acts such as torture, arbitrary execution, etc. (article 4, paragraph 2).

5. The Danish Government sees it as an important task for the international community to secure universal accession to and observance of the existing conventions. This could most appropriately be achieved by addressing a direct appeal to all States which have not yet done so to become parties to the conventions and by disseminating information to all those on whom it is incumbent to implement the provisions of the conventions.

6. As to the need for prohibition and limitation of the use of certain methods and means of warfare, the Danish Government is of the opinion that questions of this nature should be considered within the framework of the disarmament negotiations in progress in the Conference of the Committee on Disarmament.

Finland

/Original: English/
2 July 1969

1. The primary prerequisite for securing better application of existing humanitarian international conventions and rules is that States not yet adhering to these conventions become parties to them. Thus, in addition to the call in operative paragraph 5 of General Assembly resolution 2444 (XXIII), directed to such States, they should be urged to report to the Secretary-General on the measures taken to comply with the call, in order that the Secretary-General might forward this information to the General Assembly at the beginning of each session.
2. Considering the need for additional humanitarian international conventions or for other appropriate legal instruments to ensure better protection of civilians, prisoners and combatants in all armed conflicts and the prohibition and limitation of the use of certain methods and means of warfare, it is obvious that the existent conventions originating mainly from the nineteenth century and the first years of the present century, are to a large extent obsolete.
3. Consequently, only a few of the existing rules of warfare are up to date. Besides, many important fields, such as air warfare, are left practically unregulated.
4. In this connexion, the question of neutrality and the status of neutral nationals deserves further attention. The neutrality of a State properly proclaimed should be internationally respected to the effect that the territory of the State and its nationals be left intact in an armed conflict between other States. Also, the status of neutral nationals should be recognized even outside their country so as to enable them, when needed, to participate in peace-keeping operations or to assume certain tasks of mediation or conciliation between the belligerents.
5. By modernizing and codifying the rules of warfare and neutrality and ensuring their enforcement by an effective machinery, new confidence in their value as well as their obligatory character, would be created.

France

/Original: French/
13 August 1969

1. The French Government is a party to the Conventions of 1899, nearly all the Conventions of 1907, the Protocol of 1925 and the Conventions of 1949, referred to in the document sent by the Secretary-General.
2. It has always attached the greatest significance to their implementation and has taken internal measures to ensure that they are widely circulated and more fully understood. It considers that priority must be given at the international level to their strict implementation by the greatest possible number of States.

3. It might become possible to formulate new conventions in other fields. In this respect, the International Committee of the Red Cross is conducting studies on the protection of civilians. However, this seems to be less important than the problem of ensuring the implementation of texts which form the present rules of international law on the subject.

4. The different questions raised by the Secretary-General will in any case be examined during the forthcoming International Conference of the Red Cross to be held at Istanbul in September 1969. Any additional suggestions could then be put forward as a result of discussions arising from the Conference.

Guatemala

[Original: Spanish]
10 July 1969

1. Guatemala agrees with the provisions of the resolution and considers that enforcement measures should be taken against any State not complying with it.

2. Moreover, it feels that emphasis should be placed on the establishment of special markings - some of which already exist - to distinguish at any time between military and civilian personnel and installations.

Hungary

[Original: English]
8 September 1969

1. In connexion with General Assembly resolution 2444 (XXIII) on respect for human rights in armed conflicts, it should be noted that Hungary is a party to the Hague Conventions of 1899 and 1907, the Geneva Protocol of 1925 and the Geneva Conventions of 1949.

2. With regard to the more effective implementation of the existing conventions, the Government of the Hungarian People's Republic is of the opinion that it would be useful if the Secretary-General included in his report a list of States which are not parties to the international instruments in question.

3. It would also be desirable if the United Nations urged all States to accede to these instruments at the earliest possible date.

4. It would promote the implementation of the provisions of General Assembly resolution 2444 (XXIII) if the Secretary-General asked the Governments of Member States for regular information on the application of the above international instruments.

5. With regard to additional humanitarian international conventions, the Government of the Hungarian People's Republic expresses its readiness to take part in the consideration of possible proposals for other appropriate legal instruments.

India

[Original: English]
2 November 1969

1. The Government of India support the study initiated by General Assembly resolution 2444 (XXIII) and look forward to the results with considerable interest.

The question of revising the existing humanitarian international conventions or adopting additional ones certainly requires careful examination.

2. The Government of India note that the study is also to cover "steps which could be taken to secure the better application of existing humanitarian international conventions and rules in all armed conflicts", and they would give serious and sympathetic consideration to practical and pragmatic proposals in this regard. Indeed, an enduring solution to the problem identified would perhaps be found more through the complete implementation of the existing conventions than through the search for new legal instruments. One useful step in this direction could be the acceptance of the suggestion that UNESCO, in connexion with the International Committee of the Red Cross, should be directed to prepare and disseminate throughout the world suitable educational pamphlets and books regarding the existing humanitarian conventions and the respect for human rights in armed conflict. The Government of India are convinced that an informed and educated public opinion can play a powerful role in promoting the observance of human rights.

3. The Government of India are also interested in the recommendation that the World Health Organization (WHO) should, in co-operation with the International Committee of the Red Cross and the International Committee of Military Medicine, be authorized to send medical teams to areas of conflict in order to advise and report on medical measures necessary to afford protection to the civilian population. The joint medical teams should be sent only at the request of the Governments involved.

4. The suggestion has been made that WHO could be in a position to contribute to the solution of problems regarding the medical and humanitarian aspects of the protection of civilians, prisoners and combatants; and further that WHO might be able to make useful contributions in regard to the effects of nuclear, chemical and biological means of warfare. In principle, the Government of India support these ideas, but a final view would be possible only when they are elaborated in detail.

Iraq

✓Original: English7
15 September 1969

1. The Republic of Iraq has already acceded to the following:

(a) The Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed on 17 June 1925;

(b) The Geneva Convention relative to the Treatment of Prisoners of War, signed on 27 July 1929;

(c) The Geneva Convention of 1949 relative to the Protection of Civilian Persons in Time of War of 12 August 1949.

2. As to the Hague Conventions of 1899 and 1907, the appropriate Iraqi authorities are studying the possibility of Iraq's becoming a party to them, and shall inform the Secretary-General once a decision has been reached.

Italy

[Original: Italian]
17 July 1969

1. The study of the steps which could be taken to ensure the better application of international Conventions concerning respect for human rights in armed conflicts requires a detailed examination of the many existing international agreements and, consequently, more time than that allowed by the United Nations Secretariat for the replies of Member States.

2. The following suggestions, however, are preliminary and provisional comments which we reserve the right to amplify, if, after the initial review of the opinions and suggestions requested in General Assembly resolution 2444 (XXIII), it is decided to proceed to a detailed study of the question:

(a) It appears advisable to consider the possibility of delegating authority to the International Red Cross, so that that body may, in the case of armed conflict, ensure that its own representatives are continually present in the belligerent countries throughout the duration of the conflict;

(b) It appears advisable to consider the possibility of ensure close co-operation between the United Nations and the International Committee of the Red Cross so that, at the request of that Committee, a United Nations observer may be present in the camps for prisoners or civil internees, in order to investigate and report periodically on the treatment of the detainees and on the extent to which the provisions of existing international Conventions are respected;

(c) Should the above proposal be considered feasible, it would be necessary to lay down the procedure for examining the observers' reports on failure to respect the international conventions and to decide what action should be taken on those reports.

Kuwait

[Original: English]
24 June 1969

1. Kuwait is a party to the Geneva Conventions of 1949. The competent authorities in the State of Kuwait are seriously considering ratification of the Hague Conventions of 1899 and 1907 and the Geneva Protocol of 1925.

2. The Government of Kuwait would also like to point out that the resolution adopted by the International Conference on Human Rights in Teheran regarding respect for human rights in armed conflicts has not yet been complied with by the Israeli authorities in the occupied territories.

Madagascar

/Original: French/
18 August 1969

1. Respect for human rights in armed conflicts is a matter of legitimate concern. Ways should be sought of establishing an international convention to safeguard the rights in question.
2. Resolution XXVIII, adopted by the twentieth International Conference of the Red Cross held at Vienna in 1965, lays down principles designed primarily to protect civilian populations. It states that the right of the parties to a conflict to adopt means of injuring the enemy is not unlimited and that it is prohibited to launch attacks against the civilian populations as such. The resolution further stipulates that distinction must be made at all times between persons taking part in the hostilities and members of the civilian population to the effect that the latter be spared as much as possible.
3. Experience has shown, however, that the observance of these principles has encountered practical difficulties arising out of the more or less direct participation of members of the civilian population in military actions.
4. It is therefore important that any international convention, while calling for respect for human rights in armed conflicts, should seek as far as possible to regulate the conditions and means of combat in such a way that distinguishing between combatants and non-combatants will not be impossible.

Mexico

/Original: Spanish/
24 September 1969

1. In order to secure the better application of existing humanitarian international conventions and rules in armed conflicts, it is essential that States should scrupulously honour their contractual commitments. It would be appropriate at the same time for States to undertake to use the information media at their disposal to impress on their nationals the necessity of respecting human rights in time of war.
2. Given the possibility of nuclear war to which mankind is at present exposed, the steps which might be taken to avert or at least mitigate its effects might include the following:
 - (a) The establishment of nuclear-free zones through agreements such as the Treaty for the Prohibition of Nuclear Weapons in Latin America, or Treaty of Tlatelolco, signed at Mexico City on 14 February 1967;
 - (b) The creation of appropriate facilities for the protection of life against the indirect effects of nuclear weapons;
 - (c) The formulation of plans, dissemination of information and training of the population for individual and collective protection against the effects of nuclear weapons, through the civil defence agencies of each State.

