

Part Two

REPORTS OF COMMITTEE III

FIRST SESSION

(Geneva, 20 February - 29 March 1974)

COMMITTEE III

REPORT

Contents

	<u>Paragraph</u>	<u>Page</u>
I. Introduction	1 - 2	231
II. Basic proposal	3	231
III. Meetings and organization of work . .	4 -15	231
IV. Account of the discussion on the articles examined	16 -66	234

Annex

Amendments to articles not yet discussed by Committee III	247
--	-----

COMMITTEE III

REPORT

I. INTRODUCTION

Election of officers of the Committee

1. At its seventh plenary meeting, on 1 March 1974, the Conference elected the following officers of Committee III:

<u>Chairman:</u>	Mr. H. Sultan	(Arab Republic of Egypt)
<u>Vice-Chairmen:</u>	Mr. G. Herczegh	(Hungary)
	Mr. M. Dugersuren	(Mongolia)
<u>Rapporteur:</u>	Mr. R. Baxter	(United States of America)

2. The post of Secretary of the Committee was assumed by Mr. B. Hediger, jurist, and the International Committee of the Red Cross (ICRC) was represented by Mrs. D. Bindschedler-Robert and Mr. J. Mirimanoff-Chilikine.

II. BASIC PROPOSAL

3. In pursuance of rule 28 of the rules of procedure (CDDH/2/Rev.1), Committee III was entrusted with the discussion of the articles listed in section III of this report of the draft Protocols additional to the Geneva Conventions of 12 August 1949 (CDDH/1), prepared as a basic proposal by the International Committee of the Red Cross. These drafts are the subject of a Commentary by the ICRC (CDDH/3).

III. MEETINGS AND ORGANIZATION OF WORK

4. Committee III held twelve meetings between 8 and 26 March 1974 (CDDH/III/SRs 1 to 12). At the first meeting of the Committee, the Chairman proposed the following work programme (CDDH/III/1/Rev.1) for the Committee in order to permit it to carry on its deliberations in a systematic way:

- (a) General protection of the civilian population against the effects of hostilities

Basic rule and field of application

Articles 43 and 44 of draft Protocol I
Article 24, paragraph 1, of draft Protocol II

Civilians and civilian population

Articles 45 and 46 of draft Protocol I
Articles 25 and 26 of draft Protocol II

Civilian objects

Articles 47 to 49 of draft Protocol I
Articles 27 and 28 of draft Protocol II

Precautionary measures

Articles 50 and 51 of draft Protocol I
Article 24, paragraph 2, of draft Protocol II

Localities under special protection

Articles 52 and 53 of draft Protocol I

Prohibition of forced movement of civilians

Article 29 of draft Protocol II

(b) Methods and means of combat

Articles 33 to 41 of draft Protocol I
Articles 20 to 23 of draft Protocol II

(c) New category of prisoners of war

Article 42 of draft Protocol I

(d) Treatment of persons in the power of a party to the conflict

Articles 63 to 69 of draft Protocol I
Article 32 of draft Protocol II

5. The Chairman proposed that the topics be taken up chapter by chapter in draft Protocol I and that each article of draft Protocol II be considered in connexion with the corresponding article of draft Protocol I. He informed the Committee that there might be some transfer of responsibility for item (d) between Committees as the work progressed and as it became clearer how much work each Committee would have to do.

6. In the ensuing discussion of the proposed work programme, a number of delegations supported the parallel consideration of draft Protocol I and draft Protocol II. Other delegations took the position that it would be difficult to discuss draft Protocol II

without knowing its precise scope and suggested that consideration of that Protocol be postponed until the completion of consideration of draft Protocol I.

7. The Chairman's proposal was then adopted as submitted to the Committee, with the understanding that the corresponding articles of draft Protocol II would be discussed ad referendum. Several delegations wished to be recorded as reserving their positions.

8. Eight meetings of the Committee were devoted to the consideration of articles 43, 44, 45 and 46 of draft Protocol I and of articles 24, paragraph 1, and 25 and 26 of draft Protocol II, together with delegations' amendments thereto.

9. At the fourth meeting of the Committee, the Chairman referred the first of the draft articles discussed in the Committee (article 43) and the various proposals made with respect to it to a Working Group under the chairmanship of the Rapporteur and composed of the delegations sponsoring amendments and such other delegations as might wish to participate. As the preliminary discussion of each article was concluded in the Committee, the Chairman followed the same procedure of referring the article and the proposals made with respect to it to the Working Group.

10. The Working Group submitted proposed texts or alternative texts for articles 43, 44, and 45 of draft Protocol I and for article 24, paragraph 1, and article 25 of draft Protocol II. Article 46 of draft Protocol I and article 26 of draft Protocol II were likewise referred to the Working Group, but the Group was unable to complete its consideration of the two articles in time to permit their further consideration by the Committee.

11. The articles reported upon by the Working Group appear in the following documents:

Draft Protocol I

Article 43:	CDDH/III/29
Article 44:	CDDH/III/54
Article 45:	CDDH/III/66

Draft Protocol II

Article 24, paragraph 1:	CDDH/III/53
Article 25:	CDDH/III/72

12. At the tenth meeting of the Committee, a motion that the Committee merely take note in its report of the discussions in the Committee and in the Working Group and of the texts proposed by

that Group was defeated by 44 votes to 13, with 9 abstentions. The Committee then proceeded to vote on the articles reported upon by the Working Group.

13. The Committee approved the revised article 43, article 44, paragraphs 2 and 3, and article 45 of draft Protocol I and article 24, paragraph 1, and article 25 of draft Protocol II. At the time of voting and during the subsequent discussions, the Chairman made it clear that the voting on the articles of draft Protocol II would be subject to the decision to be taken later by Committee I on article 1 of draft Protocol II and on the scope of that Protocol. Various delegations expressed the desire to reserve their position on the articles of draft Protocol II voted upon, because no agreement had yet been reached on the scope of that Protocol. Other delegations were of the opinion that the voting on the articles of draft Protocol II did not depend on a decision on the scope of that draft Protocol, since the articles dealt with the protection of the victims of non-international armed conflicts which should be ensured whatever the scope of draft Protocol II might be. One delegation reserved its position on the need for draft Protocol II. It was also understood by the Committee that certain modifications in the articles adopted might be called for at the second session of the Conference in order to adjust them to, or harmonize them with, other articles of the two Protocols subsequently adopted.

14. At its twelfth and final meeting, the Committee approved its report.

15. The disposition of the various articles that were considered within the Committee is dealt with in the following sections.

IV. ACCOUNT OF THE DISCUSSION ON THE ARTICLES EXAMINED

Article 43 of draft Protocol I

16. The following proposals were made with respect to the ICRC text:

Czechoslovakia, German Democratic Republic,
Poland:

CDDH/III/9

Romania:

CDDH/III/10

Libyan Arab Republic, Kuwait, Romania,
Sudan, Syrian Arab Republic, Madagascar,
Mauritania, Morocco, United Arab
Emirates:

CDDH/III/14 and
Add.1

Ghana:

CDDH/III/20

France:

CDDH/III/26

The amendment proposed in document CDDH/III/9 was withdrawn by its sponsors, who stated their agreement with document CDDH/III/26, and the amendment proposed in CDDH/III/10 was withdrawn by its sponsor, who stated his agreement with document CDDH/III/14 and Add.1.

17. General support was expressed in the Committee for the rule set forth in article 43, which was regarded as being the governing principle with respect to the protection of the civilian population. The principal suggestions for its improvement were that express reference should be made to the purpose of ensuring respect for civilian objects as well as the civilian population and that reference to the "destruction or weakening of the military resources of the adversary" should be deleted. Several delegations considered that language of that nature was out of place in a convention relating to the protection of the civilian population rather than the law of war in the strict sense and that "military resources" might provide too wide a basis for attacks in wartime.

18. The convergence of views within the Working Group on the wording of article 43 is reflected in document CDDH/III/29. With an oral amendment providing for the insertion of the word "accordingly" between the words "military objectives and" and "shall direct", the Committee at its tenth meeting adopted the text proposed by the Working Group.

19. Article 43, as adopted, reads as follows

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

Article 44 of draft Protocol I

20. The following proposals were made with respect to the ICRC text:

Romania:

CDDH/III/10

Belgium, United Kingdom of Great Britain
and Northern Ireland: ;

CDDH/III/16

Arab Republic of Egypt:

CDDH/III/19

Australia:

CDDH/III/21

Paragraph 1

21. In the discussion of this paragraph in the Committee, a number of delegations pointed out that the words "military operations" or "attacks" should be substituted for the word "warfare" appearing in the English text submitted by the ICRC. Several delegations spoke in favour of deleting the words "on land" so that the protection under section I of part IV of draft Protocol I would be as broad as possible, embracing the protection of the civilian population, individual civilians, and civilian objects at sea and in the air. Other delegations supported the retention of the words "on land" in order to exclude the application of the Protocol to attacks on merchant ships and on civil aircraft, which they asserted to be covered by other bodies of law, such as the law of blockade and of visit and search.

22. The Working Group, to which the article as a whole was referred, was unable to achieve a generally acceptable text for this paragraph and referred back to the Committee in document CDDH/III/54 three questions of substance which it considered that the Committee should decide.

23. The first question was whether the word "warfare" in the ICRC text should be replaced by the words "military operations" or "attacks". The proposal to substitute the word "attacks" was rejected by 53 votes to 10, with 5 abstentions. The words "military operations" were thus adopted.

24. The second question put to a vote was whether the words "against the adversary" should be inserted in the definition. By 31 votes to 22, with 11 abstentions, it was decided to incorporate the words "against the adversary" in the paragraph.

25. The third question was whether to delete the words "on land". By 35 votes to 33, with 4 abstentions, it was decided to retain the words "on land". When it was proposed to submit the entire paragraph to a vote, the Committee was unable to reach agreement on the place in which the words "on land" should be inserted in the paragraph. It was accordingly decided by 41 votes to 21, with 17 abstentions, to return the entire paragraph to the Working Group, with a request that it again study the paragraph.

26. The paragraph resulting from the first votes on the first two questions reads (with the places where "on land" might be inserted or omitted indicated by blanks):

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

27. The Working Group was of the view that the words "on land" included rivers, canals, and lakes.

Paragraph 2

28. There was relatively little discussion of this paragraph in the Committee. In view of the variety of views expressed in the Working Group about the extent, if any, of the application of Protocol I to a party's own population, the Group decided to submit to the Committee in document CDDH/III/54 the question whether the words "against the adversary" in the ICRC text should be deleted. The Committee decided not to delete the words "against the adversary" by 38 votes to 18, with 10 abstentions. The paragraph was thereafter adopted as a whole by 51 votes to 1, with 18 abstentions.

29. The Committee did not take any decision on whether to move paragraph 2 of article 44 to article 2 of draft Protocol I, as had been recommended by a majority of the Working Group. It was considered that it would be premature to take a decision in this respect and that the question might be left for decision by the Drafting Committee of the Conference.

30. The text of the paragraph, as adopted, reads:

"'Attacks' mean acts of violence committed against the adversary, whether in defence or offence."

Paragraph 3

31. In the discussions of this paragraph in the Committee and in the Working Group, some difficulty was encountered with the word "complementary" (in English), a word which was thought by some to lend a measure of ambiguity to the paragraph. Other delegations considered that the words "complément" in French and "completan" in Spanish had a precise meaning and expressed correctly and in an appropriate manner that the Protocol was intended to supplement the Conventions so that the latter would be applied in future as supplemented by the Protocol. The Working Group recommended the substitution of the words "in addition" for "complementary". A number of delegations were in favour of provisions which did not jeopardize the protection provided by other treaties or by international customary law.

32. The text recommended by the Working Group in document CDDH/III/54 was adopted by 73 votes to none, with 2 abstentions.

33. The paragraph, as adopted, reads:

"The provisions of the present Section are in addition to the rules with respect to humanitarian protection contained in the Fourth Convention, particularly Part II thereof, and in such other international conventions as may be binding upon the High Contracting Parties, as well as to other rules of international law relating to the protection of civilians and civilian objects on land, on sea, or in the air, against the effects of hostilities."

Article 45 of draft Protocol I

34. The following proposals were made with respect to the ICRC text:

Finland, Sweden:	CDDH/III/13 and Add.1
Belgium, United Kingdom of Great Britain and Northern Ireland:	CDDH/III/22
Brazil:	CDDH/III/25
Romania:	CDDH/III/30
Australia:	CDDH/III/35

Paragraph 1

35. Some difficulty having been encountered in the Committee and in the Working Group in choosing an apposite form of words to describe the persons covered by the two articles referred to in this paragraph, it was recommended by the Working Group in document CDDH/III/66 that the text merely refer to "persons" instead of "armed forces".

36. On the adoption of article 45 by the Committee, it was pointed out that no decision had yet been reached on article 42 and that it was on that account impossible to give a final formulation to paragraph 1. It was agreed in the Committee that a definitive decision on paragraph 1 of article 45 would therefore have to await a decision on article 42.

Paragraph 2

37. The text of this paragraph as recommended by the Working Group and adopted by the Committee is identical with that in the ICRC proposal. The Working Group encountered a number of

difficulties in connexion with the amendment contained in document CDDH/III/13 and Add.1, and the amendment was not pressed by its sponsors.

Paragraph 3

38. The text of this paragraph as recommended by the Working Group and adopted by the Committee is identical with that in the ICRC proposal. However, drafting changes have been made in the Spanish text.

Paragraph 4

39. There were generally two divergent tendencies in the discussion of this paragraph in the Committee. On the one hand, it was thought desirable by some delegations that the presumption should be retained as drafted by the ICRC in order to preclude unscrupulous belligerents from denying the protection of the Protocol to civilians. On the other hand, several delegations were of the view that the provision should be redrafted in such a way as to make it more readily understandable to the soldier. It was also pointed out in the discussions that there was a possibility of conflict between this presumption and that contained in the second paragraph of article 5 of the Third Geneva Convention of 1949. It was agreed in the Working Group that the concept of presumption gave rise to such difficulties that the word "presumed" should be replaced by the word "considered". The Working Group was also of the view that paragraph 4, as thus amended, would not be inconsistent with article 5 of the Third Geneva Convention of 1949, as the two provisions were intended to apply to different circumstances. On that basis, it was possible to arrive at a convergence of views on the text presented in document CDDH/III/66.

40. Article 45 was adopted with an oral amendment to substitute the words "such person" for "he or she".

41. Article 45, as adopted, reads as follows:

"1. A civilian is anyone who does not belong to one of the categories of persons referred to in article 4(A)(1), (2), (3) and (6) of the Third Convention and in article 42 of the present Protocol.

2. The civilian population comprises all persons who are civilians.

3. The presence, within the civilian population, of individuals who do not fall within the definition of civilians does not deprive the population of its civilian character.

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

42. The Working Group was of opinion that some or all of the paragraphs of article 45 might ultimately be moved to article 2 of draft Protocol I or to some other point in the Protocol. Some combination of the paragraphs might also be undertaken as a drafting matter.

43. It was called to the attention of the Committee and of the Working Group that, in at least one national legal system, the definition contained in paragraph 1 of the article might, if given effect in internal law, alter existing national administrative law with respect to the definition of civilians and members of the armed forces. The Working Group considered that that problem might be dealt with through a reservation or declaration by the State concerned in which it would make clear that the definitions in the article were for the purposes of international humanitarian law only. It was thought desirable to call this matter to the attention of Committee I, so that it might deal with the question in connexion with its consideration of what reservations might be permitted to the Protocols. One delegation stated that persons who were not members of the armed forces or who did not take a direct part in military operations, including militia and guerrilla fighters when they were not engaged in fighting, were civilians.

Article 46 of draft Protocol I

44. The following proposals were made with respect to the ICRC text:

Czechoslovakia, German Democratic Republic, Hungary, Poland:	CDDH/III/8 and Corr.1
Romania:	CDDH/III/10
Finland, Sweden:	CDDH/III/13 and Add.1
Brazil, Canada, Federal Republic of Germany, Nicaragua:	CDDH/III/27
Ghana:	CDDH/III/28
Ghana, Nigeria, Uganda, United Republic of Tanzania:	CDDH/III/38
Australia:	CDDH/III/43/Rev.1

Sweden:

CDDH/III/44

Algeria, Arab Republic of Egypt, Democratic
Yemen, Iraq, Kuwait, Libyan Arab
Republic, Mauritania, Morocco, Sudan,
Syrian Arab Republic, United Arab
Emirates:

CDDH/III/48/Rev.1
and Add.1

Philippines:

CDDH/III/51

Ghana subsequently withdrew the amendment to paragraph 1 of article 46 contained in document CDDH/III/28 in favour of the amendment contained in document CDDH/III/38.

45. The article was discussed in the Committee and then referred to the Working Group, which still had the article under consideration at the time of the final meeting of the Committee.

46. In the discussions of paragraph 1 of the article in the Committee, some delegations called for an interpretation of "methods intended to spread terror" going beyond the attacks referred to in the first sentence of the paragraph. Specific reference was made in this connexion to propaganda. The language of "intended to" also gave rise to some controversy. Some delegations suggested that the substantive element of intent would be too difficult to determine and that methods that in fact spread terror should be prohibited. Other delegations emphasized the problem of imposing responsibility for acts that might cause terror without terror having been intended.

47. Discussion of paragraph 2 centred on the problem of the person who intermittently or occasionally took part in hostilities and how that participation should be defined.

48. While the introductory language of paragraph 3 seemed to have achieved a certain measure of acceptance, a number of delegations thought that sub-paragraph 3(a) was too imprecise to afford a guide of conduct for aviators, while other delegations supported the prohibition concerning "target area" or "carpet" bombardment in the paragraph as an important safeguard for the civilian population. The principle of proportionality in sub-paragraph 3(b) similarly received a mixed reaction. Some delegations considered it a necessary means of regulating the conduct of warfare and of protecting the civilian population. Other delegations rejected that principle as a criterion and asserted that in humanitarian law there should be no condonation of casualties among civilians. Some who took the latter view considered that it would be desirable to delete sub-paragraph 3(b) as a whole, while others of the latter view proposed the deletion of the words "to an extent disproportionate to the direct and substantial military advantage anticipated".