Morocco

/Original: French/
28 August 1969

1. Morocco endorses the five operative paragraphs of General Assembly resolution 2444 (XXIII).
2. The preparation of new conventions might be contemplated as a means of augmenting the protection of persons in armed conflicts, bearing in mind the extent to which existing conventions are already implemented.

Norway

/Original: English/
11 September 1969

1. The Norwegian Government would note, as a point of departure, that it is important during all stages of the discussion of this matter to recognize that the general principles of the fundamental human rights, as they are laid down in the Universal Declaration, in the two Covenants, in other international instruments and in national legislation, apply fully in armed conflicts. This recognition has formed the basis for the development of the laws and customs of war, and of the humanitarian conventions that offer further protection for identified groups of persons in certain conflict situations. The immediate task at hand, as set out in General Assembly resolution 2444 (XXIII), is thus to investigate how the protection provided by fundamental human rights may be reinforced by more specific action on the part of the international community.
2. As regards steps which could be taken to secure the better application of existing humanitarian international conventions, the Norwegian Government notes that the laws and customs of war, as they are formulated inter alia in the Hague Conventions, must be regarded as expressing general rules of customary international law. This was the finding more than twenty years ago of the International Military Tribunal at Nurnberg, which stated that "by 1939, these rules laid down in the Convention were recognized by all civilized nations and were regarded as being declaratory of the laws and customs of war". This means that even States which are not Parties to these early Conventions are bound to certain standards of conduct in armed conflicts in which they take part.
3. However, the humanitarian international conventions, and in particular the Geneva Conventions of 1949, provide a more specific set of regulations that apply to various aspects of armed conflicts. It must be the goal of the international community to obtain universal accession to these conventions.
4. In the opinion of the Norwegian Government, it is also important to disseminate information about the laws and customs of war and the humanitarian international conventions to all persons who are charged with the implementation of any part of this body of international law. The Norwegian Government has, for its own part, published a complete collection of texts relating to the laws and customs of war and to the humanitarian protection of the victims of war. This

collection of texts has been given wide distribution to civil and military officials. In addition, booklets of an informative character are distributed to military personnel, medical personnel and to civil authorities. Military personnel of all ranks are given suitably graded instruction with regard to the conduct of military operations and the protection of victims of hostilities. The Norwegian Red Cross Society provides the general public with information on all aspects of the work of the International Red Cross.

5. The United Nations could provide assistance in various ways to Governments that would wish to undertake similar instruction and information programmes, inter alia, by placing at the disposal of Governments suitable instruction materials, and by providing advice on the planning and execution of information activities.

6. In the opinion of the Norwegian Government, the need for further international instruments for the protection of victims of hostilities in all armed conflicts appears to be indicated by developments of the past two decades. However, this need seems to some extent related to the interpretation that is given to existing instruments, and to the field of application of those instruments on which the international community could agree. The study which the Secretary-General was asked to undertake by the General Assembly in resolution 2444 (XXIII) will surely lead to a better appreciation of this fundamental consideration, on which all future work as regards the question of further international conventions in the field must be based.

7. For the time being, the Norwegian Government will limit itself to pointing out that the Geneva Convention relative to the Protection of Civilian Persons in Time of War in many respects appears to be directed mainly at the regulation of international conflict, and that, article 3 of the Convention notwithstanding, certain specific terms of the Convention are not readily applicable to conflicts of a non-international character. For this reason, the Norwegian Government feels that the consideration of a special régime for the protection of civilian populations in non-international armed conflicts might be one of the fields of inquiry to which attention should be directed in any future study of human rights in armed conflicts.

Romania

/Original: French/
16 September 1969

I. General information on Romania

1. The Socialist Republic of Romania is a party to the Hague Conventions of 1899 and 1907, except for the Declaration prohibiting the Discharge of Projectiles and Explosives from Balloons, to the Geneva Protocol of 1925 and to the Geneva Conventions of 1949 on the protection of human rights in armed conflicts. Romania is also a party to the Convention on the Protection of Cultural Property in the event of Armed Conflict, concluded at The Hague on 14 May 1954.

2. Provisions for ensuring respect for human rights in wartime have been included in Romanian penal legislation. Relevant extracts from the penal code are given below:

"Article 350. Theft on the battlefield of objects belonging to the dead or wounded shall be punishable by imprisonment for three to ten years and the suspension of certain rights."

"Article 358. Subjection of the wounded or sick, of civilian health personnel or members of the Red Cross or similar organizations, of shipwrecked persons, of prisoners of war or of any other person at the mercy of the enemy, to inhuman treatment or to medical or scientific experiments unjustified by the need for medical treatment shall be punishable by imprisonment for five to fifteen years, the loss of certain rights and partial confiscation of goods.

"Any of the following acts committed against the persons mentioned in the preceding paragraph shall be subject to the same penalty:

- (a) coercion to serve in the armed forces of the enemy;
- (b) the taking of hostages;
- (c) deportation;
- (d) interference with or deprivation of freedom without legal cause;
- (e) sentence or execution without prior judgement rendered by a legally constituted tribunal and with respect for the basic guarantees prescribed by the law.

"The torture, mutilation or extermination of persons referred to in paragraph 1 shall be punishable by death and by the confiscation of all property, or by imprisonment for fifteen to twenty years, by the loss of certain rights and by the partial confiscation of goods.

"Acts covered by this article and carried out during wartime shall be punishable by death and by the total confiscation of goods.

"Article 359. The complete or partial destruction of:

- (a) buildings or any other constructions or ships intended for use as hospitals;
- (b) any means of transport assigned to a health service, the Red Cross or similar organization for the transport of the wounded or sick, health supplies or supplies of the Red Cross or similar organization;
- (c) health supply depots, provided that they carry the distinguishing marks, laid down in the regulations,

shall be punishable by imprisonment for five to fifteen years, by the loss of certain rights and by the partial confiscation of goods.

"Unless justified by military necessity, any form whatsoever of large-scale appropriation of resources or supplies allocated for the assistance or care of the wounded or sick who are at the mercy of the enemy shall be subject to the same penalty.

"Unless justified by military necessity, the large-scale complete or partial destruction or appropriation in any form whatsoever of any goods shall be similarly punishable.

"Article 360. Any form of destruction, for which there is no military necessity, of monuments or buildings of artistic, historic or archaeological value, museums, libraries, historic or scientific archives, works of art, manuscripts, books of special value, scientific collections or important collections of books, archives or reproductions of the items mentioned above and in general any cultural asset of the people shall be punishable by imprisonment for five to fifteen years, the loss of certain rights and the partial confiscation of goods.

"The theft or appropriation in whatever form of any of the cultural assets mentioned in this article on territories under military occupation shall be subject to the same penalty."

3. The Romanian Penal Code also condemns other offences against peace and against humanity, such as war propaganda and genocide.

II. Suggestions and comments

4. The protection of human rights during periods of armed conflict, an essentially humanitarian question, is closely connected with the evolution of international law and in particular of laws on the conduct of war. Contemporary international law reflects the fact that it has not yet been possible to eliminate war completely from social life; even if wars of aggression have been declared illegal, recourse to force is still a fact.

5. The question is also mentioned in the United Nations Charter (Article 51), although that Article expressly recognizes the right of individual or collective self-defence. The situation has now been complicated by new factors, primarily the existence of nuclear rocket weapons which, because of the extent of their destructive power and the impossibility of distinguishing, from the point of view of their effects, between belligerents and civil population, would, if they were used, call into question all standards governing the conduct of war.

6. The best way of avoiding the destructive effects of war is of course the strict observance of the principle forbidding the use of force in international relations, the drafting of a general agreement on disarmament and above all on nuclear disarmament.

7. Experience shows that, despite their limited application, the international conventions laying down humanitarian rules to be observed during armed conflicts have done much to restrict the means and methods used, and consequently, their destructive effects.

8. We consider the recommendation made in General Assembly resolution 2444 (XXIII) of 19 December 1968, which calls upon Member States to become parties to the Hague Conventions of 1899 and 1907, the Geneva Protocol of 1925 and the Geneva Conventions of 1949 to be particularly useful. It would consolidate the humanitarian principles of international law which should be respected during periods of armed conflict. It is obvious, however, that, since the drafting of these Conventions, military techniques have greatly developed; consequently, the problems of the protection of the civilian population and the belligerents are more complex and new rules which complement and extend all the principles of the protection of victims of war must be adopted. We therefore think it would be useful to convene an international conference to draft regulations adapted to present requirements for the protection of civilians and belligerents. At that conference, consideration might be given to the adoption of supplementary conventions or additional protocols to existing conventions, in which the problems posed by the protection of human rights in armed conflicts might be discussed, taking into account new means of warfare.

9. At the present stage, it has proved to be particularly necessary to draft an agreement forbidding the use of mass destruction weapons, the harmful effects of which make no distinction between the civilian population and the belligerents. As the illegality of the use of nuclear, bacteriological and other mass destruction weapons is implicit in all existing provisions of international law on the protection of war victims, we consider the conclusion of such a convention to be essential for the protection of the non-combatant population; at the same time it could have a special moral and political influence leading to the definite abolition of war of any sort.

10. In view of the role of the International Committee of the Red Cross in drawing up and securing respect for international conventions on the protection of human rights in times of armed conflicts and of its present keen interest in broadening the scope of these regulations, it seems to us to be particularly advisable to consult this Committee and co-operate with it.

Singapore

/Original: English/
16 July 1969

1. The Government of Singapore is currently considering the provisions and the possible implications of the four Geneva Conventions of 1949 with a view to acceding to them. However, the Singapore Government has no comments to make on the study to be undertaken by the Secretary-General in relation to:

(a) Steps which could be taken to secure the application of existing humanitarian international conventions and rules in all armed conflicts;

(b) The need for additional humanitarian international conventions or for other appropriate legal instruments to ensure the better protection of civilians, prisoners and combatants of all armed conflicts and the prohibition and limitation of the use of certain methods and means of warfare.

United Kingdom of Great Britain and Northern Ireland

/Original: English/
9 September 1969

1. The Government of the United Kingdom of Great Britain and Northern Ireland have the honour to draw the Secretary-General's attention to the enclosed Draft Convention for the Prohibition of Biological Methods of Warfare with the associated Security Council draft resolution. These drafts were tabled by the United Kingdom in the Conference of the Eighteen-Nation Committee on Disarmament a/ in Geneva on 26 August 1969 and are revised versions of drafts originally tabled in the Conference on 10 July 1969.
2. The aim of this proposed Convention is to reinforce the 1925 Geneva Protocol, the major arms control agreement at present existing in the field of chemical and biological warfare, by extending the prohibition so as to cover not only the use in war of biological methods of warfare, but also the production and possession of biological agents for hostile purposes. The Convention would outlaw completely a form of warfare which arouses instinctive repugnance and has a horrifying potential for the indiscriminate destruction of human life, as was pointed out in the Secretary-General's recent Report on Chemical and Bacteriological (Biological) Weapons and the Effects of their Possible Use. b/
3. This draft Convention is now being discussed by the Conference of the Eighteen-Nation Disarmament Committee in Geneva. Her Majesty's Government very much hope that early and positive progress will be made on it so that, in this way, a significant step may be taken towards the ultimate goal of the complete elimination of chemical and biological methods of warfare.
4. Her Majesty's Government await with much interest the Secretary-General's preliminary report to the twenty-fourth session of the General Assembly. In their view, the study being carried out under General Assembly resolution 2444 (XXIII) might most usefully focus particular attention on possible means of securing the more effective application of existing humanitarian international conventions in this field.

a/ The Conference of the Eighteen-Nation Committee on Disarmament, at its 431st plenary meeting on 26 August 1969, decided that henceforth its name would be the Conference of the Committee on Disarmament.

b/ United Nations publication, Sales No.: E.69.I.24.

REVISED DRAFT CONVENTION FOR THE PROHIBITION OF BIOLOGICAL METHODS OF
WARFARE PROPOSED BY THE UNITED KINGDOM c/

THE STATES CONCLUDING THIS CONVENTION, hereinafter referred to as the
"Parties to the Convention",

RECALLING that many States have become Parties to The Protocol for the
Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases, and of
Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925,

RECOGNIZING the contribution that the said Protocol has already made, and
continues to make, to mitigating the horrors of war,

RECALLING FURTHER United Nations General Assembly resolutions 2162 B (XXI) of
5 December 1966 and 2454 A (XXIII) of 20 December 1968, which called for strict
observance by all States of the principles and objectives of the Geneva Protocol
and invited all States to accede to it,

BELIEVING that chemical and biological discoveries should be used only for
the betterment of human life,

RECOGNIZING nevertheless that the development of scientific knowledge
throughout the world will increase the risk of eventual use of biological methods
of warfare,

CONVINCED that such use would be repugnant to the conscience of mankind and
that no effort should be spared to minimize this risk,

DESIRING therefore to reinforce the Geneva Protocol by the conclusion of a
Convention making special provision in this field,

DECLARING their belief that, in particular, provision should be made for the
prohibition of recourse to biological methods of warfare in any circumstances,

HAVE AGREED as follows:

ARTICLE I

Each of the Parties to the Convention undertakes, in so far as it may not
already be committed in that respect under treaties or other instruments in
force prohibiting the use of chemical and biological methods of warfare, never
in any circumstances, by making use for hostile purposes of microbial or other
biological agents causing death, damage or disease by infection or infestation
to man, other animals, or crops, to engage in biological methods of warfare.

c/ Originally issued under the symbol ENDC/255/Rev.1.

ARTICLE II

Each of the Parties to the Convention undertakes:

- (a) Not to produce or otherwise acquire, or assist in or permit the production or acquisition of:
 - (i) Microbial or other biological agents of types and in quantities that have no independent justification for prophylactic or other peaceful purposes;
 - (ii) Ancillary equipment or vectors the purpose of which is to facilitate the use of such agents for hostile purposes;
- (b) Not to conduct, assist or permit research aimed at production of the kind prohibited in sub-paragraph (a) of this article; and
- (c) To destroy, or divert to peaceful purposes, within three months after the Convention comes into force for that Party, any stocks in its possession of such agents or ancillary equipment or vectors as have been produced or otherwise acquired for hostile purposes.

ARTICLE III

1. Any Party to the Convention which believes that biological methods of warfare have been used against it may lodge a complaint with the Secretary-General of the United Nations, submitting all evidence at its disposal in support of the complaint, and request that the complaint be investigated and that a report on the result of the investigation be submitted to the Security Council.

2. Any Party to the Convention which believes that another Party has acted in breach of its undertaking under articles I and II of the Convention, but which is not entitled to lodge a complaint under paragraph 1 of this article, may lodge a complaint with the Security Council, submitting all evidence at its disposal, and request that the complaint be investigated.

3. Each of the Parties to the Convention undertakes to co-operate fully with the Secretary-General and his authorized representatives in any investigation he may carry out, as a result of a complaint, in accordance with Security Council resolution.... .

ARTICLE IV

Each of the Parties to the Convention affirms its intention to provide or support appropriate assistance, in accordance with the United Nations Charter, to any Party to the Convention, if the Security Council concludes that biological methods of warfare have been used against that Party.

ARTICLE V

Each of the Parties to the Convention undertakes to pursue negotiations in good faith on effective measures to strengthen the existing constraints on chemical methods of warfare.

ARTICLE VI

Nothing contained in the present Convention shall be construed as in any way limiting or derogating from obligations assumed by any State under the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925.

ARTICLE VII

/Provisions for amendments./

ARTICLE VIII

/Provisions for signature, ratification, entry into force etc./

ARTICLE IX

1. This Convention shall be of unlimited duration.

2. Each Party shall, in exercising its national sovereignty, have the right to withdraw from the Convention, if it decides that extraordinary events, related to the subject-matter of this Convention, have jeopardized the supreme interests of its country. It shall give notice of such withdrawal to all other Parties to the Convention and to the United Nations Security Council three months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardized its supreme interests.

ARTICLE X

/Provisions on languages of texts etc./

REVISED DRAFT SECURITY COUNCIL RESOLUTION PROPOSED BY THE UNITED KINGDOM

THE SECURITY COUNCIL,

WELCOMING the desire of a large number of States to subscribe to the Convention for the Prohibition of Biological Methods of Warfare, and thereby undertake never to engage in such methods of warfare; to prohibit the production and research aimed at the production of biological weapons; and to destroy, or divert to peaceful purposes, such weapons as may already be in their possession,

NOTING that, under article III of the Convention, Parties will have the right to lodge complaints and to request that the complaints be investigated,

RECOGNIZING the need, if confidence in the Convention is to be established, for appropriate arrangements to be made in advance for the investigation of any such complaints, and the particular need for urgency in the investigation of complaints of the use of biological methods of warfare,

NOTING further the declared intention of Parties to the Convention to provide or support appropriate assistance, in accordance with the Charter, to any other Party to the Convention, if the Security Council concludes that biological methods of warfare have been used against that Party,

REAFFIRMING in particular the inherent right, recognized under Article 51 of the Charter, of individual and collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security,

1. Requests the Secretary-General

(a) To take such measures as will enable him

(i) To investigate without delay any complaints lodged with him in accordance with article III.1 of the Convention;

(ii) If so requested by the Security Council, to investigate any complaint made in accordance with article III.2 of the Convention; and

(b) To report to the Security Council on the result of any such investigation.

2. Declares its readiness to give urgent consideration to

(a) Any complaint that may be lodged with it under article III.2 of the Convention; and

(b) Any report that the Secretary-General may submit in accordance with operative paragraph 1 of this resolution on the result of his investigation of a complaint; and if it concludes that the complaint is well-founded, to consider urgently what action it should take or recommend in accordance with the Charter.

3. Calls upon Member States and upon specialized agencies of the United Nations to co-operate as appropriate with the Secretary-General for the fulfilment of the purposes of this resolution.

United States of America

/Original: English/
1 October 1969

1. In his note of 19 May 1969, the Secretary-General of the United Nations drew attention to General Assembly resolution 2444 (XXIII), entitled "Respect for human rights in armed conflicts". In the second operative paragraph of that resolution, the General Assembly invited the Secretary-General, in consultation with the International Committee of the Red Cross and other appropriate international organizations, to carry out a study which will deal with steps which could be taken to secure the better application of existing humanitarian international conventions and rules in all armed conflicts and will examine the

need for new international instruments. The Secretary-General has requested information, suggestions or comments which may be relevant and useful for the preparation of the study.

2. At the twenty-third session of the General Assembly, the United States delegation fully supported Assembly resolution 2444 (XXIII). United States Government endorsement of the study called for in that resolution was based, in part, upon a strongly held conviction that steps are urgently needed to secure better application of existing humanitarian international conventions to armed conflicts. This is a matter involving fundamental human rights and one which should be of major concern to the United Nations.