49. In the course of the debate on reprisals, some delegations expressed their support of the ICRC text. Several delegations considered that the prohibition of reprisals against the civilian population should be extended to civilian objects as well. Certain other delegations expressed doubt whether it would be realistic to expect that there would be compliance with the prohibition in paragraph 4 of the ICRC text.

50. The discussion of paragraph 5 was largely directed to the drafting of the first sentence and the desirability of retaining the second sentence.

Article 24, paragraph 1, of draft Protocol II

51. The following proposals were made with respect to the ICRC text:

Romania:	CDDH/III/12
Czechoslovakia, German Democratic Republic, Poland:	CDDH/III/15
United States of America:	CDDH/III/23

52. The discussion of this article in the Committee and in the Working Group followed in general the same lines as the discussion of the corresponding article 43 of draft Protocol I. It was decided in the Working Group to recommend a text (CDDH/III/53) which was identical with that proposed for article 43. With an oral amendment providing for the insertion of the word "accordingly" between the words "military objectives and" and "shall direct" the Committee at its tenth meeting adopted the text proposed by the Working Group.

53. Article 24, paragraph 1, as adopted, reads as follows:

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

Article 25 of draft Protocol II

54. The following proposals were made with respect to the ICRC text:

Republic of Viet-Nam:	CDDH/III/2
Romania:	CDDH/III/12

Finland, Sweden:	CDDH/III/13 and Add.1
Brazil:	CDDH/III/31
Arab Republic of Egypt:	CDDH/III/33
Australia	CDDH/III/34
Canada	CDDH/III/36

55. The discussion of this article in the Committee and in the Working Group followed much the same course as the discussion of the corresponding article 45 of draft Protocol I.

56. The Working Group thought it desirable for the language of paragraph 1 to conform to that of the existing article 1 of the draft Protocol so that anyone not a member of the armed forces or "of an organized armed group" would be considered a civilian. Paragraphs 2 and 3 were cast in the same form as the corresponding paragraphs 2 and 3 of article 45 of draft Protocol I. The addition of a paragraph 4 corresponding to paragraph 4 of article 45 was also recommended.

57. The Committee adopted at its tenth meeting the proposal of the Working Group in document CDDH/III/72, with an oral amendment to substitute the words "such person" for "he or she".

58. The Working Group gave some consideration to the problem of those who, in an internal armed conflict, did not bear arms but who lent support to the armed forces or members of armed groups by supplying labour, transporting supplies, serving as messengers, disseminating propaganda, and the like. It was decided that that matter might more appropriately be dealt with in connexion with paragraph 2 of article 26.

59. The text of article 25, as adopted, reads:

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

2. The civilian population comprises all persons who are civilians.

3. The presence, within the civilian population, of individuals who do not fall within the definition of civilians does not deprive the population of its civilian character.

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

60. The observation made in paragraph 43 of this report dealing with article 45 of draft Protocol I, with respect to a possible problem in the incorporation in national law of the definitions of civilians and members of the armed forces, also applies to article 25 of draft Protocol II.

61. The Working Group was of opinion that some or all of the paragraphs of article 25 might ultimately be moved to an article on definition or to some other point in draft Protocol II.

62. The Working Group agreed that a proposal by the Republic of Viet-Nam in document CDDH/III/2, relating to a definition of "civilian objects", would be taken up in connexion with later provisions relating to the protection of "civilian objects".

Article 26 of draft Protocol II

63. The following proposals were made with respect to the ICRC text:

Romania:	CDDH/III/12
Ghana:	CDDH/III/28
Canada:	CDDH/III/36
Australia:	CDDH/III/42
Sweden:	CDDH/III/45
Algeria, Arab Republic of Egypt, Democratic Yemen, Iraq, Kuwait, Libyan Arab Republic, Mauritania, Morocco, Sudan, Syrian Arab Republic, United Arab Emirates	CDDH/III/48/Rev.1 and Add.1
Philippines	CDDH/III/51
Brazil	CDDH/III/68

64. The discussion of this article in the Committee ran along lines similar to those of the discussion of the corresponding article 46 of draft Protocol I. Several delegations proposed that parts of this article were unsuitable in the case of non-international conflicts and that there was a need for simplicity in order to provide a practical Protocol II.

65. The article was referred to the Working Group, which was considering the article when the first session of the Conference ended.

66. A list of other amendments submitted with respect to articles other than the above for which Committee III is responsible is attached as an annex.

ANNEX

Amendments to articles not yet discussed by Committee III

Methods and means of combat

Draft Protocol I

Article 33

Uruguay:	CDDH/III/7
Pakistan:	CDDH/III/11

Article 34

Ghana:	CDDH/III/28
Brazil:	CDDH/III/32

Article 35

Republic of Viet-Nam:	CDDH/III/6
Uruguay:	CDDH/III/7

Article 36

Venezuela:	CDDH/III/75
------------	-------------

Article 38

Uruguay:	CDDH/III/7
----------	------------

Article 39

Israel:	CDDH/III/69
---------	-------------

Article 41

Ghana:	CDDH/III/28
--------	-------------

Draft Protocol II

Article 23

Venezuela:	CDDH/III/75
------------	-------------

Prisoner of war statusDraft Protocol IArticle 42

Republic of Viet-Nam:	CDDH/III/5
Pakistan:	CDDH/III/11
Ghana:	CDDH/III/28
Madagascar:	CDDH/III/73

Article 42 bis

Israel:	CDDH/III/77
---------	-------------

Measures in favour of childrenDraft Protocol IIArticle 32

Romania:	CDDH/III/12
Ghana:	CDDH/III/28

Civilian objectsDraft Protocol IArticle 47

Romania:	CDDH/III/10
Greece, Jordan, Spain:	CDDH/III/17/Rev.1
Holy See:	CDDH/III/39
France:	CDDH/III/41
Australia:	CDDH/III/49
Sweden:	CDDH/III/52
Netherlands:	CDDH/III/56
Arab Republic of Egypt, Austria, Mexico, Netherlands, Norway, Philippines, Union of Soviet Socialist Republics:	CDDH/III/57

Civilian objects (continued)

Draft Protocol I (continued)

Article 47 (continued)

Czechoslovakia, German Democratic Republic: CDDH/III/58

Arab Republic of Egypt, Democratic Yemen, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Republic, Mauritania, Morocco, Qatar, Syrian Arab Republic, United Arab Emirates, Yemen: CDDH/III/63

Canada: CDDH/III/79

Article 48

Romania: CDDH/III/10

Finland, Sweden: CDDH/III/13 and Add.1

Ghana: CDDH/III/28

Australia: CDDH/III/49

United States of America: CDDH/III/50

Arab Republic of Egypt, Democratic Yemen, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Republic, Mauritania, Morocco, Qatar, Syrian Arab Republic, United Arab Emirates, Yemen: CDDH/III/63

Czechoslovakia, German Democratic Republic, Hungary: CDDH/III/64

Belgium, United Kingdom of Great Britain and Northern Ireland: CDDH/III/67

Ukrainian Soviet Socialist Republic: CDDH/III/74

Article 49

Republic of Viet-Nam: CDDH/III/4

Romania: CDDH/III/10

Civilian objects (continued)Draft Protocol I (continued)Article 49 (continued)

Australia:	CDDH/III/49
Belgium, Netherlands:	CDDH/III/59
Arab Republic of Egypt, Democratic Yemen, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Republic, Mauritania, Morocco, Qatar, Sweden, Switzerland, Sudan, Syrian Arab Republic, United Arab Emirates, Yemen:	CDDH/III/65
Ukrainian Soviet Socialist Republic:	CDDH/III/74
Arab Republic of Egypt, Democratic Yemen, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Republic, Mauritania, Morocco, Qatar, Sudan, Syrian Arab Republic, United Arab Emirates, Yemen:	CDDH/III/76 and Add.1
Canada:	CDDH/III/79

Article 49 bis
(environment)

Australia:	CDDH/III/60
------------	-------------

General protection of civilian objectsDraft Protocol IIArticle 26 bis

Finland, Sweden:	CDDH/III/13 and Add.1
Sweden:	CDDH/III/52
Arab Republic of Egypt, Iraq, Syrian Arab Republic:	CDDH/III/62/Rev.1 and Corr.1

The above amendments are based on the concept in article 47 of draft Protocol I, which should also be reflected in draft Protocol II.

Civilian objects (continued)

Draft Protocol F (continued)

Article 27

Romania:	CDDH/III/12
Finland, Sweden:	CDDH/III/13 and Add.1
Ghana:	CDDH/III/28
Canada:	CDDH/III/36
Australia:	CDDH/III/47
Arab Republic of Egypt, Iraq, Syrian Arab Republic:	CDDH/III/62/Rev.1 and Corr.1

Article 28

Romania:	CDDH/III/12
Brazil:	CDDH/III/18
Canada:	CDDH/III/36
Finland:	CDDH/III/37
Australia:	CDDH/III/46
Arab Republic of Egypt, Iraq, Syrian Arab Republic:	CDDH/III/62/Rev.1 and Corr.1

Protection of the natural environment

Draft Protocol II

Article 28 bis

Australia:	CDDH/III/55
------------	-------------

Prohibition of forced movement of civiliansDraft Protocol IIArticle 29

Romania: CDDH/III/12

Zimbabwe African People's Union (ZAPU): CDDH/III/40

Precautionary measuresDraft Protocol IArticle 50

Republic of Viet-Nam: CDDH/III/3

Romania: CDDH/III/10

Finland, Sweden: CDDH/III/13 and Add.1

Brazil: CDDH/III/24

Ghana: CDDH/III/28

Canada: CDDH/III/79

Article 51

Romania: CDDH/III/10

Canada: CDDH/III/79

Localities under special protectionDraft Protocol IArticle 52

Pakistan: CDDH/III/11

Uruguay: CDDH/III/61

Brazil: CDDH/III/70

Canada: CDDH/III/79

Article 53

Brazil: CDDH/III/71

Treatment of persons in the power of a party
to the conflict

Draft Protocol I

Article 66

Ghana:

CDDH/III/28

Article 68

Ghana:

CDDH/III/28

Geneva, 20 February - 29 March 1974

REPORT OF THE WORKING GROUP TO COMMITTEE III
ON

ARTICLE 44, PARAGRAPH 1, OF PROTOCOL I

The Working Group was requested by the Committee at its eleventh meeting to give renewed study to Article 44, paragraph 1, of Protocol I. The Working Group devoted three sessions to consideration of this paragraph.

It was not possible to arrive at any convergence of views on the wording of the article or to set up options for the paragraph in the form of variant texts. The Working Group was of the view that an important matter of substance about the territorial scope of application of the section is involved. Until that issue of substance is resolved, it would be difficult to draw up any text. When the issue is resolved, the drafting of an appropriate text should be relatively easy.

The Working Group was unanimously of the view that Protocol I should at least cover military operations on land and military operations from the sea and air against persons and objects on land (notably in the form of bombardment) which affect civilians on land.

Beyond that there was disagreement.

Delegations were of differing views whether the Section should be applicable to operations at sea (e.g. blockade, sinking of merchant ships, etc.) which affect civilians at sea (such as crews and passengers of ships) or on land. It was recognized that naval warfare is now regulated by various conventions and by a body of customary international law, but it was not clear to the Working Group how Protocol I might modify or affect this body of law.

Delegations were also of differing views on whether the Section should be applicable to military operations from land, sea, or air against civilian objects and individual civilians in the air - that is, civil aircraft. Operations within planes, such as hijacking, were similarly in issue.

There was a widespread, but not unanimous, view in the Working Group that there could be no further progress on this paragraph until further study had been given to these questions. It was also recognized that if the Section were to cover air and sea warfare, various delegations might wish to introduce additional proposals with respect to these subjects. Some delegations were of the view that, due to the technical considerations involved, any such proposals might first be formulated or considered by experts.

The proposals with respect to this paragraph, including several additional ones submitted during the course of the discussions in the Working Group, are reproduced in Annex I.

Annex I

Proposals with Respect to Article 44,
paragraph 1, of Protocol I

Romania, CDDH/III/10

Delete the words "on land" at the end of the first paragraph.

Belgium and the United Kingdom, CDDH/III/16

"The provisions contained in the present Section apply to attacks against the adversary on land which may affect the civilian population, individual civilians or civilian objects."

Egypt, CDDH/III/19

In sub-paragraph (1), replace the word "warfare" by "military operations" in the English version.

Australia, CDDH/III/21 and Corr. 1

"The provisions contained in the present Section apply to attacks against the adversary on land which may affect the civilian population, individual civilians or civilian objects."

Belgium in the Working Group

"The provisions contained in the present Section apply to any land, air or sea military operations against the adversary which may cause, on land, casualties among the civilian population or damage to civilian objects."

Brazil in the Working Group

"The provisions contained in the present Section apply to any land, air or sea military operations against the adversary in respect of their effects against the civilian population, individual civilians and civilian objects, as provided for in this Section." *

Rapporteur in the Working Group

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

* This paragraph incorporates CDDH/III/78/Add.1/Corr.1.

or civilian objects. They do not modify the existing rules of international law applicable to armed conflict at sea or to aerial warfare, except as to sea and air attacks against objectives on land."

Ghana (being a proposal for the drafting of the entire article)

1. The provisions contained in the present Section apply to any military operations by land, sea or air against the adversary which may cause casualties among the civilian population or damage to civilian objects.
2. "Attacks" means acts of violence committed against the adversary, whether in defence or offence.
3. The provisions of the present Section are in addition to, and not in derogation of, the rules with respect to humanitarian protection contained in the Fourth Convention, particularly Part II thereof, and in such other international conventions as may be binding upon the High Contracting Parties, as well as other rules of international law relating to the protection of civilians and civilian objects on land, on sea, or in the air, against the effects of hostilities.
4. For the purposes of this Article where there is a conflict between the provisions of this Section and any rules or conventions mentioned in paragraph 3 hereof, other than those relating to armed conflict on the sea, the provisions of this section shall prevail.

SECOND SESSION

(Geneva, 3 February - 18 April 1975)

COMMITTEE III

REPORT

CONTENTS

	<u>Paragraph</u>	<u>Page</u>
I. Introduction		263
A. Officers, Secretariat, Experts . .	1 - 3	263
B. Meetings and organization of work	4 - 17	263
II. Report on the articles adopted by the Committee		267
A. Draft Protocol I	18 - 112	267
B. Draft Protocol II	113 - 153	288
III. Adoption of the report of Committee III	154	296

ANNEX

	<u>Page</u>
<u>Texts of articles adopted by Committee III</u> <u>(First and second sessions)</u>	
Draft Protocol I, Part III, Section I	
Article 33 - Basic rules	297
Article 34 - New weapons	298
Article 36 - Recognized emblems	299
Article 37 - Emblems of nationality	300
Draft Protocol I, Part IV, Section I	
Article 43 - Basic rules	301
Article 44 - Field of application	302
Article 45 - Definition of civilians and civilian population	303
Article 46 - Protection of the civilian population	304
Article 47 - General protection of civilian objects	306
Article 47 <u>bis</u> - Protection of cultural objects and of places of worship	307

CONTENTS (continued)

	<u>Page</u>
Draft Protocol I, Part IV, Section I (<u>continued</u>)	
Article 48 - Objects indispensable to the survival of the civilian population	308
Article 48 <u>bis</u> - Protection of the natural environment	309
Article 49 - Works and installations containing dangerous forces	310
Article 50 - Precautions in attack	312
Article 51 - Precautions against the effects of attacks	314
Article 52 - Non-defended localities	315
Article 53 - Demilitarized zones	317
Draft Protocol II, Part V, Chapter I	
Article 24 - Basic rules	319
Article 25 - Definition	320
Article 26 - Protection of the civilian population	321
Article 26 <u>bis</u> - General protection of civilian objects	322
Article 28 - Protection of works and installations containing dangerous forces	323
Article 28 <u>bis</u> - Protection of the natural environment	324
Article 29 - Prohibition of forced movement of civilians	325

COMMITTEE III

REPORT

I. INTRODUCTION

A. Officers, Secretariat, Experts

1. Officers of the Committee

Chairman: Mr. H. Sultan (Arab Republic of Egypt)

Vice-Chairmen: Mr. G. Herczegh (Hungary)
Mr. M. Dugersuren (Mongolia)

Rapporteur: Mr. R. Baxter (United States of America)
(17 March to 5 April 1975)
Mr. G. Aldrich (United States of America)
(3 February to 15 March and
7 April to 18 April 1975)

2. The Legal Secretaries of the Committee were

Miss C. Turian (3 March to 18 April 1975)

Mr. A. Friedrich (for the entire second
session)

Mr. B. Hediger (3 to 28 February 1975)

3. The International Committee of the Red Cross (ICRC) was represented by Mrs. D. Bindschedler-Robert, Mr. J. de Preux, Mr. J. Mirimanoff-Chilikine and Mr. M. Veuthey.

B. Meetings and organization of work

4. Committee III held twenty-eight meetings between 5 February and 14 April 1975 (CDDH/III/SR.13 to 40). During the same period, a Working Group under the chairmanship of the Rapporteur held over fifty meetings.

5. At the thirteenth meeting of the Committee, on 5 February 1975, (the first at the second session of the Conference), the Chairman recalled that the officers' suggestions concerning the Committee's method of work (CDDH/III/1/Rev.1) had been adopted at the first session. A draft programme of work (CDDH/III/201) for the second session of the Conference was distributed at the same meeting; it outlined the proposed method of work, described the work completed by the end of the first session, enumerated the articles still to be considered and suggested a provisional time-table.

6. Pursuant to rule 28 of the rules of procedure (CDDH/2/Rev.2), Committee III was entrusted with the consideration of certain articles of the draft Additional Protocols to the Geneva Conventions of August 12 1949 (CDDH/1). The articles referred to Committee III were as follows (see CDDH/4/Rev.1, p. 8):

	<u>Draft Protocol I</u>	<u>Draft Protocol II</u>
General protection against effects of hostilities	Articles 43 to 53	Articles 24 to 29
Methods and means of combat	Articles 33 to 41	Articles 20 to 23
New category of prisoners of war	Article 42	
Treatment of persons in the power of a Party to the conflict	Articles 63 to 69	Article 32

7. By the end of the first session, articles 43, 44, paragraphs 2 and 3, and 45 of draft Protocol I had been adopted by the Committee; article 44, paragraph 1, and article 46 had been referred to its Working Group. With regard to draft Protocol II, articles 24, paragraph 1, and article 25 had been adopted ad referendum and article 26 had been referred to the Working Group.

8. Accordingly, the articles remaining for consideration by the Committee at the second session were:

	<u>Draft Protocol I</u>	<u>Draft Protocol II</u>
(a) <u>General protection of the civilian population against the effects of hostilities</u>		
Basic rule and field of application	Article 44, paragraph 1	
Civilians and civilian population	Article 46	Article 26
Civilian objects	Articles 47 to 49	Articles 27 and 28
Precautionary measures	Articles 50 and 51	Article 24, paragraph 2
Localities under special protection	Articles 52 and 53	
Prohibition of forced movement of civilians		Article 29

Draft
Protocol I

Draft
Protocol II

- | | | |
|---|-------------------|-------------------|
| (b) <u>Methods and means of combat</u> | Articles 33 to 41 | Articles 20 to 23 |
| (c) <u>New category of prisoners of war</u> | Article 42 | |
| (d) <u>Treatment of persons in the power of a Party to the conflict</u> | Articles 63 to 69 | Article 32 |

9. In the course of the current session and at the request of the Chairman of Committee I, articles 63 to 65 and articles 67 to 69 of draft Protocol I, and article 32 of draft Protocol II were transferred to Committee I.

10. With respect to each article to be considered by the Committee, the Chairman set a time limit for the submission of amendments. Amendments submitted after the time limit were circulated as documents of the Committee's Working Group only and were not considered by the Committee itself.

11. Each article was first introduced by an expert of the International Committee of the Red Cross. Thereafter, the amendments were introduced. Amendments submitted by several delegations were introduced by a single sponsor. At the conclusion of the general debate in the Committee, the Committee referred each article, together with the various proposals made with respect to it, to a Working Group under the chairmanship of the Rapporteur and composed of the delegations sponsoring amendments and such other delegations as wished to participate in the work.

12. The topics of draft Protocol I were taken up Chapter by Chapter. The articles of draft Protocol II were, in most cases, considered in connexion with the corresponding articles of draft Protocol I, despite the preference of some delegations to have them considered separately.

13. The proceedings of the Working Group are reported upon by the Rapporteur in documents CDDH/III/224, CDDH/III/264/Rev.1, CDDH/III/275 and Corr.1 and CDDH/III/293.

14. The Working Group submitted to the Committee the texts set forth in the following documents:

Draft Protocol I

Article 33	CDDH/III/290/Rev.1
Article 34	CDDH/III/291
Article 36	CDDH/III/288
Article 37	CDDH/III/289
Article 44, paragraph 1	CDDH/III/227
Article 46	CDDH/III/228 and 246
Article 47	CDDH/III/229
Article 47 <u>bis</u>	CDDH/III/230
Article 48	CDDH/III/247
Article 48 <u>bis</u> and 48 <u>ter</u>	CDDH/III/276
Article 49	CDDH/III/248
Article 50	CDDH/III/249
Article 51	CDDH/III/250
Article 52	CDDH/III/251
Article 53	CDDH/III/252

Draft Protocol II

Article 24, paragraph 2	CDDH/III/278
Article 26	CDDH/III/279
Article 26 <u>bis</u>	CDDH/III/280
Article 28	CDDH/III/281
Article 28 <u>bis</u>	CDDH/III/282
Article 28 <u>ter</u>	CDDH/III/278
Article 29	CDDH/III/283

15. The Committee adopted the twenty-two articles which are discussed in the following section and completed the general debate on all other articles of the ICRC draft before it.

16. The following articles were still pending before the Working Group at the end of the second session: articles 35, 38 to 42 ter, 48 ter (dealing with nature reserves) and article 66 of draft Protocol I and articles 20 to 23 and 27 of draft Protocol II. A proposal concerning the protection of oil and oil facilities (CDDH/III/GT/62 and Add.1 to 3) and a proposal concerning aggression and non-discrimination (CDDH/III/GT/42, reproduced as document CDDH/III/284) are also pending before the Working Group. A number of delegations may wish to have the latter proposal discussed first by the Committee.

17. The Committee decided, in principle, at its thirty-eighth meeting, on 10 April 1975, to establish, in conjunction with Committees I and II, at the beginning of the third session of the Conference, a Joint Working Group on the problem of reprisals as it appears in both Protocols since all three Committees are concerned with that problem. The composition and precise terms of reference of this Working Group will be decided when it is set up. One delegation reserved its position concerning the establishment of such a Joint Working Group.

II. REPORT ON THE ARTICLES ADOPTED BY THE COMMITTEE^{*/}

A. Draft Protocol I

Article 33

18. The following proposals were made with respect to the ICRC text:

Uruguay:	CDDH/III/7
Pakistan:	CDDH/III/11
Finland:	CDDH/III/91
Arab Republic of Egypt, Australia, Czechoslovakia, Finland, German Democratic Republic, Hungary, Ireland, Norway, Yugoslavia, Sudan:	CDDH/III/222
German Democratic Republic:	CDDH/III/225
Australia:	CDDH/III/237
Democratic Republic of Viet-Nam, Uganda	CDDH/III/238 and Add.1

19. The principal difficulties encountered in the formulation of this article, aside from paragraph 3 concerning the environment, arose from the need to reaffirm the existing law and overcome inadequate prior translations which have achieved a certain acceptance through time and usage.

20. With respect to paragraph 1 and to various other provisions in this Section, the term "methods or means of warfare" was preferred to "methods or means of combat" for the reason that "combat" might be construed more narrowly than "warfare". No effort was made, however, to define either term, and the choice of words should, perhaps, be considered further by a Drafting Committee, particularly since the term "methods or means of combat" is used elsewhere in the Protocol.

21. It should also be noted that the phrase "superfluous injury or unnecessary suffering" was chosen as the preferred translation of the French, "maux superflus", which includes both physical and moral injury. Several representatives wished to have it recorded that they understood the injuries covered by that phrase to be limited to those which were more severe than would be necessary to render an adversary hors de combat.

^{*/} - The texts of the adopted articles appear in the annex to the present report.

22. It was decided to defer consideration of a number of proposed paragraphs. These included paragraphs 3 and 4 of document CDDH/III/238, until the proposal in document CDDH/III/284, was considered by the Working Group at the third session of the Conference. Some representatives said that the objectives of the two paragraphs were dealt with in part in articles 46, 48, and 48 bis and would be dealt with in part by the proposal in document CDDH/III/284. Other representatives disagreed and urged the inclusion of provisions along the lines of the two paragraphs in article 33 or elsewhere in the Protocol. Also among the paragraphs concerning which consideration was deferred was the additional paragraph proposed in amendment CDDH/III/259 which will be discussed by the Working Group in the context of its discussion of article 42 of draft Protocol I, and amendment CDDH/III/11, concerning meetings for the prohibition or restriction of certain conventional weapons.

23. Paragraph 3 is new, as the protection of the natural environment was not specifically raised in the ICRC draft. Amendments with several co-sponsors (CDDH/III/222 and CDDH/III/238) were tabled calling for a new paragraph forbidding methods and means of warfare or combat which would destroy or disrupt in some large degree the natural or human environment. Because similar proposals were made in connexion with the part of the Protocol providing for protection of the civilian population (e.g., articles 48 and 49) the issue of protection of the environment was first considered in connexion with article 48 bis.

24. The entire question of protection of the environment was referred to an informal Working Group entitled Biotope Group and its report appears in document CDDH/III/GT/35.

25. The Biotope report recommended that there should be separate provisions in article 33 as well as in article 48 bis. In view of the obvious need for these provisions to provide the same standard in substance, if not in words, much effort was made to harmonize them. Drawing on the Biotope report there was a convergence of views on the adoption of the formula "to cause widespread, long-term, and severe damage to the natural environment".

26. The alternative formula of causing damage "to disturb the stability of the ecosystem" was eventually rejected as an operative part of the standard.

27. The three elements of the adopted formula of time or duration of the damage, scope or area affected, and the severity or prejudicial effect of the damage to the civilian population was extensively discussed. The time or duration required (i.e., long-term) was considered by some to be measured in decades.

References to twenty or thirty years were made by some representatives as being a minimum. Others referred to battlefield destruction in France in the First World War as being outside the scope of the prohibition. The Biotope report states that "Acts of warfare which cause short-term damage to the natural environment, such as artillery bombardment, are not intended to be prohibited by the article," and continues by stating that the period might be perhaps for ten years or more. However, it is impossible to say with certainty what period of time might be involved. It appeared to be a widely shared assumption that battlefield damage incidental to conventional warfare would not normally be proscribed by this provision. What the article is primarily directed to is thus such damage as would be likely to prejudice, over a long term, the continued survival of the civilian population or would risk causing it major health problems.

28. Paragraph 3 was adopted by the Committee at its thirty-eighth meeting, on 10 April 1975, by a vote of 57 to 4 with 3 abstentions. The Committee adopted article 33 as a whole at its thirty-eighth meeting by consensus. (See the annex to the present report.)

Article 34

29. The following amendments were submitted with respect to the ICRC text:

Ghana:	CDDH/III/28
Brazil:	CDDH/III/32
Poland:	CDDH/III/92
Netherlands, Norway, Sweden	CDDH/III/226
Byelorussian Soviet Socialist Republic:	CDDH/III/231
Australia:	CDDH/III/235

30. The determination of legality required of States by this article is not intended to create a subjective standard. Determination by any State that the employment of a weapon is prohibited or permitted is not binding internationally, but it is hoped that the obligation to make such determinations will ensure that means or methods of warfare will not be adopted without the issue of legality being explored with care.

31. It should also be noted that the article is intended to require States to analyse whether the employment of a weapon for its normal or expected use would be prohibited under some or all circumstances. A State is not required to foresee or analyse all possible misuses of a weapon, for almost any weapon can be misused in ways that would be prohibited.

32. The Committee adopted article 34 by consensus at its thirty-eighth meeting, on 10 April 1975. (See the annex to the present report.)

Article 36

33. The following amendment was submitted with respect to the ICRC text:

Venezuela:

CDDH/III/75

34. The idea behind this article was easily accepted, but the text proved surprisingly difficult to draft. A number of representatives stated that their Governments could not, in this Protocol, accept an obligation to avoid or prevent improper use of an emblem provided for in a convention to which their Governments were not parties. On the other hand, these Governments could agree that they would not themselves deliberately misuse such an emblem. The second sentence of paragraph 1 was redrafted to express this distinction.

35. When article 36 is reviewed by the Drafting Committee of the Conference, one question that should be examined further is whether, in the first line, the word "distinctive" should be inserted before the words "protective emblem". This form of words has apparently been used by Committee II, based upon the usage in the Conventions themselves, and it seems clear that there should be a harmonization of approaches within the Conference.

36. The Committee adopted article 36 by consensus at its thirty-eighth meeting, on 10 April 1975. (See the annex to the present report.)

Article 37

37. The following amendments were submitted with respect to the ICRC text:

Austria, Finland, Sweden,
Switzerland, United Kingdom
of Great Britain and
Northern Ireland:

CDDH/45

Venezuela:

CDDH/III/239

United States of America:

CDDH/III/240

38. With respect to paragraph 1, it was considered desirable to deal with the question of neutral flags, emblems, etc. separately and in more absolute terms than the question of flags, emblems, etc. of an adverse Party. However, the prohibition in paragraph 1 is not absolute. Neutral flags, emblems, etc. may be used as long

as they are not used "in an armed conflict", that is to say as long as they are not used for the promotion of the interests of a Party to the conflict in the conduct of that conflict. Also, it is clear that article 37 is not intended to prohibit or restrict neutrals - or indeed any States - or their agencies from using their own flags, emblems, etc.

39. A number of representatives pointed out the need to provide better protection for insignia and uniforms of personnel of the United Nations, particularly of peace-keeping forces. It was decided not to try to do that in article 37, but to consider further how such protection could best be provided. It was noted that, quite apart from Protocol I, the United Nations itself could try to improve that protection through agreements concluded with the States concerned with a particular United Nations force.

40. Several representatives pointed out that paragraph 2 could have the effect of increasing the legal vulnerability of escaped spies to subsequent punishment. Although a spy who escapes successfully is not thereafter subject to punishment as a spy, he could still presumably be punished for violations of the laws of war, which, it might be asserted, would include this article. The Committee recognized that it would be of questionable wisdom to make it even marginally safer for spies to disguise themselves as civilians than as military personnel. It is conceivable that this question will be considered further by the Conference in connexion with the articles concerning repression of breaches. In any event, it should be noted that the Committee expressed no intent by means of this article to change the law (particularly Article 31 of The Hague Regulations)^{1/} as it applies to espionage.

41. Article 37 was adopted by the Committee at its thirty-eighth meeting on 10 April 1975, by consensus. (See the annex to the present report.)

Article 44, paragraph 1

42. The following amendments were submitted with respect to the ICRC text:

Romania:	CDDH/III/10
Belgium, United Kingdom of Great Britain and Northern Ireland:	CDDH/III/16
Arab Republic of Egypt:	CDDH/III/19
Australia:	CDDH/III/21

^{1/} Annexed to The Hague Convention No. IV of 1907 concerning the Laws and Customs of War on Land.

43. Paragraph 1 had been the subject of extensive discussion at the first session of the Conference. The Working Group had been unable to reach agreement on a text and in document CDDH/III/54 had referred back to the Committee three questions of substance which it considered that the Committee should decide. The Committee was unable to reach agreement on the wording of the paragraph and was compelled to refer the matter back to the Working Group (see CDDH/50/Rev.1, para. 25). The Working Group was unable to complete its consideration of the question at the first session of the Conference.

44. At the second session of the Conference, the Working Group resumed its consideration of paragraph 1. There was almost complete agreement in the Working Group that it would be both difficult and undesirable in the time available to try to review and revise the law applicable to armed conflict at sea and in the air. It was also widely recognized that care should be taken not to change that body of law inadvertently through this paragraph. The solution was found through a combination of the ICRC text with a sentence which stated clearly that, except for attacks against objectives on land, the law applicable to armed conflict at sea or in the air is unaffected.

45. Several delegations remained dissatisfied with the draft recommended by the Working Group and subsequently adopted by the Committee. They objected to the phrase "on land" in the first sentence and to the second sentence as a whole. They preferred that this Section of the Protocol should affect the law applicable to the conduct of warfare at sea or in the air to the extent that the provisions of this Section would be more favourable to civilians than the existing law.

46. The text recommended by the Working Group (CDDH/III/224 and CDDH/III/227) was submitted to the Committee at its twenty-fourth meeting on 25 February 1975. The questions of whether to include the words "on land" and the part of the second sentence beginning with "but do not ..." and concluding with "... or in the air" were submitted to a separate vote. The term "on land" was adopted by 56 votes to one, with 7 abstentions, and the portion of the second sentence referred to was adopted by 56 votes to one, with 9 abstentions. Paragraph 1 of article 44 was then adopted by 60 votes to none, with 7 abstentions. (See the annex to the present report.)

Article 46

47. The following amendments were submitted with respect to the ICRC text:

Czechoslovakia, German Democratic Republic, Hungary, Poland:	CDDH/III/8 and Corr.1
Romania:	CDDH/III/10
Finland, Sweden:	CDDH/III/13 and Add.1
Brazil, Canada, Federal Republic of Germany, Nicaragua:	CDDH/III/27
Ghana:	CDDH/III/28
Ghana, Nigeria, Uganda, United Republic of Tanzania:	CDDH/III/38
Australia:	CDDH/III/43/Rev.1
Sweden:	CDDH/III/44
Algeria, Arab Republic of Egypt, Democratic Yemen, Iraq, Kuwait, Libyan Arab Republic, Mali, Mauritania, Morocco, Sudan, Syrian Arab Republic, United Arab Emirates:	CDDH/III/48/Rev.1 and Add.1 and 2
Philippines:	CDDH/III/51

Ghana subsequently withdrew amendment CDDH/III/28 in favour of amendment CDDH/III/38.

48. Article 46 was discussed in the Committee (see the report of Committee III (CDDH/50/Rev.1, paras. 44 to 50)) and then referred to the Working Group at the first session of the Conference. The article was under consideration by the Working Group when the first session of the Conference ended.

49. At the second session of the Conference, the Working Group resumed its consideration of article 46. It was possible to draft a text only after prolonged discussions in the Working Group, paragraph 3, dealing with indiscriminate attacks, proved to be particularly difficult to formulate.

50. Article 46 is introduced with a general provision with respect to "dangers arising from military operations". While the numbered paragraphs give effect to this general principle, they are not intended to be limitative in effect. It is for this reason that express reference is made to the fact that these paragraphs are "in addition to other applicable rules of international law", which may be found both in draft Protocol I and in other treaties and rules of customary international law. The rules of article 46, as

well as the other rules of international law, apply to all types of operations, by regular and irregular forces alike, during the course of an armed conflict.

51. Paragraph 1 reproduces in its first sentence the same text as paragraph 1 of the ICRC draft. The prohibition of "acts or threats of violence which have the primary object of spreading terror" is directed to intentional conduct specifically directed toward the spreading of terror and excludes terror which was not intended by a belligerent and terror that is merely an incidental effect of acts of warfare which have another primary object and are in all other respects lawful.