3. During the discussion of the resolution in the Third Committee of the General Assembly, the United States representative expressed the deep interest held by the United States in the better application of the Geneva Conventions. This special interest derives from the experience which the United States Government has had in attempting to secure decent and humane treatment for the prisoners of war who are now presently held by communist authorities in North Viet-Nam and elsewhere in South-East Asia. At the twenty-third session of the General Assembly, the United States representative presented some details of the inhumane treatment which has been endured for so long by the American prisoners of war. The passage of time since that presentation has seen no improvement in their treatment.

4. In spite of the fact that the North Viet-Nameese authorities acknowledge that they have acceded to the Geneva Conventions, the treatment of the American prisoners of war has been characterized by a flagrant and persistent refusal to apply to them the basic humane treatment required by these conventions. As a result, the prisoners of war and their families have been experiencing great sorrow and suffering. Explicit provisions of the Geneva Convention relative to the Treatment of Prisoners of War, whose sole purpose is the humanitarian one of relieving the suffering of defenceless human beings, have been ignored in the following respects:

(a) The names of the prisoners and information on their health and welfare have not been provided to their families or the International Committee of the Red Cross or another impartial intermediary; some prisoners have been held four years and longer virtually incommunicado;

(b) Letters to and from the prisoners have been irregular and severely limited, despite many efforts to arrange for the transmission of mail for prisoners on both sides;

(c) North Viet-Nam has refused to agree to arrangements for a Protecting Power for the prisoners of war as envisaged by the Convention;

(d) Repeated applications by the International Committee of the Red Cross to visit the prisoners at their places of detention have been rejected;

(e) There have been proved incidents of abuse to prisoners of war, of their having been subjected to physical and mental coercion, to intimidation, insults and public curiosity, and of their being held for long periods in isolation and solitary confinement;

(f) Seriously sick and wounded prisoners have not been repatriated.

5. The Geneva Convention establishes special protection for prisoners of war in recognition of the fact that men who have fallen into the hands of the enemy no longer present any threat; they are helpless human beings and have no means of defending themselves. The humanitarian provisions of the Geneva Convention constitute more than simple statements of legal obligation. They are based upon a recognition of the dignity and worth of the human person as proclaimed in the United Nations Charter. They embody expressions of fundamental humane precepts which should characterize the conduct of any Government in dealings with another, whether friend or enemy.

6. The importance of the protection of prisoners of war was recently affirmed by the twenty-first International Conference of the Red Cross, which met in Istanbul, Turkey, from 6 to 13 September 1969. Resolution No. 3 of the International Humanitarian Law Commission of the Conference, which was adopted without dissent by the Conference at its closing plenary session, reads as follows:

"Resolution No. 3^a/

Protection of prisoners of war

The XX¹st International Conference of the Red Cross,

RECALLING the Geneva Convention of 1949 on the protection of prisoners of war, and the historic role of the Red Cross as a protector of victims of war,

CONSIDERING that the Convention applies to each armed conflict between two or more parties to the Convention without regard to how the conflict may be characterized,

RECOGNIZING that, even apart from the Convention, the international community has consistently demanded humane treatment for prisoners of war, including identification and accounting for all prisoners, provision of an adequate diet and medical care, that prisoners be permitted to communicate with each other and with the exterior, that seriously sick or wounded prisoners be promptly repatriated, and that at all times prisoners be protected from physical and mental torture, abuse and reprisals,

REQUESTS each party to the Convention to take all appropriate measures to ensure humane treatment and prevent violations of the Convention,

CALLS UPON all parties to abide by the obligations set forth in the Convention and upon all authorities involved in an armed conflict to ensure that all uniformed members of the regular armed forces of another party to the conflict and all other persons entitled to prisoner of war status are

a/ Adopted as resolution XI of the twenty-first International Conference of the Red Cross.

treated humanely and given the fullest measure of protection prescribed by the Convention; and further calls upon all parties to provide free access to the prisoners of war and to all places of their detention by a Protecting Power or by the International Committee of the Red Cross."

7. Basically what is needed in securing better application of existing conventions is their observance in good faith by every Government that accepts them. The humanitarian provisions of the Convention are clear and unambiguous. As is specifically required by the Geneva Convention relative to the Treatment of Prisoners of War, the text must be widely disseminated in every country which accepts the Convention, among the armed forces and to the entire population. Officials who are given responsibilities in respect of prisoners of war must be specially instructed as to the provisions of the Convention.

8. In essence, the humanitarian standards in the existing Conventions would provide adequate protection for prisoners if only nations would live up to the obligations they have assumed. The United Nations can be the centre for giving expression to the opinions of mankind. Certainly the United Nations must give full support to every measure designed to secure the observance throughout the world of the basic humanitarian principles which, through the Geneva Conventions, apply to every armed conflict.

9. The report requested of the Secretary-General will also deal with "the prohibition and limitation of the use of certain methods and means of warfare". In the Committee on Disarmament, the United States Government has drawn attention to the fact that it presently has under intensive study the full range of policy issues relating to chemical and biological weapons. Consequently, pending the completion of this study, the United States Government will reserve comment on this aspect of the subject-matter of the Secretary-General's report.

B. UNITED NATIONS ORGANS

Office of the High Commissioner for Refugees

[Original: English]
11 July 1969

In regard to securing the better application of existing conventions or the need for additional conventions or instruments, the Office of the United Nations High Commissioner for Refugees is unable to make any specific relevant comments or suggestions. We would wish to point out, however, that the definition of protected persons which is contained in article 4 of the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War does not include refugees. If in the future any amendments to existing instruments or new international instruments regarding human rights in armed conflicts were to be considered, the Office of the United Nations High Commissioner for Refugees would desire that consideration be given to including refugees in the class of persons protected in such instruments.

United Nations Children's Fund

[Original: English]
15 August 1969

1. UNICEF has the following comments to make, which it hopes will be useful for the purposes of the study requested of the Secretary-General.
2. UNICEF would welcome any developments of international law which would make it easier for UNICEF to provide relief to mothers and children in the case of armed conflict, either directly or through voluntary agencies, such as the International Institutions of the Red Cross.
3. UNICEF's obligation to do this is laid down in General Assembly resolution 57 (I), which established UNICEF and states that, in the distribution of UNICEF aid, there shall be provision for the "equitable and efficient dispensation or distribution of all supplies or other assistance, on the basis of need, without discrimination because of race, creed, nationality status or political belief".
4. One formal difficulty for UNICEF in providing relief is a result of the provision in General Assembly resolution 57 (I) which states that "The Fund shall not engage in activity in any country except in consultation with, and with the consent of, the Government concerned". This has been interpreted by UNICEF as requiring a government request for aid. In the years since the adoption of this resolution, the problem of government request has become complicated somewhat in that many of the areas of armed conflict are within the borders of a single country. In these internal conflicts, therefore, it may mean that a request for assistance would need to come from only one of the parties to the conflict.
5. The conventions of the Red Cross do not appear to contain effective provisions regarding relief assistance in areas of internal conflict.
6. It would be very helpful if the interest of the international community in gaining access to persons in need of relief on both sides of civil conflict could be recognized in international law.
7. In the case of civil war, there is a tendency on the part of both sides to assume that relief offered by a United Nations agency carries with it an element of political recognition. It would be useful if international action could be taken which would assure some means of access to the dissidents in such conflicts without appearing to give political recognition. The number of such conflicts has increased in recent years.
8. UNICEF believes that in many situations, some non-governmental organizations, such as the International Committee of the Red Cross, the League of Red Cross Societies, and church groups would have greater flexibility in operation than would an international intergovernmental agency, and greater facilities are needed for either or both to be active in relief types of operations.

C. SPECIALIZED AGENCIES

United Nations Educational, Scientific and Cultural Organization

/Original: English/
17 July 1969

1. The intent of General Assembly resolution 2444 (XXIII) on respect for human rights in armed conflicts is based upon the following three assumptions: (a) not all armed conflicts today can be adequately covered by the limited scope of existing conventions, protocols and other rules of international law; (b) there is the need for the adoption of new rules of international law; and (c) it is imperative that all States observe faithfully all rules of international law pertaining to the subject.

2. If the above is true, it seems therefore that consideration could be given to the possibility of organizing the study, which the Secretary-General is invited to undertake, into the following distinct parts. Initially, it might be desirable to undertake a survey on what are the factors which contribute to the inadequacy of existing rules of international law a/ in the light of (a) advances of scientific and technological know-how utilized in the conduct of modern war, (b) the juxtaposition of past legal rules and precedents and those factors which guide the national decision-maker, both as claimant and judge, in terms of past, present and future expectations, and (c) the psychological and sociological patterns of communities at war which inhibit the effective application of basic humanitarian principles in times of combat and armed confrontation. Secondly, an appraisal can be made of major innovative legal ideas and main thoughts expressed in national and international forums, both spoken and written, respectively, in regard to securing better applications of existing rules of international law and the creation of international machinery such as the reinforcement of instruments of international criminal law b/ and the institutionalization of a permanent international criminal court. Thirdly, a study can be made of the range of conditioning processes necessary in view of supporting institutional safeguards and a mental disposition of man conducive to the enhancement of ensuring human rights in armed conflicts.

3. While the above observations are tentative in nature and are intended to serve further thought, UNESCO, through its programmes for the development, teaching and research in international law, human rights and peace research, may be well-equipped to serve the study both in regard to its scientific substance as well as in view of promoting the moral imperative of respect of human rights in armed conflicts.

a/ Major agreements, such as the provisions of the Hague Conventions of 1899 and 1907, the Geneva Protocol of 1925 and the Red Cross Geneva Conventions of 1949.

b/ For example, the Nürnberg principles in relation to the Convention on the Prevention and Punishment of the Crime of Genocide, the Geneva Conventions of 1949 and the Draft Code of Offences against Peace and Security of Mankind.