52. Paragraph 2 is basically the same text as that of the ICRC, but the protection enjoyed by civilians is stated to be that provided by this Section of the Protocol rather than by article 46 alone. Civilians lose the protection of the Section only during such time as they actually "take a direct part in hostilities."

53. The term "hostilities" was not defined, but a number of delegations expressed the view that the term included preparations for combat and return from combat. "Hostilities" and "military operations" are among the terms which should engage the close attention of the Drafting Committee in order to ensure consistency of usage and clarity of meaning.

54. Paragraph 3, which was considered by the Working Group at three different stages, was ultimately agreed upon in that Group in its present form.

55. The introductory portion of paragraph 3 proved to be surprisingly troublesome. The main problem was that of defining the term "indiscriminate attacks". There was general agreement that a proper definition would include the act of not directing an attack at a military objective, the use of means or methods of combat which cannot be directed at a specific military objective, and the use of means or methods of combat the effects of which cannot be limited as required by the Protocol. Many but not all of those who commented were of the view that the definition was not intended to mean that there are means or methods of combat whose use would involve an indiscriminate attack in all circumstances. Rather, it was intended to take account of the fact that means or methods of combat which can be used perfectly legitimately in some situations could, in other circumstances, have effects that would be contrary to some limitations contained in the Protocol, in which event their use in those circumstances would involve an indiscriminate attack.

56. In paragraph 3 (a), "bombardment by any methods or means" refers to all attacks by fire, and the use of any type of projectile except for direct fire by small arms. The sub-paragraph prohibits all types of bombardment which treat as a single military objective a number of objectives separated by some distance which are located in an area where there is a concentration of civilians. Thus, after much deliberation, the Working Group considered it unnecessary to refer to "massive" bombardment, "target area" bombardment, or "carpet bombing", since all are covered by this prohibition, and the use of such expressions might be construed to restrict the protection of civilians from other types of bombardment.

57. Paragraph 3 (b) was drafted only after article 50 had been settled, since both provisions involved the same issue. A simple cross reference commended itself to the Working Group, although it was recognized that the Drafting Committee would ultimately have to decide whether to use a cross reference or the full text and, if the former, whether the text would appear in article 46, paragraph 3, or in article 50.

58. The text of paragraph 4 is as proposed by the ICRC.

59. Paragraph 5 amplifies the language of the first sentence of the ICRC text. There has been added a prohibition of the movement of the civilian population or of civilians to shield military objectives or operations. Finally, paragraph 6 makes it clear that the civilian population is legally protected even if one or the other of the prohibitions has been violated. The precautions in attack prescribed in article 50 must still be observed.

60. Paragraphs 1, 2, 4, 5 and 6 were adopted by consensus at the twenty-fourth meeting of the Committee on 25 February 1975, on the basis of the texts recommended by the Working Group in documents CDDH/III/228 and CDDH/III/224. Paragraph 3, on which the Working Group had been unable to achieve complete agreement, was at that time referred back to the Working Group for further consideration. An agreed text was subsequently submitted to the Committee in document CDDH/III/246 and was adopted by consensus at the thirty-first meeting of the Committee on 14 March 1975. The text of article 46 as a whole was then adopted by consensus. (See the annex to the present report.)

Article 47

61. The following amendments were submitted with respect to the ICRC text:

Romania:	CDDH/III/10
Greece, Holy See, Jordan, Spain, Uruguay, Venezuela:	CDDH/III/17/Rev.2
Holy See:	CDDH/III/39
France:	CDDH/III/41
Australia:	CDDH/III/49
Sweden:	CDDH/III/52
Netherlands:	CDDH/III/56
Arab Republic of Egypt, Austria, Mexico, Netherlands, Norway, Philippines, Union of Soviet Socialist Republics:	CDDH/III/57
Czechoslovakia, German Democratic Republic:	CDDH/III/58
Arab Republic of Egypt, Democratic Yemen, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Republic, Mauritania, Morocco, Qatar, Saudi Arabia, Syrian Arab Republic, United Arab Emirates, Yemen:	CDDH/III/63 and Add.1
Canada:	CDDH/III/79

Canada subsequently withdrew amendment CDDH/III/79 and stated that it supported the Netherlands amendment (CDDH/III/56). Amendment CDDH/III/39 was subsequently modified and incorporated in amendment CDDH/III/17/Rev.2.

62. Following the introduction of the amendments, an unsuccessful attempt was made in a Co-ordination Group of the Committee to secure one agreed amendment to article 47. A general debate then took place in the Committee, and the article was referred to the Working Group. The Working Group reached very broad agreement on a text, with the exception of two phrases.

63. Paragraph 1, in conformity with the orientation of this Section toward the protection of the civilian population forbids making civilian objects the object of attack or of reprisals. The matter of reprisals was the subject of extensive debate. Some delegations were of the view that the prohibition of reprisals against civilians in paragraph 4 of article 46 should be extended in article 47 to cover all civilian objects. Other delegations contended that, whereas prohibitions of reprisals against specially protected civilian objects such as are found in article 47 bis, article 48,

and article 49 are acceptable; ordinary civilian objects should not be immune to reprisals, which could serve as a means of enhancing compliance with the law. The Committee supported the former view by voting to include the words "nor of reprisals".

64. Paragraph 2 is a somewhat revised version of the ICRC text. Account is taken of the fact that military objectives include objectives other than military objects - such as troops, their equipment, and ground - and of the fact that objects may be neutralized or captured as well as destroyed. Extensive discussion took place before agreement was reached on the word "definite" in the phrase "definite military advantage". Among the words considered and rejected were "distinct", "direct", "clear", "immediate", "obvious", "specific", and "substantial".

65. Paragraph 3 creates a new presumption in the law. The Committee rejected a possible exception to the presumption "in contact zones where the security of the armed forces requires a derogation from this presumption".

66. It should be noted that several delegations proposed to include in this article, as well as in articles 46 and 47 bis provisions forbidding pillage of these objects and their removal without consent from the territory of the State in which they were found. It was ultimately agreed that these ideas could most usefully be considered in the context of article 65 and article 66 concerning protection of persons and objects in the power of a Party to the conflict.

67. At its twenty-fourth meeting on 25 February 1975, the Committee voted on article 47. Paragraph 1, including the words "nor of reprisals" was adopted by 58 votes to 3 with 9 abstentions. Paragraph 2 was adopted by consensus. After deletion of the words "except in contact zones where the security of the armed forces requires a derogation from this presumption", paragraph 3 of article 47 was adopted by 64 votes to none with 6 abstentions. (See the annex to the present report.)

Article 47 bis

68. This article arose out of an amendment to article 47 submitted by Greece, the Holy See, Jordan, Spain, Uruguay, and Venezuela in document CDDH/III/17/Rev.2. The Working Group considered that the subject was of sufficient importance to justify the inclusion of the amendment as a separate article of the Protocol.

69. The text of paragraph (a) as submitted to the Committee incorporated two formulations:

"to commit any acts of hostility directed against
/historic monuments, places of worship, or works of art/
/places of worship, and those historic monuments or works of
art/ which constitute the cultural heritage of peoples;"

The alternatives represented a split between those delegations which wished to extend the special protection of this article to all places of worship and those which wished to limit the special protection to such places of worship as constitute part of the cultural heritage of peoples, in the words of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. Those who wished to limit the objects protected by this article to objects of considerable historical, cultural, and artistic importance argued that the immunity of these objects would inevitably be undermined if all local places of worship were included.

70. When the matter was presented to the Committee at its twenty-fourth meeting on 25 February 1975, the second version was withdrawn on the understanding, accepted by the Committee, that article 47 bis would extend to places of worship and historic monuments, even when they were renovated and restored - the consideration that had prompted that version. Article 47 bis was then adopted by consensus. (See the annex to the present report.)

Article 48

71. The following amendments were submitted with respect to the ICRC text:

Romania:	CDDH/III/10
Finland, Sweden:	CDDH/III/13 and Add.1
Ghana:	CDDH/III/28
Australia:	CDDH/III/49
United States of America:	CDDH/III/50
Arab Republic of Egypt, Democratic Yemen, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Republic, Mauritania, Morocco, Qatar, Saudi Arabia, Syrian Arab Republic, United Arab Emirates, Yemen:	CDDH/III/63 and Add.1

Hungary, German Democratic Republic, Czechoslovakia: CDDH/III/64

Belgium, United Kingdom of Great Britain and Northern Ireland: CDDH/III/67

Ukrainian Soviet Socialist Republic: CDDH/III/74

72. Article 48 was the subject of prolonged discussion and considerable amendment. Thus, it was a source of considerable satisfaction to the Committee that it was ultimately able to adopt the article by consensus. Nevertheless, several representatives believed the text to be less than fully satisfactory from the standpoint of drafting and considered that it needed further polishing by the Drafting Committee.

73. Paragraph 1 was accepted after considerable discussion as a useful statement of the basic principle from which the rest of the article flows and as an important addition to the law protecting civilians. The scope of the principle will be defined by the remainder of the article and by the other relevant articles in the Protocol, particularly those dealing with relief actions, which have not yet been considered by Committee II. The fact that the paragraph does not change the law of naval blockade is made clear by article 44, paragraph 1.

74. In paragraph 2, drafting problems were posed by the fact that two of the objects listed - food-producing areas and irrigation works - might be useful to combatants for purposes other than directly for sustenance. Thus, the phrase in paragraph 2 "for the purpose of denying them as such" was designed to cover both the denial of food and drink as sustenance and the denial of food producing areas and irrigation works for their contribution to the production of sustenance. On the other hand, it was not intended to cover their denial to the enemy for other purposes, including the general purpose of preventing the enemy from advancing. Thus, bombarding an area to prevent the advance through it of an enemy is permissible, whether or not the area produces food, but the deliberate destruction of food-producing areas in order to prevent the enemy from growing food on them is forbidden. Similarly, destroying a field of crops in order to clear a field for fire or to prevent the enemy from using it for cover is permissible, but destroying it to prevent the enemy from consuming the crops is forbidden. This is a heavy burden of meaning to be carried by the two words "as such", and several representatives expressed the hope that the Drafting Committee would ultimately find a clearer form of words.

75. Another confusion in paragraph 2 is caused by the interplay of purpose and motive. The only attack, destruction, etc., that is prohibited by this paragraph is that which is done for the purpose of denying the objects to the adverse Party or to the civilian population. In principle that is fairly clear, but the sentence does not read easily, because that statement is followed by the words "whatever the motive that produced that purpose, whether to starve out civilians, to cause them to move away, or any other motive."

76. The phrasing of paragraph 3 is only slightly more satisfying than that of paragraph 2. Here the drafter continues to be plagued by the necessity of distinguishing between uses of the objects as sustenance and other uses. Paragraph 2 (a) was intended to apply only to those objects which clearly are assigned solely for the sustenance of the armed forces. The term "civilian population" referred to in paragraph 2 (b) was not intended to mean the civilian population of a country as a whole, but rather of an immediate area, although the size of the area was not defined.

77. Finally, article 48 raised the question whether the prohibitions in paragraph 2 other than that on attack (which by definition is against the adversary) apply to acts by a State against objects under its control and within its own national territory. A number of representatives expressed the view that it was not intended to have such an effect and that an express reservation of rights within one's own territory was unnecessary. At the suggestion of the Rapporteur, it was agreed to review subsequently the extent to which the provisions of this Section were intended to have such an effect within a State's own territory and reflect the conclusions of the Group in some appropriate way in the text. It is apparent that some provisions, for example article 46, paragraph 5, on movement of civilians to shield military operations, are intended to apply to a State within its own territory. This review will be made in the context of article 66.

Article 48 bis

78. The following proposals were made for a new article on protection of the natural environment:

Czechoslovakia, German
Democratic Republic, Hungary: CDDH/III/64
Australia (article 49 bis): CDDH/III/60

79. There was no disagreement in principle that efforts should be made to protect the natural environment and there was wide support for a provision setting out specific requirements or prohibitions to be included in Protocol I.

80. Although some representatives urged the advisability of delaying action on proposals to adopt provisions on protection of the natural environment until the third session of the Conference so that they could be studied more fully, it was decided to complete Committee action at the second session.

81. Article 48 bis is directed at protection of the natural environment. The article prohibits the employment of methods and means of warfare which are intended or expected to cause widespread, long-term, and severe damage. The Committee thus approved here the same standard or criteria as is found in article 33, paragraph 3, with the addition of material concerning the civilian population.

82. Because article 48 bis was inserted in the context of protection of the civilian population, the particular prohibition is linked to the survival of that population. The word "population" was used without the usual adjective "civilian" because it was thought that the future survival is that of the population in general, without regard to combatant status. The term "health" was used in a broad sense in connexion with survival to indicate actions which could be expected to cause such severe effects that, even if the population survived, it would have serious health problems, such as congenital defects which produced deformed or degenerate persons. Temporary or short-term effects were not contemplated within the prohibitions of this article.

83. The Committee at its thirty-eighth meeting on 10 April 1975, adopted article 48 bis by consensus. (See the annex to the present report.)

Article 49

84. The following amendments were submitted with respect to the ICRC text:

Republic of Viet-Nam:	CDDH/III/4
Romania:	CDDH/III/10
Australia:	CDDH/III/49
Belgium and the Netherlands:	CDDH/III/59/Rev.1
Arab Republic of Egypt, Democratic Yemen, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Republic, Mali, Mauritania, Morocco, Qatar, Sudan, Sweden, Switzerland, Syrian Arab Republic, United Arab Emirates, Yemen:	CDDH/III/65 and Add.1 and Corr.1

Ukrainian Soviet Socialist Republic:	CDDH/III/74
Arab Republic of Egypt, Democratic Yemen, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Republic, Mauritania, Morocco, Qatar, Sudan, Syrian Arab Republic, United Arab Emirates, Yemen:	CDDH/III/76 and Add.1
Canada:	CDDH/III/79
United States of America:	CDDH/III/202

85. Article 49 proved quite difficult and required considerable time and effort before general agreement was reached. It was only when a decision was taken to limit the special protection of the article to dams, dykes, nuclear power stations, and other military objectives in the vicinity of these objects that it was possible to produce a generally acceptable text. That limitation made it possible to be more specific in describing the circumstances in which the special protection was lost, which had been the most difficult part of the drafting task.

86. It should be noted that article 49 provides a special protection to these objects and objectives which, although important, is only one of a number of layers of protection. First, if a dam, dyke, or nuclear power station does not qualify as a legitimate military objective under article 47, it is a civilian object and cannot be attacked. Second, if it does qualify as a military objective or if it has military objectives in its vicinity, it receives special protection under this article. Third, if, pursuant to the terms of this article, it may be attacked or a military objective in its vicinity may be attacked, such attack is still subject to all the other relevant rules of this Protocol and general international law; in particular, the dam, dyke, or nuclear power plant or other military objective could not be attacked if such attack would be likely to cause civilian losses excessive in relation to the anticipated military advantage, as provided in article 50. In the case of a dam or dyke, for example, where a great many people would be killed and much damage done by its destruction, immunity would exist unless the military reasons for destruction in a particular case were of an extraordinarily vital sort.

87. In paragraph 1 the Committee decided to retain the qualifying phrase "where such attack may cause the release of dangerous forces and consequent severe losses among the civilian population" in order to avoid granting immunity from attacks of a kind not likely to release the dangerous forces.

88. Paragraph 2 provides that the special protection accorded to a dam or dyke by paragraph 1 ceases only "if it is used for other than its normal function" and in support of military operations. This phrase, "normal function" may be less clear than is desirable, and perhaps a Drafting Committee may be able to find a better term. The term means the function of holding back, or being ready to hold back, water. Thus, if a dam or dyke is used for no purpose other than holding back water or being ready to hold back water, e.g., it is not made part of a fortified line or used as a road, the immunity from attack provided in paragraph 1 cannot be lost. Even if it is used for a function in addition to its normal function, the immunity is not lost unless it is used in regular, significant, and direct support of military operations and if the only feasible way to terminate the support is by attack on the dam or dyke.

89. In addition, it must always be recognized that an attack is not justified unless the military reasons for the destruction in a particular case are of such extraordinary and vital interest as to outweigh the severe losses which may be anticipated. Nevertheless, it should be noted that some representatives remain concerned about the problems that may arise from the use of dykes for roadways.

90. It should be noted that the use of water stored by a dam for hydro-electric generating facilities cannot justify making the dam itself an object of attack, but the generating facilities could become "other military objectives located at or in the vicinity of these works or installations". If such a generating facility does become a military objective, it may not be attacked unless it is "used in regular, significant, and direct support of military operations" and, even then, only if "such attack is the only feasible way to terminate such support". Certainly, the greater the distance between hydro-electric generating facilities and the dam, the less risk there would be of collateral damage to the dam, in the event the hydro-electric generating facility were used for military purposes, in such a way as to become a legitimate military objective.

91. It should also be noted that the standard used in paragraph 2, "regular, significant, and direct support of military operations" is a higher standard than is used in article 47, i.e., "effective contribution to military action". Without trying to define the phrase in article 49, it seems clear that production of arms, ammunition and military equipment would qualify as direct support of military operations, but the production of civilian goods which may also be used by the armed forces probably would not qualify in the absence of most unusual circumstances.

92. Even when attack on one of these objects is justified under all the applicable rules, the second sentence of paragraph 3 requires the combatants to take "all practical precautions" to avoid releasing the dangerous forces. Given the array of arms available to modern armies, this requirement should provide real protection against the catastrophic release of these forces.

93. With respect to paragraph 5, there was considerable discussion about the question of the types of armament to be permitted to the defensive installations. Ultimately, it was thought impractical to include any limitation other than that implied by the phrase "weapons capable only of repelling hostile action against the protected works or installations". Thus, the use of weapons capable of attacking enemy forces passing at some distance from the protected work or installation is prohibited.

94. With respect to paragraph 7, in view of the fact that some representatives stated their disagreement with the proposal in the ICRC draft to use the protective sign authorized by the Geneva Conventions for hospital zones to indicate the objects protected by this article, this question was left for decision at a later stage of the Conference.