World Health Organization

[Original: English]
2 July 1969

1. For some years past, the World Health Organization has been involved in the questions directly related to respect for human rights in armed conflict, through its participation as an observer in the meetings of the Working Group in International Medical Law comprising representatives of the World Medical Association, the International Committee of the Red Cross and the International Committee of Military Medicine and Pharmacy.
2. In 1963, this Group transmitted to the World Health Organization certain proposals consisting of principles and rules, having as their purpose to assure care and assistance to sick and wounded persons, particularly in times of armed conflict, and the use of a special emblem by civilian medical personnel. Following the request of the Group, these proposals were communicated by the World Health Organization to its members (see text of the memorandum below).
3. As far as the question of the protection of civilian medical personnel is concerned, this will be the subject of a report by the International Committee of the Red Cross to the International Conference of the Red Cross, which will meet in Istanbul in September 1969.
4. We have examined the terms of General Assembly resolution 2444 (XXIII), particularly the second operative paragraph, and consider that, with respect to paragraph 2 (b), it is not within our competence, as an organization primarily responsible for dealing with technical and scientific matters, to suggest the "need for additional humanitarian international conventions", notwithstanding our interest in the fundamental question involved.
5. The World Health Assembly has on two occasions adopted resolutions within the general domain of your inquiry. A resolution of the eleventh World Health Assembly on the application of the Geneva humanitarian Conventions, expressed the hope that all countries might "come to have a wider knowledge" of these conventions. a/
6. In May 1967, the twentieth World Health Assembly, after considering resolution 2162 (XXI) of the United Nations General Assembly, which related to weapons of mass destruction, called upon all States to "accede to the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925, and to observe strictly the principles and aims of the Protocol", welcomed the resolution of the General Assembly and called upon all member States to "exert every effort to implement the above-mentioned resolution". b/

a/ Eleventh World Health Assembly, resolution WHA11.31 adopted 12 June 1958.

b/ Twentieth World Health Assembly, resolution WHA20.54 adopted 25 May 1967.

7. While the World Health Organization does not deem it advisable to suggest what types of definitions or legal instruments may be required, it will, of course, be prepared at any time to provide the Secretary-General, on request, with scientific and technical information or comments as may be necessary or any other assistance which the Secretary-General would consider requisite to meet the terms of the resolution.

Memorandum

PROTECTION OF CIVILIAN HEALTH PERSONNEL IN TIME OF CONFLICT

Various national and international organizations which group together members of the medical profession drew attention some years ago to the fact that, in their view and in that of their members, civilian physicians of all categories and other members of the medical professions did not enjoy adequate protection from all points of view in time of declared war or of internal conflict. They considered in particular that the protection conferred upon them by the 1949 Geneva Conventions on the protection of the victims of war, less wide with respect to civilian health personnel than for military personnel, should be strengthened in some way in order to guarantee the free and full exercise of their profession in all circumstances.

To this end, several of the organizations in question proposed that the right to exhibit the emblem of the Red Cross freely and in all circumstances should be accorded to all members of the medical and paramedical professions. This proposal, however, was not acceptable since it implied modification of the Geneva Conventions and it was considered neither possible nor desirable to convene at the present time a new Diplomatic Conference - the only instrument empowered to make the change. Moreover, serious disadvantages might attend such an extension of the use of the Red Cross emblem, with the impossibility of any control. It was therefore necessary to find some other solution.

At the instigation of the World Medical Association, it was decided to entrust the examination of the subject to a working group composed of representatives of that association, of the International Committee of Military Medicine and Pharmacy and of the International Committee of the Red Cross, a representative of the World Health Organization to be present as observer.

This last-named organization was, in fact, required by a resolution adopted by its Assembly to undertake a preliminary study of problems relating to international medical law. The similarity of the two aims led the three organizations mentioned above to propose that WHO should work in concert with them and consider the result of the group's work as a contribution to the preliminary studies asked for by the World Health Assembly. WHO accepted that proposal.

The conclusions arrived at by the working group are as follows:

1. The working group noted first of all that what was really important for medical personnel of all categories, in time of conflict, was to have concrete protection and to be able to exercise their professions freely and fully with as

little hindrance as possible. However, such concrete protection does not seem to be always guaranteed by the accepted rules, particularly in case of internal conflict. Consequently, it seemed that it would be necessary, for the time being and until international law is universally respected and possibly strengthened, to aim at some practical measures.

The first conclusion was to the effect that it is for the medical professions themselves to fix and proclaim the principles they would wish to apply themselves and have applied to them, in time of conflict. This conclusion led to the definition of certain new principles of medical ethics applicable in particular in time of conflict. They are as follows:

Rules of medical ethics in time of war

1. Medical ethics in time of armed conflict shall be the same as in peace time. They are set out in the Code of Ethics of the World Medical Association. In the performance of his duty, the physician shall obey above all his own conscience; his professional duty shall constitute his first obligation.
2. The essential mission of members of the medical profession is to safeguard human life and health. Consequently, it shall be prohibited for physicians to:
 - (a) give advice or perform any prophylactic, diagnostic or therapeutic medical act which is not in the interests of the patient;
 - (b) weaken the physical or mental resistance of a human being except in case of therapeutic necessity;
 - (c) employ any method whatsoever that may prejudice human health or life.
3. Experiments on human beings shall be subject in time of war to the same rules as in peace time; such experiments on persons who are not free, and in particular on civilian or military prisoners, or the inhabitants of occupied countries, shall be strictly prohibited.
4. The prohibitions mentioned under 2 and 3 above shall be applicable in all circumstances, even if a physician should be requested to employ such methods by a de facto or de jure authority.
5. In case of emergency, a physician must always give the necessary immediate aid, impartially and without any discrimination in regard to sex, race, nationality, religion, political opinions or any other similar criteria. The physician shall continue to give aid for as long as his presence is necessary to the sick or wounded person.
6. The physician shall observe medical secrecy in the exercise of his profession.

7. In the exercise of his mission, the physician shall not make use of any rights or facilities conferred upon him for the accomplishment of acts outside his professional activities.

2. However, this Code of Ethics cannot of itself protect civilian physicians and other members of the medical professions. By fixing the principles that are applicable by members of the professions in question, the Code demonstrates that the latter uphold the strictest principles of humanity and that they therefore deserve respect and protection, but it does not and cannot establish any rule relating to the protection itself. As it stands, it is not intended to do more than strengthen the professional conscience of the physician.

It therefore seemed necessary to formulate at the same time a certain number of rules defining not only the principles to be observed by the members of the professions themselves, but above all the principles for whose application to themselves they may legitimately ask in return - principles which they must in peace time and without delay make known to the public and to the authorities of their countries.

While the first aim of these rules is to ensure de facto protection of medical personnel in case of conflict, their final goal is to guarantee that the sick and wounded will in all circumstances receive the necessary care. Here, as in the Geneva Conventions, the protection of health personnel is related to the protection of the sick and the wounded. For this reason, the title given to these rules indicates that they aim above all at the improvement of conditions for the care of the sick and the wounded. The text of them is as follows:

Rules to ensure the succour and care of the sick and wounded particularly in time of armed conflict

1. All persons, whether military or civilian, shall be entitled to receive in all circumstances and without delay the care required by their condition, without unfavourable discrimination in regard to sex, race, nationality, religion, political opinions or any other similar criteria.

2. It shall be prohibited to make any assault on the health or bodily or mental integrity of a human being, except for justifiable therapeutic reasons.

3. In case of emergency, physicians and medical personnel of all categories shall give medical aid without delay as their consciences dictate, either spontaneously or on request, and no distinction shall be made among patients except that dictated by medical urgency. They may abstain from providing medical aid if such aid is already being given by others.

4. Members of the medical and paramedical professions shall be given the protection necessary for the free exercise of their profession. All assistance shall be given to them in the accomplishment of their mission. In particular, they shall be entitled to circulate freely at any time and to enter any place or premises where their presence is required. The professional independence of the physician shall be at all times respected.

5. In no circumstances shall an activity of a medical character be considered as an offence. The physician's right to observe medical secrecy shall never be challenged.

6. In the accomplishment of their mission, the members of the medical and paramedical professions shall be identifiable by a distinctive emblem - the staff of Aesculapius in red on a white ground, concerning the use of which special regulations shall be established.

These rules will not only be circulated by the organizations concerned and their members in peace time, but they will also be reaffirmed as soon as one of the situations they are intended to cover occurs. In such an occurrence they will also be communicated by every possible means, for approval, to the different authorities of the parties to the conflict. The aim is that the principles thus formulated should penetrate everywhere, enter into everyone's conscience and command that respect and protection which would seem, in times of conflict, to be the only guarantee of the immunity to which physicians in the exercise of their functions should be entitled.

3. Article 6 of the above-mentioned rules refers to a distinctive emblem for the medical and paramedical professions. This emblem, the staff of Aesculapius in red on a white ground, is the third of the practical measures decided upon to ensure the protection of civilian health personnel in so far as possible and in the real situations envisaged.

In fact, a practitioner who goes to the aid of the wounded in a street battle, for example, must be rapidly recognizable as such. An identity card, which may be necessary, is not sufficient. The idea is to have an emblem which would not be subject to restrictions as severe as those with regard to the Red Cross but which would, nevertheless, like the Red Cross, be known to all and clearly visible. The emblem must also be acceptable to the whole of the medical corps throughout the world, and for this reason the symbol of medicine itself was chosen. The staff of Aesculapius is today the emblem of the art of medicine and is recognized as such throughout the world. If it is designed in red on a white ground, it will not only be clearly visible but it will provoke a certain response - the kind of response which long familiarity with the Red Cross and Red Crescent has already created everywhere in regard to those symbols. The exact form, size, and proportions of this emblem have purposely not been fixed so that the physician or nurse under the pressure of circumstances will be able to improvise the emblem rapidly in a form that will still be valid. The design is stylized as a vertical line with a descending serpentine line on each side symbolizing the serpent. Those who have been authorized by their professional associations to use this new symbol will be able to do so in all circumstances and in all places, by affixing it to their residence, their car, their professional equipment, etc. This is moreover necessary in order that everyone may become familiar with it.

These provisions are certainly of interest not only to the various medical professions but also, and above all, to the whole community and to the various States. Any measure liable in time of conflict to give greater protection to civilian health personnel in the accomplishment of their task, and therefore liable to ensure better exercise of medicine, better treatment of the sick and

wounded, should be greeted with satisfaction. On a narrower plane, the creation of a medical emblem should make it possible to preserve the full significance of the emblem of the Red Cross, to ensure that its use is everywhere strictly in accordance with the accepted rules and thus to prevent its abuse.

The three institutions represented in the working group hope that all possible support and co-operation will be given to the medical and paramedical professions in each country so that the measures adopted may have their full effect and be known to the authorities and to the public, so that the principles laid down may be at all times applied on the widest possible basis.

International Committee
of Military Medicine
and Pharmacy

World Medical
Association

The International Committee
of the
Red Cross

Geneva, 30 October 1962

D. INTERNATIONAL COMMITTEE OF THE RED CROSS

[Original: French]
4 July 1969

Letter dated 4 July 1969 from the President of the International
Committee of the Red Cross to the Secretary-General

We have the honour to acknowledge receipt of the letters of 16 and 21 May 1969 (reference SO 262/4) sent to us in your name by the Director of the Human Rights Division concerning resolution 2444 (XXIII), adopted on 16 December 1968 by the General Assembly.

The studies which this resolution requests you to undertake comprise two clearly distinct parts.

In the first place, it is a question of the necessity of drawing up new international rules of a humanitarian character. In this connexion we enclose the report which we will be submitting to the twenty-first International Conference of the Red Cross (Istanbul, 6-13 September 1969) entitled "Reaffirmation and development of the laws and customs applicable in armed conflicts". This report mainly gives an account of the discussions and conclusions reached by a group of experts convened in February 1969 by the International Committee of the Red Cross and in which, as you know, the Director of the Human Rights Division of the United Nations took part. We also attach another report also intended for this Conference and which bears on the protection of the victims of conflicts of a non-international character. a/

a/ These reports were issued as documents of the twenty-first International Conference of the Red Cross under the symbols D.S. 4 a, b, e and D.S. 5 a, b. Because of their length, they are not included in the present annex, but are kept on file in the Secretariat, where they may be consulted by interested parties.

In these two reports, you will find the contribution which the International Committee of the Red Cross has pleasure in giving you on the studies undertaken. We have no objection to the whole or part of these documents being reproduced in the report you are preparing, or attached in annex.

The second part of the study requested of you deals with measures which could be adopted to ensure, in all armed conflicts, a better application of the international rules of a humanitarian character in existence.

The Conventions relative to the laws and customs of war, since they were concluded, have certainly assumed a declaratory nature. They have no doubt become the expression of rules to which the international community intends to conform. However, these Conventions are also agreements between States and it is therefore in the first place Governments or, in the case of internal conflict, the competent authorities who are responsible for their application. It is accordingly with Governments that one should act if one wishes to obtain a better application of these texts.

However, the task of Governments will be greatly facilitated if the principal provisions of a humanitarian character are well known by officials, members of the armed forces and the population in general. The International Committee of the Red Cross, for its part, attempts to encourage and favour in all countries the dissemination of the Geneva Conventions, of which it is the promoter. The United Nations could, perhaps, also interest themselves in this question of dissemination. UNESCO has, for one, already shown a certain interest in this problem.

Similarly, we have for a long time hoped, as the wish has been expressed at several Red Cross Conferences, that the United Nations, by regular accession, formally undertake to have applied the Geneva Conventions and the other provisions of a humanitarian character each time the forces of the United Nations are engaged in operations. Such a gesture would have value as an example which would without doubt have a favourable effect.

Still in connexion with United Nations bodies it would be most useful if, each time they have to deal with an armed conflict, they also concern themselves, as they have done on occasions, with the application in such conflict of the international rules of a humanitarian character. As regards non-international conflicts, it might perhaps be opportune for the United Nations to recall and officially proclaim that each time there is armed strife, the humanitarian rules must be applied, irrespective of the legal definition given to the struggle by the parties in conflict. In fact, it no longer seems today that internal armed conflicts, when they involve large numbers of victims, can be considered as being dependent on the exclusive reserve of national sovereignty. The United Nations have, moreover, admitted this on several occasions when they have had to deal with problems concerning southern Africa. This is a trend which appears would gain from being developed.

In compliance with your request, we have made every effort to have this information reach you before 15 July. It is, however, certain that the discussions of the International Conference of the Red Cross and the resolutions it will be

adopting will also constitute most useful elements. We will not fail to inform you of these, but you will also be kept in touch by the observers which you will no doubt be sending to this Conference as a result of the invitation addressed to you by the Turkish Red Crescent.

We hope that the above indications may be of use to you.

Yours sincerely,

(Signed) Marcel A. NAVILLE

/3 November 1969/

At the request of the International Committee of the Red Cross, resolutions XIII-XVIII concerning the development of humanitarian law, adopted at the twenty-first International Conference of the Red Cross, are reproduced below.

XIII

Reaffirmation and development of the laws and customs applicable in armed conflicts

The XXIst International Conference of the Red Cross,

considering that armed conflicts and other forms of violence which continue to rage in the world, continuously imperil peace and the values of humanity,

noting that, in order to strive against such dangers, the limits imposed upon the waging of hostilities by the requirements of humanity and the dictates of the public conscience should be continuously reaffirmed and defined,

recalling the resolutions previously adopted on this matter by International Conferences of the Red Cross and, in particular, Resolution No. XXVIII of the XXth International Conference,

recognizing the importance of the United Nations General Assembly resolution 2444 adopted on 19 December 1968 on respect for human rights in armed conflicts, as well as resolution 2454 adopted on 20 December 1968,

having taken note with gratitude of the work undertaken by the ICRC in this field, following Resolution No. XXVIII of the XXth International Conference and, in particular, of the extensive report which the ICRC has prepared on this subject,

underlines the necessity and the urgency of reaffirming and developing humanitarian rules of international law applicable in armed conflicts of all kinds, in order to strengthen the effective protection of the fundamental rights of human beings, in keeping with the Geneva Conventions of 1949,

requests the ICRC on the basis of its report to pursue actively its efforts in this regard with a view to

1. proposing, as soon as possible, concrete rules which would supplement the existing humanitarian law;
2. inviting governmental, Red Cross and other experts representing the principal legal and social systems in the world to meet for consultations with the ICRC on these proposals;
3. submitting such proposals to Governments for their comments; and,
4. if it is deemed desirable, recommending the appropriate authorities to convene one or more diplomatic conferences of States parties to the Geneva Conventions and other interested States, in order to elaborate international legal instruments incorporating those proposals,

encourages the ICRC to maintain and develop, in accordance with the United Nations General Assembly resolution 2444 (XXIII), the co-operation established with that organization in order to harmonize the various studies undertaken, and to collaborate with all other official and private organizations with a view to ensuring the co-ordination of such studies,

requests National Red Cross Societies to create active public interest in such a cause, which is of concern to all mankind,

urges all Governments to support the efforts of the International Red Cross in this respect.

XIV

Weapons of mass destruction

The XXIst International Conference of the Red Cross,

considering that the first and basic aim of the Red Cross is to protect mankind from the terrible suffering caused by armed conflicts,

taking into account the danger threatening mankind in the form of new techniques of warfare, particularly weapons of mass destruction,

confirming the resolutions adopted by the International Conferences of the Red Cross as well as the United Nations General Assembly resolutions 2162 (XXI), 2444 (XXIII) and 2454 (XXIII) and the Resolution No. XXIII of the International Conference on Human Rights of 1968,

considering that the adoption of a special agreement on the prohibition of weapons of mass destruction would be an important contribution to the development of international humanitarian law,

requests the United Nations to pursue its efforts in this field,

requests the ICRC to continue to devote great attention to this question, consistent with its work for the reaffirmation and development of humanitarian law and to take every step it deems possible,

renews its appeal to the Governments of States which have not yet done so to accede to the 1925 Geneva Protocol and to comply strictly with its provisions,

urges Governments to conclude as rapidly as possible an agreement banning the production and stock-piling of chemical and bacteriological weapons.

XV

Status of civil defence service personnel

The XXIst International Conference of the Red Cross,

recalling Resolution No. XXIX adopted by the XXth International Conference of the Red Cross at Vienna in 1965 which recognized the need to strengthen the protection afforded to civil defence services under international law,

having noted the report submitted by the ICRC on the "Status of Civil Defence Service Personnel" which records that, since the XXth International Conference of the Red Cross, the ICRC, with the assistance of experts, has solved a number of problems and thus established a more favourable basis for the solution of problems still unsolved,

stressing that the strengthening of international legal protection for civil defence services comes under the more general attempts which are being made to reaffirm and develop the laws and customs applicable in armed conflicts, requests the ICRC to continue its work in this field and to convene a meeting of governmental and Red Cross experts with a view to submitting to Governments, for approval, regulations supplementing the provisions of the existing humanitarian conventions, in particular the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949.