95. The Committee adopted article 49 by consensus at its thirty-first meeting on 14 March 1975. (See the annex to the present report.)

Article 50

96. The following amendments were submitted with respect to the ICRC text:

Republic of Viet-Nam:	CDDH/III/3
Romania:	CDDH/III/10
Finland, Sweden:	CDDH/III/13 and Add.1
Brazil:	CDDH/III/24
Ghana:	CDDH/III/28
Canada:	CDDH/III/79
German Democratic Republic:	CDDH/III/83
Australia:	CDDH/III/203/Rev.1
Arab Republic of Egypt, Jordan, Kuwait, Libyan Arab Republic, Mauritania, Qatar, Sudan, United Arab Emirates:	CDDH/III/205
United Kingdom of Great Britain and Northern Ireland:	CDDH/III/207

97. Paragraph 2 (a) of article 50 required much time and effort to work out, but the other paragraphs were fairly quickly agreed upon. The so-called rule of proportionality in paragraph 2 (a) iii was found ultimately to be acceptable when it was preceded by paragraph 2 (a) i and paragraph 2 (a) ii which prescribe additional precautions and phrased in terms of losses "excessive in relation to the concrete and direct military advantage anticipated", and was supplemented by paragraph 5 to make clear that it may not be construed as authorization for attacks against civilians.

98. Referring to the use of the word "feasible" in paragraph 2 (a) i and ii, it was preferred by most representatives to the word "reasonable", and it was intended to mean that which is practicable or practically possible.

99. In recognition of the limitation of the scope of this Section, as set forth in article 44, paragraph 1, on the effect on the law applicable to armed conflict at sea or in the air, paragraph 4 was added to article 50 to ensure that all reasonable precautions would nevertheless be taken in the conduct of armed conflict at sea and in the air.

100. Article 50 was adopted at the thirty-first meeting of the Committee on 14 March 1975, by 66 votes to none, with 3 abstentions. (See the annex to the present report.)

Article 51

101. The following amendments were submitted to the ICRC text:

Romania:	CDDH/III/10
Canada:	CDDH/III/79
Australia:	CDDH/III/204
Arab Republic of Egypt, Kuwait, Libyan Arab Republic, Mauritania, Qatar, Sudan, United Arab Emirates:	CDDH/III/206
Canada and Ireland:	CDDH/III/208

102. Agreement was reached fairly quickly on the text after it was revised to have the phrase "to the maximum extent feasible" modify all paragraphs. This revision reflected the concern of a number of representatives that small and crowded countries would find it difficult to separate civilians and civilian objects from military objectives. Other representatives pointed out that even large countries would find such separation difficult or impossible to arrange in many cases.

103. It was clearly understood that article 51 applies to all territory under the effective de facto control of a party, that is, including both its own national territory which is under its control and any foreign territory which it occupies.

104. The phrase in paragraph 1, "without prejudice to article 49 of the fourth Convention," was chosen to make it clear that the provisions of the paragraph are not intended to amend in any way that article. This paragraph, on the contrary is intended to stand on its own in all cases except where action proposed to be taken under it would be contrary to article 49 of the fourth Geneva Convention of 1949; in that rare case, article 49 would govern.

105. In paragraph 3 the word "dangers" was retained from the ICRC draft after some discussion of possible alternatives. It was pointed out that article 18, paragraph 5 of the fourth Geneva Convention of 1949 refers in a similar way to "the dangers to which hospitals may be exposed".

106. The Committee adopted article 51 by consensus at its thirty-first meeting on 14 March 1975. (See the annex to the present report.)

Article 52

107. The following amendments were submitted to the ICRC text:

Pakistan:	CDDH/III/11
Uruguay:	CDDH/III/61
Brazil:	CDDH/III/70
Poland:	CDDH/III/96
Spain:	CDDH/III/211
Federal Republic of Germany:	CDDH/III/218
Canada:	CDDH/III/219

108. The text, which was adopted by the Committee by consensus at its thirty-first meeting, on 14 March 1975, resulted from a compromise among five tendencies: (1) those who wished to see non-defended localities established by unilateral declaration; (2) those who wished to see them established only by agreement; (3) those who wished to limit them to in area in or near the contact zone; (4) those who wished to permit them also in the hinterland; and (5) those who wished to provide a mechanism for creating non-defended localities even where it would take some further time to remove all combatants from the locality. The result is an article that permits unilateral declaration of

non-defended localities near or in a contact zone which are open for occupation by an adverse Party and meet the other prescribed conditions and which requires agreement for the establishment of zones not meeting the geographical or other requirements. Several delegations supported the view that in case of a dispute between the Parties to the conflict regarding the character of a locality outside the zone of contact, there should be a verification by some impartial body. They, therefore, proposed that a separate article 52 bis might be included in the Protocol to deal with the question of verification as well as the mechanism. (For the text of article 52 as adopted, see the annex to the present report.)

Article 53

109. The following amendments were submitted to the ICRC text:

Uruguay:	CDDH/III/61
Brazil:	CDDH/III/71
German Democratic Republic:	CDDH/III/84 CDDH/III/85
Poland:	CDDH/III/97
Spain:	CDDH/III/212

110. One of the most controversial issues posed by article 53 was its title. The terms "neutralized zone", "demilitarized zone", and "non-militarized zone" were all considered, and each had its proponents. The term finally chosen - "demilitarized zone" - is understood to cover both zones from which military forces have been withdrawn so as to comply with the conditions prescribed by this article and by the agreement establishing them, and zones in which no military forces were stationed in the first place and otherwise satisfied the conditions prescribed by the article and by the agreement establishing them.

111. Article 53 is intended to permit the establishment both of zones that must remain demilitarized no matter which party controls the area in which they are located and also zones that may lose their demilitarized character if occupied by the adverse Party. It was thought that this flexibility would give the maximum encouragement to the creation of such zones. This is the reason why the phrase, "if such extension is contrary to the terms of these agreements", is included in paragraph 1 and why the phrase, "if the Parties to the conflict have so agreed", is included in paragraph 6. Similarly, the phrase "shall normally be" was inserted in paragraph 3 to permit the parties to agree upon zones which do not fulfil all the conditions of that paragraph. Although such agreement might be rare, it was thought that it should not be discouraged by the text of article 53.

112. The Committee adopted article 53 by consensus at its thirty-first meeting on 14 March 1975. (See the annex to the present report.)

B. Draft Protocol II

Article 24

Paragraph 1

113. At the first session of the Conference, this paragraph had been adopted ad referendum (See CDDH/50/Rev.1, paras. 51 to 53), pending the solution of the question of the scope of application of Protocol II. That question having been decided (CDDH/I/274), the Committee adopted the text by consensus at its thirty-seventh meeting on 4 April 1975 (See the annex to the present report). One representative was of the opinion that article 24, paragraph 1, and article 27 should be discussed again by the Committee and by the Working Group before their final adoption, in view of the subsequent adoption of article 1 of draft Protocol II.

Paragraph 2

114. The following amendments were submitted with respect to the ICRC text:

United States of America: CDDH/III/23

Finland: CDDH/III/106

115. A basic choice was posed between a short and a long form of article on the precautions to be taken in military operations in order to protect the civilian population. The short form was article 24, paragraph 2, as originally presented by the ICRC. The long form was a new article, pursuant to the Finnish amendment; this drew upon article 50 of draft Protocol I, as adopted by the Committee (CDDH/III/268). The differing approaches reflect basic differences about the role and the scope of application of Protocol II.

116. The argument for the longer form of article was based on the threshold of application established for Protocol II in article 1, as adopted by Committee I (CDDH/I/274). The level of application, according to some delegations, made Protocol II applicable in conflicts of substantial duration in which relatively large numbers of persons were involved in military operations over areas of some size. Indeed, the intensity of non-international armed conflicts may well be greater than that of some international armed conflicts.

It would therefore be desirable to provide protection to the civilian victims of war at the same level and with the same specificity of legal prescription as in Protocol I. This would call, at least so far as the protection of the civilian population is concerned, for the inclusion in Protocol II of articles corresponding in substance and in wording to those in Protocol I. Deviations from the language of Protocol I, it was argued, could be construed to permit an a contrario argument that conduct prohibited by Protocol I but not referred to in Protocol II would be lawful. Also, although some of the provisions on the protection of the civilian population in Protocol II might not be applicable in all internal armed conflicts, they would control conduct in any non-international armed conflict which reached the requisite level.

117. Other delegations contended, however, that there was a certain amount of ambiguity in article 1 of draft Protocol II, and that each attempt to import the detailed provisions of Protocol I would in fact raise the level of application of Protocol II, because States would regard the Protocol as applicable only if it seemed that hostilities had assumed the scale of requiring application of all or most of the provisions of Protocol I concerning international armed conflicts. The complexity and onerousness of the obligations might deter States from signature, ratification, or application of Protocol II. Rebels might refuse to comply with the Protocol because they would be unable to reach the standards set by it, while the authorities in power might use the inability of the insurgents to comply with the detailed provisions of the Protocol as an excuse for not complying with it. An approach placing emphasis on the protection of human rights, rather than on the conduct of military operations, should, it was argued, be preferred. And the Protocol should be as short and cogent and direct as feasible in order that the parties might clearly see their obligations. No argument a contrario would be possible, as it would be understood that Protocol II is drafted in terms different from those of Protocol I and does not simply echo the norms in that Protocol. The two Protocols therefore do not have to be read together; each would be complete and self-contained.

118. In other articles, it was possible to reconcile these two views to a certain extent through the presentation by the Working Group of a text that would incorporate some but not all of the language of the corresponding article of Protocol I. But this did not prove possible in connexion with the subject matter of article 24, paragraph 1, and article 27.

119. It was pointed out by several representatives that at some point or other the relationship between the texts of the two Protocols should be clarified, so as to prevent dispute about the application of the a contrario principle.

120. The Working Group agreed to submit to the Committee the two texts set forth in document CDDH/III/278. At its thirty-seventh meeting on 4 April 1975, the Committee rejected the longer version in the form of a draft article 28 ter by a vote of 24 to 4, with 31 abstentions. Article 24, paragraph 2, was then adopted by 50 votes to none with 11 abstentions. (See the annex to the present report.)

Article 25

121. At the first session of the Conference, article 25 was adopted ad referendum (see CDDH/50/Rev.1, paras. 54 to 62), pending solution of the question of the scope of application of Protocol II. That question having been decided (CDDH/I/274), the Committee adopted this text by consensus at its thirty-seventh meeting. (See the annex to the present report.)

Article 26

122. The following amendments were submitted with respect to the ICRC text:

Romania:	CDDH/III/12
Ghana:	CDDH/III/28
Canada:	CDDH/III/36
Australia:	CDDH/III/42
Sweden:	CDDH/III/45
Algeria, Arab Republic of Egypt, Democratic Yemen, Iraq, Libyan Arab Republic, Mali, Mauritania, Morocco, Kuwait, Sudan, Syrian Arab Republic, United Arab Emirates:	CDDH/III/48/Rev.1 and Add.1 and 2
Philippines:	CDDH/III/51
Brazil:	CDDH/III/68
German Democratic Republic:	CDDH/III/88

123. Article 26 is the counterpart of article 46 of draft Protocol I, as adopted in Committee (CDDH/III/272); and its structure and much of its language are derived from that article. There had again been a difference of views in the Working Group about the desirability of a long as against a short version of this article.

124. The introductory paragraph is the same as the corresponding language of article 46 of draft Protocol I, with the omission of the words "in addition to other applicable rules of international law". These words were deleted in view of the fact that there is very little conventional international law with respect to non-international armed conflicts other than Article 3 common to the four Geneva Conventions of 1949, which contains no provisions pertinent to the subject matter of this article of draft Protocol II. This paragraph was adopted by consensus at the thirty-seventh meeting of the Committee, on 4 April 1975, when article 26 as a whole was considered.

125. The language of paragraphs 1 and 2 is the same as that of paragraphs 1 and 2 of article 46 of draft Protocol I. Paragraph 1 was adopted by consensus. In paragraph 2, a proposal to delete the words "and for such time as" was defeated at the thirty-seventh meeting by 28 votes to 5, with 29 abstentions.

126. The Working Group submitted two drafts for the first part of paragraph 3. The Committee rejected the Canadian proposal to delete the paragraph by 27 votes to 13, with 21 abstentions. The introductory language of paragraph 3 is the same as that of paragraph 3 of the ICRC text, a proposal to substitute a longer text based on paragraph 3 of article 46 of draft Protocol I having been defeated by a vote of 29 in favour of the ICRC text, 15 in favour of the longer text based on Protocol I, with 16 abstentions. By a vote of 25 to 13, with 24 abstentions, it was decided to retain a provision on "An attack by bombardment by any methods or means ...". The phrase "The employment of means of combat and any methods ... are prohibited" should be examined by the Drafting Committee, as the language is not consistent with terminology used elsewhere in the Protocols and does not in any event seem to be intrinsically correct.

127. It was agreed to postpone a vote on the question of reprisals in this article until the question had been resolved for draft Protocols I and II in general.

128. Paragraph 5, identical to the like-numbered paragraph of article 46 of draft Protocol I, was adopted by consensus.

129. The Working Group agreed to the deletion of paragraph 6. The sentiment seemed to be that its deletion would simplify and shorten the article somewhat.

130. At its thirty-seventh meeting on 4 April 1975, the Committee adopted article 26 as a whole by 44 votes to none with 22 abstentions. (See the annex to the present report.)

Article 26 bis

131. The following amendments were submitted with respect to the addition to draft Protocol II of a new article concerning the general protection of civilian objects:

Finland, Sweden:	CDDH/III/13 and Add.1
Sweden:	CDDH/III/52
Arab Republic of Egypt, Iraq, Mali, Syrian Arab Republic:	CDDH/III/62/Rev.1 and Add.1 and Corr.1

132. There having been substantial support in the Committee for the addition of an article on this subject, corresponding to article 47 of draft Protocol I, the amendments were referred to the Working Group. The Working Group submitted to the Committee the text set forth in document CDDH/III/280.

133. The text submitted to the Committee was a simplified form of article 47 of draft Protocol I, as adopted by the Committee (CDDH/III/263). Reference to "military objectives" was deleted in article 26 bis because a number of delegations were of the view that the term was inappropriate for use in connexion with non-international armed conflicts, both because it evoked the idea of large-scale hostilities and because the objectives attacked in non-international conflicts might not necessarily be "military" ones. Instead, it was decided that attacks should be limited to "those objects which by their own nature, location, purpose, or use make an effective contribution to the armed action of the parties to the conflict", and the article was so drafted. "Armed action" was substituted for "military action", because of the unwillingness of some to use the term "military" in a limitative way in internal armed conflicts. Several representatives suggested that the Drafting Committee should consider whether "armed action" was the apposite phrase to use in draft Protocol II in place of "military operations" or "warfare" and urged that the terminology be made consistent throughout draft Protocol II.

134. At its thirty-seventh meeting on 4 April 1975, the Committee adopted the present text, as recommended by the Working Group, by 35 votes to 8, with 17 abstentions. (See the annex to the present report.) It was agreed to postpone a vote on the question of reprisals until the matter had been resolved for draft Protocols I and II in general.

Article 28

135. The following amendments were submitted with respect to the ICRC text:

Romania:	CDDH/III/12
Brazil:	CDDH/III/18
Canada:	CDDH/III/36
Finland:	CDDH/III/37
Australia:	CDDH/III/46
Arab Republic of Egypt, Iraq, Mali, Syrian Arab Republic:	CDDH/III/62/Rev.1 and Add.1 and Corr.1

136. The Working Group submitted to the Committee a text which was a shortened version of article 49 of draft Protocol I, as adopted by the Committee (CDDH/III/267).

137. The proposal of the Working Group (CDDH/III/281) was an agreed text, with the exception of two different formulations of paragraph 1. These were:

"Works or installations containing dangerous forces, namely dams, dykes, and nuclear electrical generating stations, shall not be made the object of attack /, even where these objects are military objectives⁷, when such attack may cause the release of dangerous forces and consequent severe losses among the civilian population."

or

"Dams and dykes containing dangerous forces and nuclear electrical generating stations shall not be made the object of attack /, even where these objects are military objectives⁷."

138. The two options reflected two different approaches: the first was that the standard with respect to the protection of works or installations containing dangerous forces should be cast in the same terms as in international armed conflicts. This option reproduced the language of paragraph 1 of article 49 of draft Protocol I. The second approach was that the protection of these installations in internal armed conflicts should be absolute and not subject to the qualification that "such attack may cause the release of dangerous forces and consequent severe losses among the civilian population". It was necessary to bracket the language "even where these objects are military objectives" because some delegations were of the view that this expression, found in article 49 of draft Protocol I, should also appear here so that no negative inference could be drawn from the absence of that expression.

139. At the thirty-seventh meeting of the Committee on 4 April 1975, the amendment of Canada to delete the article having been defeated by a vote of 26 to 10 with 25 abstentions, the Committee voted to accept the first option by 39 votes to 2 with 22 abstentions. The Committee then decided by a vote of 26 to 15, with 21 abstentions not to delete the bracketed phrase regarding military objectives.

140. Paragraph 2 of article 28 is the same as the ICRC text, with the addition of a sentence about armed guards. It was pointed out that such installations, particularly nuclear generating stations, are often guarded in time of peace and would certainly be guarded in time of non-international armed conflict and that such works or installations should not lose their immunity of that account. Paragraph 2 was adopted by consensus by the Committee at its thirty-seventh meeting.

141. It was agreed to postpone a vote on paragraph 3, relating to reprisals, until the question of reprisals had been solved for draft Protocols I and II.

142. The language of paragraph 7 of article 49 of Protocol I was carried over into paragraph 4 of article 28. The provision permits, but does not require, marking and such markings might in any event already have been applied in connexion with an international armed conflict in which the State may have been involved.

143. Article 28 as a whole was then adopted by the Committee at its thirty-seventh meeting on 4 April 1975 by 43 votes to none with 21 abstentions. (See the annex to the present report.)

Article 28 bis

144. The following proposal was made for a new article:

Australia:

CDDH/III/55

145. A number of representatives considered that it was desirable to include in Protocol II an article on the protection of the natural environment with the same restriction as that provided in article 33, paragraph 3 of draft Protocol I.

146. Although several representatives were of the view that such a provision was inappropriate in a non-international conflict, the Committee at its thirty-eighth meeting on 10 April 1975, adopted the article by 49 votes to 4, with 7 abstentions. (See the annex to the present report.)

Article 29

147. The following amendments were submitted with respect to the ICRC text:

Romania:	CDDH/III/12
Zimbabwe African People's Union:	CDDH/III/40
Canada:	CDDH/III/220

148. The Working Group submitted to the Committee the text set forth in CDDH/III/283.

149. Paragraph 1 is the same text as that proposed by the ICRC, with the addition of the words "for reasons relating to that conflict".

150. Displacement may be necessary in certain cases of epidemic, natural disasters, and the like, and such displacements would not come within the scope of paragraph 2. The additional language of paragraph 2 relating to cases in which civilians may be compelled to leave their own territory reflected the concern of a number of delegations that the article should not interfere with the operation of certain municipal legal systems which permit such action. It was pointed out that it may be more humanitarian to require or allow an individual to leave the territory of a State than to require him to serve out a prison sentence within the State concerned. Extradition would also be effected in the normal way, as in time of peace.

151. Paragraph 3, which appears in bracketed form in document CDDH/III/283 was added to the text because, in the view of some delegations, it would be desirable to have a prohibition on some forms of transfer of property out of a State, to serve as a counter-part to the provision on the displacement of persons. The paragraph is drafted in these terms, borrowed in part from language used with respect to the protection of the environment, in order to preserve the right of a State to send cultural property abroad for safe-keeping and to maintain the right to operate a general export trade in time of non-international armed conflict.

152. At the thirty-seventh meeting of the Committee on 4 April 1975, a Canadian amendment to delete the article as a whole was defeated by 30 votes to 7 with 25 abstentions. Paragraph 1 was then adopted by consensus. It was voted to incorporate the exceptions in paragraph 2 by 17 votes to 16, with 33 abstentions. No vote was taken on paragraph 3, because it was considered that the matter should be taken up in the context of general protection of the population, particularly article 66 of draft Protocol I. Article 29 as a whole was then adopted by 40 votes to none with 28 abstentions. (See the annex to the present report.)

153. Amendment CDDH/III/40 was not acted upon, as the subject-matter did not seem germane to article 29.

III. ADOPTION OF THE REPORT OF COMMITTEE III

154. At its fortieth meeting, on 14 April 1975, the Committee adopted this report as amended.

ANNEX

ARTICLES ADOPTED BY COMMITTEE III
(First and second sessions)

Draft Protocol I,
Part III, Section I

Article 33 - Basic rules*

1. In any armed conflict, the right of Parties to the conflict to choose methods or means of warfare is not unlimited.
2. It is forbidden to employ weapons, projectiles, and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering.
3. It is forbidden to employ methods or means of warfare which are intended or may be expected to cause widespread, long-term, and severe damage to the natural environment.

* Paragraph 3 was adopted by 57 votes to 4 with 3 abstentions at the thirty-eighth meeting on 10 April 1975. At the same meeting article 33 as a whole was adopted by consensus. See paragraphs 18 to 28 of the present report.

Draft Protocol I,
Part III, Section I

Article 34 - New weapons*

In the study, development, acquisition, or adoption of a new weapon, means, or method of warfare a High Contracting Party is under an obligation to determine whether its employment would, under some or all circumstances be prohibited by this Protocol or by any other rule of international law applicable to the High Contracting Party.

* Adopted by consensus at the thirty-eighth meeting, on 10 April 1975. See paragraphs 29 to 32 of the present report.

Draft Protocol I,
Part III, Section I

Article 36 - Recognized emblems*

1. It is forbidden to make improper use of the protective emblem of the Red Cross, Red Crescent, and Red Lion and Sun, or other emblems, signs, or signals provided for by the Conventions or by the present Protocol. It is also forbidden to misuse deliberately in armed conflict other internationally recognized protective emblems, signs or signals, including the flag of truce, and the protective emblem of cultural property.
2. It is forbidden to make use of the distinctive emblem of the United Nations, except as authorized by that Organization.

* Adopted by consensus at the thirty-eighth meeting on 10 April 1975. See paragraphs 33 to 36 of the present report.

Draft Protocol I,
Part III, Section I

Article 37 - Emblems of nationality*

1. It is forbidden to make use in an armed conflict of the flags or military emblems, insignia, or uniforms, of neutral or other States that are not Parties to the conflict.
2. It is forbidden to make use of the flags or military emblems, insignia, or uniforms of adverse parties while engaging in attacks or in order to shield, favour, protect, or impede military operations.
3. Nothing in this article shall affect the existing generally recognized rules of international law applicable to the use of flags in the conduct of armed conflict at sea.

* Adopted by consensus at the thirty-eighth meeting on 10 April 1975. See paragraphs 37 to 41 of the present report.

Draft Protocol I,
Part IV, Section I

Article 43 - Basic rule*

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

* Adopted by consensus at the tenth meeting, on 21 March 1974.
See the report of Committee III (first session) (CDDH/50/Rev.1, paras. 16 to 19).

Draft Protocol I,
Part IV, Section I

Article 44 - Field of application*

1. The provisions contained in the present Section shall apply to any land, air, or sea warfare which may affect the civilian population, individual civilians, or civilian objects on land. They shall further apply to all attacks from the sea or the air against objectives on land but do not otherwise affect the existing generally recognized rules of international law applicable to armed conflict at sea or in the air.

2. "Attacks" mean acts of violence committed against the adversary, whether in defence or offence.

3. The provisions of the present Section are in addition to the rules with respect to humanitarian protection contained in the Fourth Convention, particularly Part II thereof, and in such other international conventions as may be binding upon the High Contracting Parties, as well as to other rules of international law relating to the protection of civilians and civilian objects on land, on sea, or in the air, against the effects of hostilities.

* Article 44, paragraph 2 was adopted by 51 votes to one, with 18 abstentions at the eleventh meeting on 21 March 1974. Paragraph 3 was adopted at the same meeting by 73 votes to none with 2 abstentions. See the report of Committee III (first session) (CDDH/50/Rev.1, paras. 20 to 33). Paragraph 1 was adopted by consensus at the twenty-fourth meeting on 25 February 1975. See paragraphs 42 to 46 of the present report.

Draft Protocol I,
Part IV, Section I

Article 45 - Definition of civilians and civilian population*

1. A civilian is anyone who does not belong to one of the categories of persons referred to in Article 4 A (1), (2), (3) and (6) of the third Convention and in article 42 of the present Protocol.
2. The civilian population comprises all persons who are civilians.
3. The presence, within the civilian population, of individuals who do not fall within the definition of civilians does not deprive the population of its civilian character.
4. In case of doubt as to whether a person is a civilian, such person shall be considered to be a civilian.

* Adopted by consensus at the tenth meeting on 21 March 1974. See the report of Committee III (first session) (CDDH/50/Rev.1, para. 40).

Draft Protocol I,
Part IV, Section I

Article 46 - Protection of the civilian population*

The civilian population and individual civilians shall enjoy general protection against dangers arising from military operations. To give effect to this protection, the following rules, in addition to other applicable rules of international law shall be observed in all circumstances:

1. The civilian population as such, as well as individual civilians, shall not be made the object of attack. Acts or threats of violence which have the primary object of spreading terror among the civilian population are prohibited.
2. Civilians shall enjoy the protection afforded by this Section of the Protocol unless and for such time as they take a direct part in hostilities.
3. Indiscriminate attacks are prohibited. Indiscriminate attacks are those which are not directed at a specific military objective; or those which employ a method or means of combat which cannot be directed at a specific military objective, or the effects of which cannot be limited as required by this Protocol, and consequently are of a nature to strike military objectives and civilians or civilian objects without distinction. Among others, the following types of attacks are to be considered as indiscriminate:
 - (a) An attack by bombardment by any methods or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village, or other area containing a concentration of civilians or civilian objects; and
 - (b) An attack of the type prohibited by article 50 (2) (a) (iii).

* Paragraphs 1,2,4,5 and 6 were adopted by consensus at the twenty-fourth meeting on 25 February 1975. Paragraph 3 was adopted by consensus at the thirty-first meeting on 14 March 1975. At the same meeting article 46 as a whole was adopted by consensus. See paragraphs 47 to 60 of the present report.

Draft Protocol I,
Part IV, Section I

Article 46 - Protection of the civilian population (continued)

4. Attacks against the civilian population or civilians by way of reprisals are prohibited.

5. The presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favour or impede military operations. Parties to a conflict also shall not direct the movement of the civilian population or individual civilians in attempts to shield military objectives from attack or to shield military operations.

6. Any violations of these prohibitions shall not release the Parties to the conflict from their legal obligations with respect to those civilians, including the precautionary measures provided for in the article 50.

Draft Protocol I,
Part IV, Section I

Article 47 - General protection of civilian objects*

1. Civilian objects shall not be the object of attack nor of reprisals. Civilian objects are all objects which are not military objectives, as defined in paragraph 2.
2. Attacks shall be strictly limited to military objectives. In so far as objects are concerned, military objectives are limited to those objects which by their own nature, location, purpose, or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization in the circumstances ruling at the time, offers a definite military advantage.
3. In case of doubt whether an object which is normally dedicated to civilian purposes, such as a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used.

* Paragraph 1 was adopted by 58 votes to 3, with 9 abstentions at the twenty-fourth meeting on 25 February 1975. At the same meeting paragraph 2 was adopted by consensus and paragraph 3 by 64 votes to none with 6 abstentions. At the same meeting article 47 as a whole was adopted by consensus. See paragraphs 61 to 67 of the present report.

Draft Protocol I,
Part IV, Section I

Article 47 bis - Protection of cultural objects and
of places of worship*

Without prejudice to the provisions of the Hague Convention on the Protection of Cultural Property of 14 May 1954, and other relevant international instruments, it is forbidden:

- (a) to commit any acts of hostility directed against historic monuments, places of worship, or works of art which constitute the cultural heritage of peoples;
- (b) to use such historic monuments or places of worship in support of the military effort; and
- (c) to make such objects the object of reprisals.

* Adopted by consensus at the twenty-fourth meeting on 25 February 1975. See paragraphs 68 to 70 of the present report.

Draft Protocol I,
Part IV, Section I

Article 48 - Objects indispensable to the survival
of the civilian population*

1. Starvation of civilians as a method of warfare is prohibited.
2. It is forbidden to attack, destroy, remove, or render useless objects indispensable to the survival of the civilian population, such as, foodstuffs and food producing areas, crops, livestock, drinking water installations and supplies, and irrigation works, for the purpose of denying them as such to the civilian population or to the adverse party, whatever the motive that produced that purpose, whether to starve out civilians, to cause them to move away, or any other motive.
3. The prohibition provided by the preceding paragraph shall not apply to such of the objects covered by it as are used by an adverse party:
 - (a) as sustenance, solely for the members of its armed forces; or
 - (b) if not as sustenance, then in direct support of military action; provided, however, that actions against these objects shall in no event be taken which may be expected to leave the civilian population with such inadequate food or water as to cause its starvation or force its movement.
4. These objects shall not be made the object of reprisals.

* Adopted by consensus at the thirty-first meeting on 14 March 1975. See paragraphs 71 to 77 of the present report.

Draft Protocol I,
Part IV, Section I

Article 48 bis - Protection of the natural environment*

1. Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. Such care includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population.
2. Attacks against the natural environment by way of reprisal are prohibited.

* Adopted by consensus at the thirty-eighth meeting on 10 April 1975. See paragraphs 78 to 83 of the present report.

Draft Protocol I,
Part IV, Section I

Article 49 - Works and installations containing
dangerous forces*

1. Works or installations containing dangerous forces, namely dams, dykes, and nuclear electrical generating stations, shall not be made the object of attack, even where these objects are military objectives, where such attack may cause the release of dangerous forces and consequent severe losses among the civilian population. Other military objectives located at or in the vicinity of these works or installations shall not be made the object of attack where such attack may cause the release of dangerous forces from the works or installations and consequent severe losses among the civilian population.
2. The special protection against attack provided by paragraph 1 shall cease for a dam or a dyke only (a) if it is used for other than its normal function and in regular significant and direct support of military operations, and (b) if such attack is the only feasible way to terminate such support. The special protection against attack provided by paragraph 1 shall cease for a nuclear electrical generating station only if it provides electric power in regular, significant and direct support of military operations and if such attack is the only feasible way to terminate such support. The special protection against attack provided by paragraph 1 shall cease for other military objectives located at or in the vicinity of these works or installations only if they are used in regular, significant and direct support of military operations and if such attack is the only feasible way to terminate such support.
3. In all cases, the civilian population and individual civilians shall remain entitled to all the protections accorded them by international law, including the precautionary measures provided by article 50. In the event the protection ceases and any of the works, installations, or objectives mentioned in paragraph 1 is attacked, all practical precautions shall be taken to avoid releasing the dangerous forces.
4. It is prohibited to make any of the works, installations, or objectives mentioned in paragraph 1 the object of reprisals.

* Adopted by consensus at the thirty-first meeting on 14 March 1975. See paragraphs 84 to 95 of the present report.

Draft Protocol I,
Part IV, Section I

Article 49 - Works and installations containing
dangerous forces (continued)

5. The parties to a conflict shall endeavour to avoid locating any military objectives in the vicinity of the works or installations mentioned in paragraph 1. Nevertheless, installations erected for the sole purpose of defending the protected works or installations from attack are permissible and shall not themselves be made the object of attack, provided that they do not participate in hostilities except for defensive actions necessary to respond to attacks against the protected works or installations and are limited in their armament to weapons capable only of repelling hostile action against the protected works or installations.

6. The High Contracting Parties and parties to a conflict are urged to conclude further agreements among themselves to provide additional protection for objects containing dangerous forces.

7. In order to facilitate their identification, parties to a conflict may mark the objects protected by this article with a special sign consisting of . . . **. Absence of such marking in no way relieves any party to a conflict from its obligations under this article.

**To be determined.

Draft Protocol I,
Part IV, Section I

Article 50 - Precautions in attack*

1. In conducting military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects.

2. With respect to attacks, the following precautions shall be taken:

(a) those who plan or decide upon an attack shall

- i. do everything feasible to verify that the objectives to be attacked are neither civilian nor civilian objects and are not subject to special protection but are military objectives within the meaning of paragraph 2 of article 47 and that it is permissible to attack them under the rules of this Protocol;
- ii. take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians, and damage to civilian objects; and
- iii. refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;

* Adopted by 66 votes to none with 3 abstentions at the thirty-first meeting on 14 March 1975. See paragraphs 96 to 100 of the present report.

Draft Protocol I,
Part IV, Section I

Article 50 - Precautions in attack (continued)

- (b) an attack shall be cancelled or suspended if it becomes apparent that the objective is not a military one, or that is subject to special protection or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;
 - (c) effective advance warning shall be given of attacks which may affect the civilian population unless circumstances do not permit.
3. When a choice is possible between several military objectives for obtaining a similar military advantage, the objective to be selected shall be that which may be expected to cause the least danger to civilian lives and to civilian objects.
4. In the conduct of armed conflict at sea or in the air, each party to a conflict shall, consistent with its rights and duties under the rules of international law applicable to such armed conflict, take all reasonable precautions to avoid losses in civilian lives and damage to civilian objects.
5. No provision of this article may be construed as authorization for any attacks against the civilian population, civilians, or civilian objects.

Draft Protocol I,
Part IV, Section I

Article 51 - Precautions against the effects of attacks*

The Parties to the conflict shall, to the maximum extent feasible:

1. Without prejudice to article 49 of the Fourth Convention, endeavour to remove the civilian population, individual civilians, and civilian objects under their control from the vicinity of military objectives; and
2. avoid locating military objectives within or near densely populated areas;
3. take the other necessary precautions to protect the civilian population, individual civilians, and civilian objects under their control against the dangers resulting from military operations.

* Adopted by consensus at the thirty-first meeting on 14 March 1975. See paragraphs 101 to 106 of the present report.

Draft Protocol I,
Part IV, Section I

Article 52 - Non-defended localities*

1. It is forbidden for the Parties to a conflict to attack, by any means whatsoever, non-defended localities:
2. The appropriate authorities of a Party to the conflict may declare as a non-defended locality any inhabited place near or in a zone where armed forces are in contact which is open for occupation by an adverse party. Such a locality shall fulfil the following conditions.
 - (a) armed forces and all other combatants, as well as mobile weapons and mobile military equipment must have been evacuated;
 - (b) no hostile use shall be made of fixed military installations or establishments;
 - (c) no acts of warfare shall be committed by the authorities or by the population, and
 - (d) no activities in support of military operations shall be undertaken.
3. The presence, in this locality, of specially protected persons under this Protocol and the Conventions and the presence of police forces retained for the sole purpose of maintaining law and order is not contrary to the conditions in this article.
4. The declaration shall be addressed to the adverse Party and shall define and describe, as precisely as possible, the limits of the non-defended locality. The Party to the conflict to whom the declaration is addressed shall acknowledge its receipt and shall treat the locality as a non-defended locality unless the conditions required by paragraph 2 do not in fact exist, in which event it shall immediately so inform the Party making the declaration. Even when the conditions required by paragraph 2 are not met, the locality shall continue to enjoy the protection provided by the other provisions of this Protocol and the other applicable rules of international law.

* Adopted by consensus at the thirty-first meeting on 14 March 1975. See paragraphs 107 and 108 of the present report.