XVI

Protection of civilian medical and nursing personnel

The XXIst International Conference of the Red Cross,

recognizing the interest attached in time of armed conflict, of whatever nature it may be, to increased protection for civilian health personnel and for their hospital installations, ambulances and other medical material,

referring to Resolution No. XXX of the XXth International Conference of the Red Cross,

having noted the studies and surveys which the ICRC has since made concerning the distinctive sign,

emphasizing that all categories of health services, both civilian and military, must co-operate closely in cases of armed conflict, of whatever nature they may be,

notes that the sign of the red cross (red crescent, red lion and sun) is the most appropriate to ensure increased protection for civilian personnel

organized and duly authorized by the State and for their hospital installations, ambulances and other medical material,

requests the ICRC to submit specific proposals to Governments along these lines with a view to the rapid conclusion of an additional protocol to the First and Fourth Geneva Conventions.

XVII

Protection of victims of non-international armed conflicts

The XXIst International Conference of the Red Cross,

considering that since the conclusion of the Geneva Conventions in 1949 non-international armed conflicts have been on the increase and have caused much suffering,

whereas Article 3 common to the four Geneva Conventions has already rendered great service in protecting the victims of these conflicts,

considering however that experience has brought out certain points on the basis of which this Article could be made more specific or supplemented,

asks the ICRC to devote special attention to this problem within the framework of the more general studies it has started to develop humanitarian law, in particular with the co-operation of Government experts.

XVIII

Status of combatants in non-international armed conflicts

The XXIst International Conference of the Red Cross,

considering Resolution No. XXXI, in which the XXth International Conference of the Red Cross urged the ICRC to continue its work with the aim of strengthening the humanitarian assistance of the Red Cross to victims of non-international armed conflicts and recommended that Governments of States parties to the Geneva Conventions and National Societies support these efforts in their respective countries,

whereas, since the adoption of the Geneva Conventions of 1949, non-international armed conflicts have become increasingly extensive and have already caused millions of victims,

considers that combatants and members of resistance movements who participate in non-international armed conflicts and who conform to the provisions of Article 4 of the Third Geneva Convention of 12 August 1949 should when captured be protected against any inhumanity and brutality and receive treatment similar to that which that Convention lays down for prisoners of war,

requests the ICRC to make a thorough study of the legal status of such persons and take the action in this matter that it deems necessary.

ANNEX II

SIGNATURES, RATIFICATIONS, ACCESSIONS, ETC. PERTAINING
TO THE GENEVA PROTOCOL OF 17 JUNE 1925 AND THE GENEVA
CONVENTIONS OF 12 AUGUST 1949

A. SIGNATURES, RATIFICATIONS, ACCESSIONS, ETC. AS REGARDS
THE PROTOCOL FOR THE PROHIBITION OF THE USE IN WAR OF
ASPHYXIATING, POISONOUS OR OTHER GASES AND OF
BACTERIOLOGICAL METHODS OF WARFARE SIGNED AT GENEVA
ON 17 JUNE 1925

Data as at 30 October 1969*

TABLE I
Signatures and ratifications

Signatory	Deposit of ratification	Remarks
AUSTRIA	9.5.1928	
BELGIUM	4.12.1928	R
BRAZIL		
BRITISH EMPIRE	9.4.1930	R
BULGARIA	7.3.1934	R
CANADA	6.5.1930	R
CHILE	2.7.1935	R
CZECHOSLOVAKIA	16.8.1938	R
DENMARK	5.5.1930	
EL SALVADOR		
EGYPT	6.12.1928	
ESTONIA	28.8.1931	
ETHIOPIA		See Table II
FINLAND	26.6.1929	
FRANCE	10.5.1926	R
GERMANY	25.4.1929	
GREECE	30.5.1931	
INDIA	9.4.1930	R
ITALY	3.4.1928	
JAPAN		
KINGDOM OF THE SERBS, CROATS AND SLOVENES	12.4.1929	R
LATVIA	3.6.1931	
LITHUANIA	15.6.1933	
LUXEMBOURG	1.9.1936	
NETHERLANDS	31.10.1930 <u>1/</u>	R
NICARAGUA		
NORWAY	27.7.1932	
POLAND	4.2.1929	
PORTUGAL	1.7.1930	R

* As communicated by the depository Government, the Government of France.

1/ Including the Netherlands Indies, Surinam and Curaçao.

TABLE I (cont'd)

Signatory	Deposit of ratification	Remarks
ROMANIA	23.8.1929	R
SIAM	6.6.1931	
SPAIN	22.8.1929	R
SWEDEN	25.4.1930	
SWITZERLAND	12.7.1932	
TURKEY	5.10.1938	
UNITED STATES OF AMERICA		
URUGUAY		
VENEZUELA	8.2.1928	

R = Reservation

TABLE II
Notifications of adherence or accession

Government	Notification by the French Government	Remarks
LIBERIA	17.6.1927	
USSR	15.4.1928	R
CHINA	24.8.1929	See Table III.1
IRAN	5.11.1929	
SOUTH AFRICA	24.5.1930	R
AUSTRALIA	24.5.1930	R
NEW ZEALAND	24.5.1930	R
IRELAND	29.8.1930	R
IRAQ	8.9.1931	R
MEXICO	28.5.1932	
PARAGUAY	22.10.1933 <u>1/</u>	
ETHIOPIA	20.9.1935	
HUNGARY	11.10.1952	
CEYLON	20.1.1954	
PAKISTAN	9.6.1960	See Table III.2
TANGANYIKA	22.4.1963	
RWANDA	25.6.1964	See Table III.3
UGANDA	24.5.1965	
CUBA	24.6.1966	
HOLY SEE	18.10.1966	
GAMBIA	16.11.1966	See Table III.4
CYPRUS	12.12.1966	See Table III.5
MONACO	6.1.1967	
MALDIVES	6.1.1967	See Table III.6
SIERRA LEONE	20.3.1967	
NIGER	19.4.1967	See Table III.7
GHANA	3.5.1967	
TUNISIA	12.7.1967	
MALAGASY REPUBLIC	2.8.1967	
ICELAND	2.11.1967	
NIGERIA	15.10.1968	R
MONGOLIA	6.12.1968	R
SYRIA	17.12.1968	R
ISRAEL	20.2.1969	R
LEBANON	17.4.1969	
NEPAL	9.5.1969	
ARGENTINA	12.5.1969	

R = Reservation.

1/ Date of receipt of the instrument of adherence (notification on 13 January 1969 for purpose of regularization).

TABLE III

Declarations

1. In a Declaration of 13 July 1952, received on 16 July 1952, the PEOPLE'S REPUBLIC OF CHINA recognized the accession of China to the Protocol in 1929 (see Table IV).
2. In a note of 13 April 1960, received on 15 April 1960, PAKISTAN declared that it was a party to the Protocol by virtue of paragraph 4 of the annex to the Indian Independence Act of 1947.
3. In a Declaration of 21 March 1964, received on 11 May 1964, RWANDA recognized that it was bound by the Protocol, which had been made applicable to it by Belgium.
4. In a Declaration of 11 October 1966, received on 5 November 1966, GAMBIA confirmed its participation in the Protocol, which had been made applicable to it by Great Britain.
5. In a note of 21 November 1966, received on 29 November 1966, CYPRUS declared that it was bound by the Protocol, which had been made applicable to it by the British Empire.
6. In a Declaration of 19 December 1966, received on 27 December 1966, MALDIVES confirmed its adherence to the Protocol.
7. In a letter of 18 March 1967, received on 5 April 1967, NIGER declared that it was bound by the accession of France to the Protocol.
8. A document concerning the "reapplication" of the Protocol by the "German Democratic Republic" was submitted to the Ministry of Foreign Affairs by the Embassy of Czechoslovakia on 2 March 1959.

B. SIGNATURES, RATIFICATIONS, ACCESSIONS, ETC. AS REGARDS
THE GENEVA CONVENTIONS OF 12 AUGUST 1949

- I 1949 Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field
- II 1949 Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea
- III 1949 Convention relative to the Treatment of Prisoners of War
- IV 1949 Convention relative to the Protection of Civilian Persons in Time of War

Data as at 20 October 1969^{a/}

Note: Where ratifications, accessions or declarations of continuity have been made subject to reservations, it is so indicated by an asterisk (*).