Draft Protocol I,
Part IV, Section I

Article 52 - Non-defended localities (continued)

5. The Parties to the conflict may agree on the establishment of non-defended localities even if such localities do not meet the requirements of paragraph 2. The agreement should define and describe, as precisely as possible, the limits of the non-defended locality; should the need arise, it may lay down the methods of supervision.

6. The Party in whose power a locality subject to such an agreement lies shall mark it, so far as possible, by such means as may be agreed with the other Party, which shall be displayed where they are clearly visible, especially on its perimeter and its limits and on highways.

7. A locality will lose its status as a non-defended locality if it no longer fulfils the conditions prescribed by paragraph 2 or by the agreement referred to in paragraph 5. If such a situation occurs, the locality shall continue to enjoy the protection provided by the other provisions of this Protocol and the other applicable rules of international law.

Draft Protocol I,
Part IV, Section I

Article 53 - Demilitarized zones*

1. It is forbidden for the Parties to a conflict to extend their military operations to zones on which they have conferred by agreement the status of demilitarized zone if such extension is contrary to the terms of these agreements.
2. This shall be an express agreement, which may be concluded verbally or in writing, either directly or through a Protecting Power or any impartial humanitarian body, and may consist of reciprocal and concordant declarations. The agreement may be concluded in peace time, as well as after the outbreak of hostilities, and should define and describe, as precisely as possible, the limits of the demilitarized zone and, should the need arise, lay down the methods of supervision.
3. The subject of such an agreement shall normally be any zone which fulfils the following conditions.
 - (a) armed forces and all other combatants, as well as mobile weapons and mobile military equipment, must have been evacuated;
 - (b) no hostile use shall be made of fixed military installations or establishments;
 - (c) no acts of warfare shall be committed by the authorities or by the population, and
 - (d) any activity linked to the military effort must have ceased.

The Parties to the conflict shall agree upon the interpretation to be given to the condition prescribed in sub-paragraph (d) and upon persons to be admitted to the demilitarized zone other than those mentioned in paragraph 4.

* Adopted by consensus at the thirty-first meeting on 14 March 1975. See paragraphs 109 to 112 of the present report.

Draft Protocol I,
Part IV, Section I

Article 53 - Demilitarized zones (continued)

4. The presence, in this zone, of specially protected persons under this Protocol and the Conventions and the presence of police forces retained for the sole purpose of maintaining law and order is not contrary to the conditions prescribed in this article.

5. The Party in whose power such a zone lies shall mark it, so far as possible, by such means as may be agreed upon with the other Party, which shall be displayed where they are clearly visible, especially on its perimeter and its limits and on high-ways.

6. If the fighting draws near to a demilitarized zone, and if the Parties to the conflict have so agreed, none of them may use the zone for purposes related to the conduct of military operations or unilaterally repeal its status.

7. If one of the Parties to the conflict commits a material breach of the provisions of paragraphs 3 or 6, the other Party shall be released from the obligations incumbent upon it under the agreement or the treaty conferring upon a zone the status of demilitarized zone. If such a situation occurs, the zone shall lose its status but shall continue to enjoy the protection provided by this Protocol and by other rules of international law.

Draft Protocol II,
Part V, Chapter I

Article 24 - Basic rules*

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

2. Constant care shall be taken, when conducting military operations, to spare the civilian population, civilians and civilian objects. This rule shall, in particular, apply to the planning, deciding or launching of an attack.

* Paragraph 1 was adopted by consensus at the thirty-seventh meeting on 4 April 1975. Paragraph 2 was adopted by 50 votes to one with 11 abstentions at the same meeting. At the same meeting article 24 as a whole was adopted by consensus. See paragraphs 113 to 120 of the present report.

Draft Protocol II,
Part V, Chapter I

Article 25 - Definition*

1. A civilian is anyone who is not a member of the armed forces or of an organized armed group.
2. The civilian population comprises all persons who are civilians.
3. The presence, within the civilian population, of individuals who do not fall within the definition of civilians does not deprive the population of its civilian character.
4. In case of doubt as to whether a person is a civilian, he or she shall be considered to be a civilian.

* Adopted by consensus at the thirty-seventh meeting on 4 April 1975. See paragraph 121 of the present report.

Draft Protocol II,
Part V, Chapter I

Article 26 - Protection of the civilian population*

The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances:

1. The civilian population as such, as well as individual civilians, shall not be made the object of attack. Acts or threats of violence which have the primary object of spreading terror among the civilian population are prohibited.
2. Civilians shall enjoy the protection afforded by this Chapter of the Protocol unless and for such time as they take a direct part in hostilities.
3. The employment of means of combat, and any methods which strike or affect indiscriminately the civilian population and combatants, or civilian objects and military objectives are prohibited.

An attack by bombardment by any methods or means which treats as a single military objective a number of clearly separate and distinct military objectives located in a city, town, village, or other area containing a concentration of civilians or civilian objects is to be considered as indiscriminate.

(4.)**

5. The Parties to the conflict shall not use the civilian population or civilians in attempts to shield military objectives from attacks.

* Adopted by 44 votes to none with 22 abstentions at the thirty-seventh meeting on 4 April 1975. See paragraphs 122 to 130 of the present report.

** Final decision on this paragraph must await decision on the problem of reprisals in general in draft Protocols I and II.

Draft Protocol II,
Part V, Chapter I

Article 26 bis - General protection of civilian objects*

Civilian objects shall not be made the object of attack /or of reprisals/. Attacks shall be strictly limited to those objects which by their own nature, location, purpose, or use make an effective contribution to the armed action of the parties to the conflict.

* Adopted by 35 votes to 8, with 27 abstentions at the thirty-seventh meeting on 4 April 1975. See paragraphs 131 to 134 of the present report.

** A decision on the bracketed words depends on the outcome of the deliberations on the handling of reprisals in draft Protocols I and II.

Draft Protocol II,
Part V, Chapter I

Article 28 - Protection of works and installations
containing dangerous forces*

1. Works or installations containing dangerous forces, namely dams, dykes, and nuclear electrical generating stations, shall not be made the object of attack, even where these objects are military objectives, when such attack may cause the release of dangerous forces and consequent severe losses among the civilian population.

2. The Parties to a conflict shall endeavour to avoid locating any military objectives in the vicinity of the works or installations mentioned in paragraph 1. Nevertheless, an armed guard may be placed over such works or installations without prejudice to the protected status that they enjoy under paragraph 1.

(3.):**

4. In order to facilitate their identification, parties to a conflict may mark the objects protected by this article with a special sign consisting of . . . ***. Absence of such markings in no way relieves any party to a conflict from its obligations under this article.

* Adopted by 43 votes no none with 21 abstentions at the thirty-seventh meeting on 4 April 1975. See paragraphs 135 to 143 of the present report.

** Final decision on this paragraph is to await solution of the problem of reprisals in general in Protocols I and II.

*** To be determined.

Draft Protocol II,
Part V, Chapter I

Article 28 bis* - Protection of the natural environment**

It is forbidden to employ methods or means of combat which are intended or may be expected to cause widespread, long-term, and severe damage to the natural environment.

* This article is referred to as article 28 bis for ease of reference only. If adopted, it should be inserted as a paragraph of article 20.

** Adopted by 49 votes to 4 with 7 abstentions at the thirty-eighth meeting on 10 April 1975. See paragraphs 144 to 146 of the present report.

Draft Protocol II,
Part V, Chapter I

Article 29 - Prohibition of forced movement of civilians*

1. The displacement of the civilian population shall not be ordered by a Party to the conflict for reasons relating to that conflict unless the security of the civilians involved or imperative military reasons so demand. Should a Party to the conflict undertake such displacements, they shall take all possible measures in order that the civilian population be received under satisfactory conditions of hygiene, health, safety and nutrition.

2. Civilians shall not be compelled to leave their own territory for reasons connected with the conflict except in cases in which individuals finally convicted of crimes are required to leave that territory or having been offered the opportunity of leaving the territory, elect to do so, or individuals are extradited in conformity with law.

(3.)**

* Adopted by 40 votes to none, with 28 abstentions at the thirty-seventh meeting on 10 April 1975. See paragraphs 147 to 153 of the present report.

** Final decision on this paragraph must await decision on the problem of reprisals in general in Protocols I and II.

REPORT TO COMMITTEE III
ON THE WORK OF THE WORKING GROUP

Submitted by the Rapporteur

The Working Group held a series of 16 meetings, during the period January 31 - February 21, 1975. It completed its work on Article 44, paragraph 1, Article 46, Article 47, and Article 47 bis. These articles were thoroughly discussed by the Working Group, and, even though there are some points on which consensus could not be obtained, it is reasonable to expect that the necessary decisions can be taken and the articles adopted by Committee III without extensive further debate. This report will attempt to explain some of the problems encountered and to present clearly the issues remaining for decision. To the extent that it fails in that task, the fault rests with the Rapporteur; time did not permit consideration of this report by the Working Group, so it should be understood as simply the report of the Rapporteur on the work of the group.

Article 44(1)

Broad agreement was reached on the following text:

"1. The provisions contained in the present Section shall apply to any land, air, or sea warfare which may affect the civilian population, individual civilians, or civilian objects on land. They shall further apply to all attacks from the sea or the air against objectives on land but do not otherwise affect the existing generally recognized rules of international law applicable to armed conflict at sea or in the air."

Discussions in the Working Group showed almost complete agreement that it would be both difficult and undesirable in the time available to try to review and revise the laws applicable to armed conflict at sea and in the air. Moreover, it was clear that we should be careful not to revise that body of law inadvertently through this article. The solution was found by combining the ICRC text with a sentence which stated clearly that, except for attacks against objectives on land, the law applicable to armed conflict at sea or in the air is unaffected.

During the search for agreement on this Article in the Working Group, the Rapporteur proposed for consideration an additional paragraph to Article 50 (CDDH/III/GT/DT/7), the essence of which was that, in the conduct of armed conflict at sea or in the air which was beyond the scope of this Section, each Party to the conflict would be obligated, consistent with its rights and duties under the law applicable to such armed conflict, to take all reasonable precautions to avoid harm to civilians and civilian objects. This proposal was received with interest but will not be examined in detail until the Working Group reaches Article 50.

Several delegates wish it recorded here that they remain dissatisfied with this draft. They object to the phrase "on land" in the first sentence and to the second sentence as a whole. These delegates would prefer to have this Section of the Protocol affect the law applicable to the conduct of warfare at sea or in the air to the extent that the provisions of this Section would be more favourable to civilians than the existing law.

The Rapporteur recommends that the Commission adopt the text quoted above for Article 44, paragraph 1.

Article 46

With a few exceptions as shown by the bracketed provisions, broad agreement was reached on the following text:

"The civilian population and individual civilians shall enjoy general protection against dangers arising from military operations. To give effect to this protection, the following rules, in addition to other applicable rules of international law, shall be observed in all circumstances:

1. The civilian population as such, as well as individual civilians, shall not be made the object of attack. Acts or threats of violence which have the primary object of spreading terror among the civilian population are prohibited.

2. Civilians shall enjoy the protection afforded by this Section of the Protocol unless and for such time as they take a direct part in hostilities.
3. Indiscriminate attacks are prohibited. Indiscriminate attacks are those which are not directed at a specific military objective or which employ methods or means of combat of a nature to strike military objectives and civilians or civilian objects without distinction. Among others, the following types of attacks are prohibited as indiscriminate:
 - (a) An attack by any means of bombardment which treats as a single military objective a number of /widely separated/ /distinct/ military objectives located in a city, town, village, or other area containing a concentration of civilians or civilian objects /unless the objectives are too close together to be capable of being attacked separately/.
 - (b) An attack directed against a military objective which, because of the methods or means of combat chosen or for any other reason, may be expected to cause incidental losses or injury among the civilian population or losses or damage to civilian objects or a combination of both to an extent disproportionate to the direct or substantial military advantage anticipated. This prohibition is without prejudice to other prohibitions on attacks, in particular those prohibiting attacks against civilians and civilian objects, as mentioned in paragraph 1 above.
4. Attacks against the civilian population or civilians by way of reprisals are prohibited.
5. The presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks, or to shield, favour or impede military operations. Parties to a conflict also shall not direct the movement of the civilian population or individual civilians in attempts to shield military objectives from attack or to shield military operations.
6. Any violations of these prohibitions shall not release the Parties to the conflict from their legal obligations with respect to those civilians, including the precautionary measures provided for in the Article 50."

From the prolonged discussion of this Article in the Working Group the Rapporteur believes it useful to note here only a few of the many problems that arose. In the introductory paragraph, several delegates questioned the phrase, "To give effect to this protection". It was pointed out that there were also other rules in this Protocol and in other

there were also other rules in this Protocol and in other instruments which helped give effect to the protection and that the phrase might conceivably import a limitation of the protections to military operations. In the end, however, it was decided that the sentence is satisfactory because it states clearly that there are other applicable rules of law and that these rules must be observed in all circumstances and in all types of operations, by regular and irregular forces alike, during the course of an armed conflict.

Several delegations expressed a wish to have it noted in the record that they understand the word "hostilities" in paragraph 2 as including preparations for combat and return from combat. The Rapporteur notes that words like "hostilities" and "military operations" will be among those which should engage the close attention of the Drafting Committee at a later stage of the Conference to ensure consistency of use among articles and maximum clarity of meaning.

With respect to subparagraph 3(a) there was considerable discussion of the meaning of the term "bombardment". The Rapporteur understands that the phrase chosen, "any means of bombardment", was intended to cover all attacks by fire, except for direct fire by small arms, and the use of any type of projectile.

The bracketed phrases in subparagraph 3(a) represent two basic alternatives. Some delegates object to the phrase "unless the objectives are too close together to be capable of being attacked separately". They believed that the inclusion of this phrase would tend to encourage area attacks, because only the attacking forces could decide whether, with the weapons available and in the circumstances, individual targets were too close together to be capable of being attacked separately. There was, however, no intent to immunize such targets. Many of those delegates also preferred the word "distinct" to the phrase "widely separated". Other delegates could accept the deletion of the final phrase only if the phrase "widely separated" were adopted. The Rapporteur doubts that consensus can be reached on any basis that includes the final phrase of the subparagraph, and suggests that efforts be continued in the Commission to obtain broad support for the phrase "widely separated", or a similar phrase.

Subparagraph 3(b) is in brackets because a number of delegates were not prepared to accept it in advance of the consideration and adoption of a text for Article 50, which contains a similar paragraph. The Rapporteur believes it was the general feeling of most delegates that a text for Article 46(3)(b) would be much easier to agree upon if discussed together with Article 50. The prohibition of attacks which may be expected to cause disproportionate civilian losses is of such significance for the protection of the civilian population and the responsible

development of the law that the Rapporteur recommends that the text of this subparagraph not be voted on now but rather be put aside until Article 50 is considered by the Working Group and broad agreement can hopefully be reached on texts of the rule for both Articles.

With respect to paragraph 4 of this Article, several delegations asked to have it recorded that they would have preferred wording that prohibited reprisals, rather than attacks by way of reprisals. In this connection, the Rapporteur notes that reprisals by belligerent occupants are dealt with elsewhere.

Article 47

With the exception of the two phrases shown in brackets, the Working Group reached very broad agreement on the following text:

"1. Civilian objects shall not be the object of attack /nor of reprisals/. Civilian objects are all objects which are not military objectives, as defined in paragraph 2.

2. Attacks shall be strictly limited to military objectives. In so far as objects are concerned, military objectives are limited to those objects which by their own nature, location, purpose, or use make an effective contribution to military action and whose total or partial destruction, capture or neutralisation in the circumstances ruling at the time, offers a definite military advantage.

3. In case of doubt whether an object which is normally dedicated to civilian purposes, such as a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used /except in contact zones where the security of the armed forces requires a derogation from this presumption/."

The question of reprisals produced a sharp split among the delegates. Some delegates argued that the prohibition of reprisals against civilians contained in Article 46, paragraph 4 should be extended in Article 47 to cover all civilian objects. Other delegates argued that, whereas prohibitions of reprisals against specially protected civilian objects, such as are found in Articles 47(bis), 48, and 49 are acceptable, ordinary civilian objects should not be immune to reprisals. These delegates expressed the view that, if any reprisals were to be permitted, reprisals against ordinary civilian objects should be permitted, and they asserted the importance of retaining at least a limited right of reprisal as a means of enhancing compliance with the law.

The Rapporteur suggests that the Commission not adopt the phrase "nor of reprisals" in paragraph 1. More fundamentally, however, the Rapporteur believes that the whole question of the scope of permitted reprisals - which

will also be considered by Commission I - be the subject of a special study by a small group (perhaps open to participation by all delegations) drawn from both Commissions I and III. The Rapporteur suggests consultations between the chairmen of the two commissions for the purpose of establishing such a small study group.

In paragraph 2 of Article 47, extensive discussion was required before agreement was reached on the word "definite" in the phrase "definite military advantage". Among the words considered and rejected were "distinct", "direct", "clear", "immediate", "obvious", "specific", and "substantial". The Rapporteur is unable to draw any clear significance from this choice.

In paragraph 3 the bracketed phrase which would provide an exception to the normal presumption of civilian use for objects in contact zones, was defended on the grounds that infantry soldiers could not be expected to place their lives in great risk because of such a presumption and that, in fact, civilian buildings which happen to be in the front lines usually are used as part of the defensive works. The phrase was criticized by other delegates on the ground that it would unduly endanger civilian objects to permit any exceptions to the presumption.

The Rapporteur recommends adoption of the phrase in brackets. The presumption created by this paragraph will be a significant new addition to the law, and it is of the greatest importance that it be respected in practice. It would be unfortunate to draft the provision so that it requires something we know in advance is unlikely to be lived up to.

Finally, it should be noted that several delegations proposed to include in this Article, as well as in Articles 46 and 47(bis), provisions forbidding pillage of those objects and their unconsented removal from the territory of the State in which they are found. Ultimately, it was agreed that these ideas could most usefully be considered in the context of Articles 65 and 66 concerning protections of persons and objects in the power of a party to the conflict. The Rapporteur recommends that this suggestion be transmitted by the Chairman of Commission III to the Chairman of Commission I and that the interested delegations be encouraged to submit appropriate amendments to Articles 65 or 66.