	I 1949	II 1949	III 1949	IV 1949
Afghanistan	26.9.1956	26.9.1956	26.9.1956	26.9.1956
Albania*	27.5.1957	27.5.1957	27.5.1957	27.5.1957
Algeria	3.7.1962	3.7.1962	3.7.1962	3.7.1962
Argentina	18.9.1956	18.9.1956	18.9.1956	18.9.1956
Australia*	14.10.1958	14.10.1958	14.10.1958	14.10.1958
Austria	27.8.1953	27.8.1953	27.8.1953	27.8.1953
Barbados	10.9.1968	10.9.1968	10.9.1968	10.9.1968
Belgium	3.9.1952	3.9.1952	3.9.1952	3.9.1952
Botswana	29.3.1968	29.3.1968	29.3.1968	29.3.1968
Brazil	29.6.1957	29.6.1957	29.6.1957	29.6.1957
Bulgaria*	22.7.1954	22.7.1954	22.7.1954	22.7.1954
Byelorussia*	3.8.1954	3.8.1954	3.8.1954	3.8.1954
Cambodia	8.12.1958	8.12.1958	8.12.1958	8.12.1958
Cameroon	21.9.1963	21.9.1963	21.9.1963	21.9.1963
Canada	14.5.1965	14.5.1965	14.5.1965	14.5.1965
Central African Republic	1.8.1966	1.8.1966	1.8.1966	1.8.1966
Ceylon	28.2.1959	28.2.1959	28.2.1959	23.2.1959
Chile	12.10.1950	12.10.1950	12.10.1950	12.10.1950
China (People's Republic)*	28.12.1956	28.12.1956	28.12.1956	28.12.1956
Colombia	8.11.1961	8.11.1961	8.11.1961	8.11.1961
Congo (Brazzaville)	4.2.1967	4.2.1967	4.2.1967	4.2.1967
Congo (Leopoldville)	24.2.1961	24.2.1961	24.2.1961	24.2.1961
Costa Rica	15.10.1969	15.10.1969	15.10.1969	15.10.1969
Cuba	15.4.1954	15.4.1954	15.4.1954	15.4.1954
Cyprus	23.5.1962	23.5.1962	23.5.1962	23.5.1962
Czechoslovakia*	19.12.1950	19.12.1950	19.12.1950	19.12.1950
Dahomey	9.1.1962	9.1.1962	9.1.1962	9.1.1962
Denmark	27.6.1951	27.6.1951	27.6.1951	27.6.1951
Dominican Republic	22.1.1958	22.1.1958	22.1.1958	22.1.1958

^{a/} As communicated by the depository Government, the Government of Switzerland.

	I 1949	II 1949	III 1949	IV 1949
Ecuador	11.8.1954	11.8.1954	11.8.1954	11.8.1954
Egypt	10.11.1952	10.11.1952	10.11.1952	10.11.1952
Ethiopia	2.10.1969	2.10.1969	2.10.1969	2.10.1969
Finland	22.2.1955	22.2.1955	22.2.1955	22.2.1955
France	28.6.1951	28.6.1951	28.6.1951	28.6.1951
Gabon	26.2.1965	26.2.1965	26.2.1965	26.2.1965
Gambia	20.10.1966	20.10.1966	20.10.1966	20.10.1966
Germany (Democratic Republic)*	30.11.1956	30.11.1956	30.11.1956	30.11.1956
Germany (Federal Republic)	3.9.1954	3.9.1954	3.9.1954	3.9.1954
Ghana	2.8.1958	2.8.1958	2.8.1958	2.8.1958
Greece	5.6.1956	5.6.1956	5.6.1956	5.6.1956
Guatemala	14.5.1952	14.5.1952	14.5.1952	14.5.1952
Guyana	22.7.1968	22.7.1968	22.7.1968	22.7.1968
Haiti	11.4.1957	11.4.1957	11.4.1957	11.4.1957
Holy See	22.2.1951	22.2.1951	22.2.1951	22.2.1951
Honduras	31.12.1965	31.12.1965	31.12.1965	31.12.1965
Hungary*	3.8.1954	3.8.1954	3.8.1954	3.8.1954
Iceland	10.8.1965	10.8.1965	10.8.1965	10.8.1965
India	9.11.1950	9.11.1950	9.11.1950	9.11.1950
Indonesia	30.9.1958	30.9.1958	30.9.1958	30.9.1958
Iran	20.2.1957	20.2.1957	20.2.1957	20.2.1957
Iraq	14.2.1956	14.2.1956	14.2.1956	14.2.1956
Ireland	27.9.1962	27.9.1962	27.9.1962	27.9.1962
Israel*	6.7.1951	6.7.1951	6.7.1951	6.7.1951
Italy	17.12.1951	17.12.1951	17.12.1951	17.12.1951
Ivory Coast	30.12.1961	30.12.1961	30.12.1961	30.12.1961
Jamaica	30.7.1964	30.7.1964	30.7.1964	30.7.1964
Japan	21.4.1953	21.4.1953	21.4.1953	21.4.1953
Jordan	29.5.1951	29.5.1951	29.5.1951	29.5.1951
Kenya	20.9.1966	20.9.1966	20.9.1966	20.9.1966
Korea (Democratic People's Republic)	27.8.1957	27.8.1957	27.8.1957	27.8.1957
Korea (Republic)*	16.8.1966	16.8.1966	16.8.1966	16.8.1966
Kuwait	2.9.1967	2.9.1967	2.9.1967	2.9.1967
Laos	29.10.1956	29.10.1956	29.10.1956	29.10.1956
Lebanon	10.4.1951	10.4.1951	10.4.1951	10.4.1951
Lesotho	20.5.1968	20.5.1968	20.5.1968	20.5.1968
Liberia	29.3.1954	29.3.1954	29.3.1954	29.3.1954
Libya	22.5.1956	22.5.1956	22.5.1956	22.5.1956
Liechtenstein	21.9.1950	21.9.1950	21.9.1950	21.9.1950
Luxembourg	1.7.1953	1.7.1953	1.7.1953	1.7.1953
Madagascar	19.7.1963	19.7.1963	19.7.1963	19.7.1963
Malawi	5.1.1968	5.1.1968	5.1.1968	5.1.1968
Malaya	24.8.1962	24.8.1962	24.8.1962	24.8.1962
Mali	24.5.1965	24.5.1965	24.5.1965	24.5.1965
Malta	22.8.1968	22.8.1968	22.8.1968	22.8.1968
Mauritania	30.10.1962	30.10.1962	30.10.1962	30.10.1962
Mexico	29.10.1952	29.10.1952	29.10.1952	29.10.1952

	I 1949	II 1949	III 1949	IV 1949
Monaco	5.7.1950	5.7.1950	5.7.1950	5.7.1950
Mongolia (People's Republic)	20.12.1958	20.12.1958	20.12.1958	20.12.1958
Morocco	26.7.1956	26.7.1956	26.7.1956	26.7.1956
Nepal	7.2.1964	7.2.1964	7.2.1964	7.2.1964
Netherlands*	3.8.1954	3.8.1954	3.8.1954	3.8.1954
New Zealand*	2.5.1959	2.5.1959	2.5.1959	2.5.1959
Nicaragua	17.12.1953	17.12.1953	17.12.1953	17.12.1953
Nigeria	20.6.1961	20.6.1961	20.6.1961	20.6.1961
Niger	21.4.1964	21.4.1964	21.4.1964	21.4.1964
Norway	3.8.1951	3.8.1951	3.8.1951	3.8.1951
Pakistan*	12.6.1951	12.6.1951	12.6.1951	12.6.1951
Panama	10.2.1956	10.2.1956	10.2.1956	10.2.1956
Paraguay	23.10.1961	23.10.1961	23.10.1961	23.10.1961
Peru	15.2.1956	15.2.1956	15.2.1956	15.2.1956
Philippines	7.3.1951	6.10.1952	6.10.1952	6.10.1952
Poland*	26.11.1954	26.11.1954	26.11.1954	26.11.1954
Portugal*	14.3.1961	14.3.1961	14.3.1961	14.3.1961
Romania*	1.6.1954	1.6.1954	1.6.1954	1.6.1954
Rwanda	5.5.1964	5.5.1964	5.5.1964	5.5.1964
Salvador	17.6.1953	17.6.1953	17.6.1953	17.6.1953
San Marino	29.8.1953	29.8.1953	29.8.1953	29.8.1953
Saudi Arabia	18.5.1963	18.5.1963	18.5.1963	18.5.1963
Senegal	31.5.1963	31.5.1963	31.5.1963	31.5.1963
Sierra Leone	23.6.1965	23.6.1965	23.6.1965	23.6.1965
Somalia	12.7.1963	12.7.1963	12.7.1963	12.7.1963
South Africa	31.3.1952	31.3.1952	31.3.1952	31.3.1952
Spain*	4.8.1952	4.8.1952	4.8.1952	4.8.1952
Sudan	23.9.1957	23.9.1957	23.9.1957	23.9.1957
Sweden	28.12.1953	28.12.1953	28.12.1953	28.12.1953
Switzerland	31.3.1950	31.3.1950	31.3.1950	31.3.1950
Syria	2.11.1953	2.11.1953	2.11.1953	2.11.1953
Tanganyika	17.12.1962	17.12.1962	17.12.1962	17.12.1962
Thailand	29.12.1954	29.12.1954	29.12.1954	29.12.1954
Togo	11.1.1962	11.1.1962	11.1.1962	11.1.1962
Trinidad and Tobago	17.5.1963	24.9.1963	24.9.1963	24.9.1963
Tunisia	4.5.1957	4.5.1957	4.5.1957	4.5.1957
Turkey	10.2.1954	10.2.1954	10.2.1954	10.2.1954
Uganda	18.5.1964	18.5.1964	18.5.1964	18.5.1964
Ukraine*	3.8.1954	3.8.1954	3.8.1954	3.8.1954
Union of Soviet Socialist Republics*	10.5.1954	10.5.1954	10.5.1954	10.5.1954
United Kingdom*	23.9.1957	23.9.1957	23.9.1957	23.9.1957
United States*	2.8.1955	2.8.1955	2.8.1955	2.8.1955
Upper Volta	7.11.1961	7.11.1961	7.11.1961	7.11.1961
Uruguay	5.3.1969	5.3.1969	5.3.1969	5.3.1969
Venezuela	13.2.1956	13.2.1956	13.2.1956	13.2.1956
Viet-Nam (Democratic Republic)*	28.6.1957	28.6.1957	28.6.1957	28.6.1957
Viet-Nam (Republic)	14.11.1953	14.11.1953	14.11.1953	14.11.1953
Yugoslavia*	21.4.1950	21.4.1950	21.4.1950	21.4.1950
Zambia	19.10.1966	19.10.1966	19.10.1966	19.10.1966