Article 47(bis) - Protection of Cultural Objects and of Places of Worship.

The Working Group believed that this subject deserved to be dealt with in a separate article, rather than simply in a paragraph of Article 47. Aside from one substantive disagreement, which is shown by the bracketed alternative phrases in paragraph (a), broad agreement was reached on the following text:

"Without prejudice to the provisions of the Hague Convention on the Protection of Cultural Property of 14 May 1954, and other relevant international instruments, it is forbidden:

- (a) to commit any acts of hostility directed against /historic monuments, places of worship, or works of art/ /places of worship, and those historic monuments or works of art/ which constitute the cultural heritage of peoples;
- (b) to use such historic monuments or places of worship in support of the military effort; and
- (c) to make such objects the object of reprisals.

The alternatives represent a split between those delegates who wished to extend the special protection of this Article to all places of worship and those who wished to limit the special protection to such places of worship as constitute part of the cultural heritage of peoples, in the words of the Hague Convention of 1954. Those who wish to include all places of worship adduced both religious reasons and traditions of immunity and asylum to support their proposal. Those who wished to limit the objects protected by this Article to objects of considerable historical, cultural, and artistic importance argued that the immunity of these latter objects would inevitably be undermined if all local churches and other places of worship were included. They pointed out that such churches frequently had been utilized in the past for military purposes when they became part of the front lines, and that they could not be immunized from hostile action in such circumstances.

The Rapporteur recommends that, in the interest of stronger protection for the priceless cultural monuments of mankind, the special protection of this Article be limited to "historic monuments, places of worship, and works of art which constitute the cultural heritage of peoples".

In summary, the Rapporteur recommends the adoption of Articles 44(1), 46, 47, and 47(bis), with the exception of subparagraph 3(b) of Article 46, action on which should be deferred until the text of Article 50 is ready for adoption.

MIXED GROUP REPORT

MARCH 1975

The Chairman, Committee II
The Chairman, Committee III

Sirs,

1. At your joint request, a mixed working group from members of Committee II and Committee III consisting of:

<u>Chairman:</u>	Mr. E. Rosenblad, Sweden	(Committee II)
<u>Members:</u>	Mr. S. Modisi, Botswana	"
	Mr. V. N. Denisov, Ukraine SSR	"
	Comdt. S. F. Agudo Lopez, Spain	(Committee III)
	Brig. L. A. Kermose, <u>Rapporteur</u> , New Zealand	"
	Brig. El Misbah El Sadig, Sudan	"
	Col. D. T. Starling, Brazil	"

(in attendance Mr. F. de Mulinen, ICRC),

met during the period 24 February to 13 March 1975 with the aim of recommending:

- (a) terms that should be used to cover the various military situations that are envisaged in some of the articles contained in the Draft Additional Protocols I and II to the Geneva Conventions of 12 August 1949; and
- (b) definitions of the terms recommended.

2. As Chairman of this Group I have much pleasure in submitting our report.

3. The terms recommended, together with their definitions, are attached as Annex A. For your convenience it is produced in English, French, Russian and Spanish.

4. At the beginning of its deliberations the Group decided to try:

- (a) to keep the number of terms to be recommended to the minimum possible;
- (b) to recommend only terms that, as far as possible, could be understood and accepted by both civilians and military persons and could be translated with the minimum difficulty and ambiguity into the various languages to be used for the Protocols;
- (c) to avoid special military terms wherever possible, and to use the language of the Protocols.

5. In arriving at its recommendations this Group

First; agreed upon a diagrammatic display of a classical ground forces disposition. This was done so that all members could agree as to what area was being referred to. (Copy is attached as Annex B).

Second; made a comprehensive list of the various terms that had so far been used when drafting the Articles of Protocols I and II. (Copy is attached as Annex C).

6. Amongst the military members of the Group it was generally agreed that the total area in any armed conflict over which military activity extends, can conveniently be divided into three distinct zones or areas, namely:

- (a) the total area of the conflict, which includes the area of all military or para-military units taking a direct or even indirect part in the conflict;
- (b) that area of a conflict where fighting on any scale is taking place;
- (c) that limited area of the fighting where the opposing forces are in direct, and at times physical, contact with each other.

7. Once the terms and the definitions covering these three zones or areas were agreed upon by this Group, the instances where military situations had been envisaged in the articles (see Annex C) were examined to see if the terms recommended would be appropriate. They were found to be so.

8. The Group did not deem it appropriate to suggest where in the articles, each one of the terms recommended should be employed. This choice, it believed, should be made by Committees II or III because they would be the best judges of what military situation was referred to in the articles it would be debating.

9. The term "Combat Area" would seem to cover most situations, but the other terms are also submitted since this Group, when it examined the relevant articles of the Draft Protocols, could foresee situations where these terms might be required.

10. The terms "at sea", "on land", or "in the air", have been avoided in the definitions, because this Group believes that the substance of each individual article will clarify this aspect.

11. The terms recommended, together with their definitions (see Annex A), are proposed for the purposes of Protocols I and II only.

(Signed) Esbjörn Rosenblad

Annex A to Mixed Group Report of March 1975

For the purposes of Protocols I and II the following terms are recommended:

Zone of Military Operations means, in an armed conflict, the territory where the armed forces of the adverse Parties taking a direct or an indirect part in current military operations, are located.

Combat Area means, in an armed conflict, that area where the armed forces of the adverse Parties actually engaged in combat, and those directly supporting them, are located.

Contact Area means, in an armed conflict, that area where the most forward elements of the armed forces of the adverse Parties are in contact with each other.

Annexe A à un Rapport d'un Groupe Mixte mars 1975

Aux fins des Protocoles I et II les termes suivants sont recommandés :

Zone de combat - Dans un conflit armé, cette expression désigne la zone où les forces armées des parties adverses réellement engagées dans le combat, et où sont situées celles qui les soutiennent directement.

Zone de contact - Dans un conflit armé, cette expression désigne les zones où les éléments les plus avancés des forces armées des parties adverses sont au contact les uns des autres.

Zone des opérations militaires - Dans un conflit armé, cette expression signifie le territoire où se trouvent les forces armées qui participent directement ou indirectement aux opérations militaires en cours.

Приложение А к докладу смешанной
группы, март 1975 г.

Для целей Протоколов I и II рекомендуются следующие термины:

Зона военных операций означает в вооруженном конфликте территорию, где располагаются вооруженные силы враждебных сторон, принимающие прямое или косвенное участие в проводимых военных операциях.

Район боевых действий означает в вооруженном конфликте район, в котором располагаются вооруженные силы враждебных сторон, фактически участвующие в боевых действиях, и тыловые части, непосредственно их обеспечивающие.

Район соприкосновения означает в вооруженном конфликте район, в котором наиболее передовые части вооруженных сил враждебных сторон находятся в соприкосновении друг с другом.

Anexo A al Informe del Grupo Mixto, marzo, 1975

Para los fines de los Protocolos I y II, se recomiendan los términos siguientes:

Zona de operaciones militares

Significa, en un conflicto armado, el territorio donde están ubicadas las fuerzas armadas que toman parte directa o indirecta en las operaciones militares en curso.

Area de combates

Significa, en un conflicto armado, aquella área donde están ubicadas las fuerzas armadas de las partes adversarias empeñadas realmente en combate.

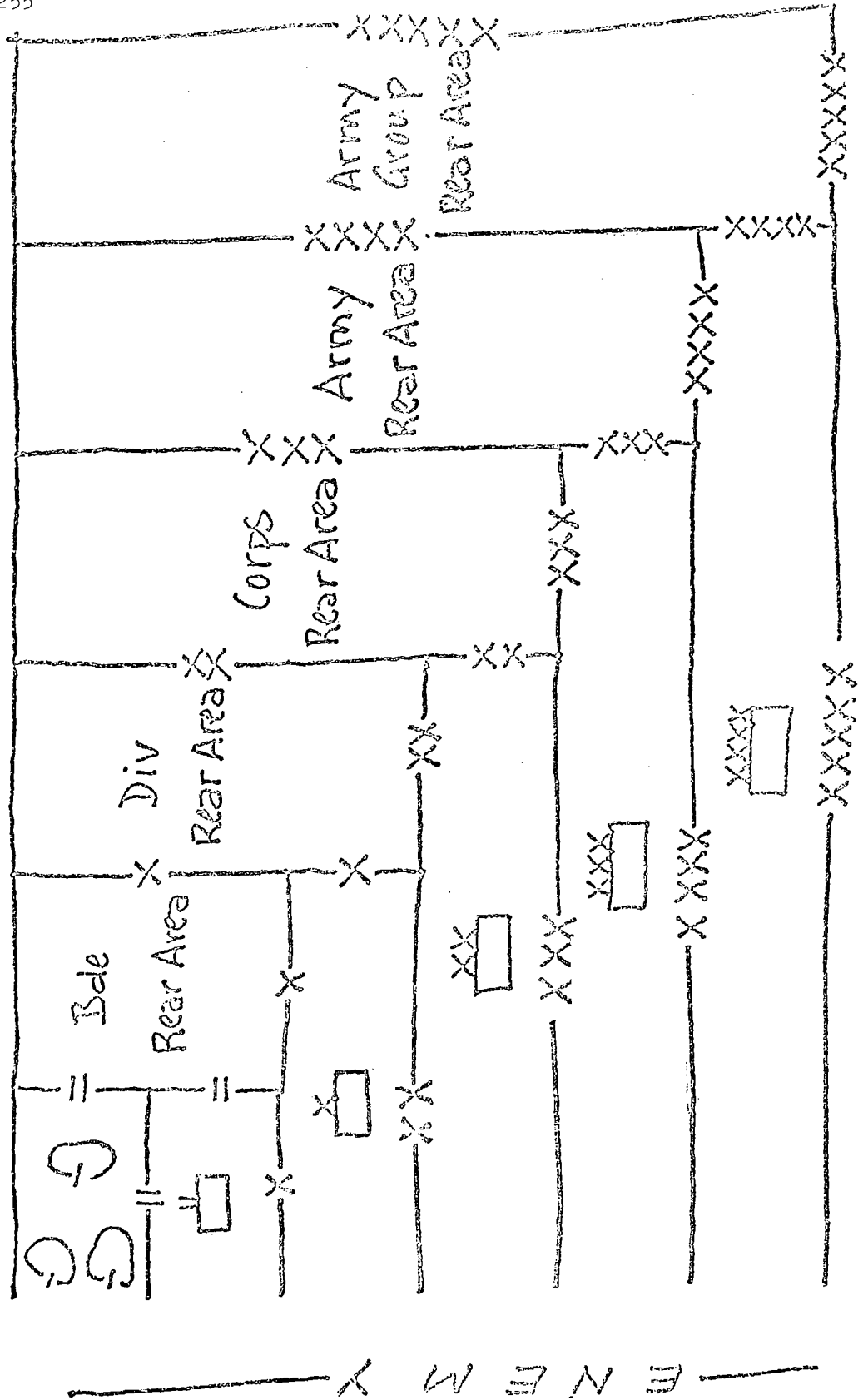
Area de contacto

Significa, en un conflicto armado, aquella área donde los elementos más avanzados de las fuerzas de las partes adversarias están en contacto entre sí.

Annex B to Mixed Group Report of March 1975

DIAGRAMATIC DISPLAY OF

ARMED FORCES ORGANIZATION ON LAND



Annex C to Mixed Group Report of March, 1975

TERMS USED IN THE GENEVA CONVENTIONS OF 1949 AND THE
DRAFT ADDITIONAL PROTOCOLS I AND II

- C III/47/2 If the combat zone (le front - la linea de fuego) draws closer to a camp, the prisoners of war in the said camp
- C IV/127/4 If the combat zone (le front - la linea de combate) draws close to a place of internment,
- C III/23/1 No prisoner of war at any time be sent to, or detained in areas where he may be exposed to the fire of the combat zone, (zone de combat - al fuego de la zona de combate) nor may his presence be used to render certain points or areas immune from military operations.
- C III/19/1 Prisoners of war shall be evacuated as soon as possible after their capture, to camps situated in an area far enough from the combat zone (zone de combat - la zona de combate) for them to be out of danger.
- P I/15/3 All possible help shall be afforded medical personnel in the combat zone. (zone de combat - la zona de combate)
- P II/8/3 d places of internment and detention shall not be set up close to the combat zone (zone de combat - zona de combate)
- P II/13/2 Whenever circumstances permit, local arrangements shall be concluded by the parties to the conflict for the removal of the wounded and the sick from the combat zone (zone de combat - zona de combate) or from a besieged or encircled area.
- P II/32/2 c (The parties to the conflict shall) take measures, if necessary and with the consent of their parents or persons responsible for their care, to remove children from the area of combat (zone de combat - zona de combate)
- C IV/20/2 In occupied territory and in zones of military operations, (zones d'opérations militaires - zonas de operaciones militares) the above personnel (hospital staff) shall be recognisable by means of an identity card
- C IV/28 The presence of a protected person may not be used to render certain points or areas immune from military operations. (régions à l'abri des opérations militaires o regiones al abrigo operaciones militares)

- P I/55/1 In zones of military operations (zones d'operations militaires - zonas de operaciones militares), the civilian bodies which are established or recognized by their governments and are assigned to the discharge of the tasks mentioned in Article 54 shall be respected and protected.
.....
- C IV/49/5 The Occupying Power shall not detain protected persons in an area particularly exposed to the dangers of war (région particulièrement exposée aux dangers de la guerre - regiones singularmente expuestas a peligros de guerra) unless the security of the population or imperative military reasons so demand.
- C IV/83/1 The Detaining Power shall not set up places of internment in areas particularly exposed to the dangers of war. (régions particulièrement exposées aux dangers de la guerre - regiones particularmente expuestas a los peligros de la guerra)
- C IV/38/1/4 (The non repatriated protected persons :) if they reside in an area particularly exposed to the dangers of war, (région particulièrement exposée aux dangers de la guerre - regiones particularmente expuestas a peligros de la guerra) they shall be authorized to move from that area to the same extent as the nationals of the State concerned.
- C IV/15/1 Any Party to the conflict may, either direct or through a neutral State or some humanitarian organization, propose to the adverse Party to establish, in the regions where fighting is taking place, (les régions où ont lieu les combats - regiones donde tengan lugar los combates) neutralized zones intended to shelter from the effects of war the following persons,
- C III/19/3 Prisoners of war shall not be unnecessarily exposed to danger while awaiting evacuation from a fighting zone. (zone de combat - zona de combate)
- P I/27/1 In any parts of a land or sea contact zone effectively controlled by national or allied troops, (zone de contact effectivement contrôlée - zona de contacto efectivamente controlados) and in those areas the control of which is not clearly established, the only guarantee of protection for medical aircraft is an agreement reached between the local military authorities of the Parties to the conflict. No particular form of such agreement is prescribed.

- P I/52/2 the Parties to the conflict may declare as a non-defended locality any inhabited place near or in a zone where armed forces are in contact. (zone où les forces armées sont en contact - zona donde las fuerzas armadas están en contacto) Armed forces and all other combatants, as well as mobile weapons and mobile military equipment, must have been evacuated from that locality ; no hostile use shall be made of fixed military installations or establishments ; no acts of warfare shall be committed by the authorities or the population.
- P I/53/3 (Neutralized localities) the subject of such an agreement may be any inhabited place situated outside a zone where armed forces are in contact. (zone où les forces armées sont en contact - zona donde las fuerzas armadas están en contacto) Armed forces and all other combatants, as well as mobile weapons and mobile military equipment, must have been evacuated from that locality ; no hostile use shall be made of fixed military installations or establishments ; no acts of warfare shall be committed by the authorities or the population ; any activity linked to the military effort must have ceased.
- C III/19/2 Only those prisoners of war who, owing to wounds or sickness, would run greater risks by being evacuated than by remaining where they are, may be temporarily kept back in a danger zone. (zone dangereuse - zona peligrosa)
- P I/Ann./
6/2 As far as possible, medical personnel removing casualties from the battle area (champ de bataille - campo de batalla) shall wear headgear and clothing bearing distinctive emblems.
- P I/26 Subject to Article 27, the medical aircraft of a Party to the conflict may fly over areas of land or sea controlled by itself or by its allies, (secteurs qu'elle ou ses alliés contrôlent - sectores controlados por dicha Parte o por sus aliados) without the prior agreement of the adverse Party. However, for greater safety, a Party to the conflict so using its medical aircraft may inform the adverse Party or its allies of such flights.

Geneva, 3 February - 18 April 1975

Draft Protocol I, Part IV,
Section I, Articles 46(3) and 48 to 53

REPORT TO COMMITTEE III
ON THE WORK OF THE WORKING GROUP
SUBMITTED BY THE RAPPORTEUR

Articles 46(3) and 48 to 53

The Working Group held a series of meetings during the period February 24 - March 13, 1975. It completed its work on article 46, paragraph 3 and articles 48-53, with the exception of article 48 bis concerning the environment. Although there remain a few differences which the Committee should decide, a very large measure of agreement was reached on these articles. As was the case with the previous report by the Rapporteur, CDDH/III/224, dated February 24, 1975, this report has not been approved by the Working Group and should be understood simply as the report of the Rapporteur on the work of the group.

Article 46(3)

The Working Group agreed to submit to the Committee the text set forth in document CDDH/III/246, dated 14 March 1975. This paragraph, which was discussed in the previous report of the Rapporteur, document CDDH/III/224, dated 24 February 1975, was one of the most difficult for the Working Group to work out. Sub-paragraph (a) was formulated along the lines foreseen by the Rapporteur in his previous report.

Sub-paragraph (a) prohibits all types of bombardment, by whatever means or methods, which treat as a single military objective a number of objectives separated by some distance which are located in an area where there is a concentration of civilians. Thus, after deliberation, the Working Group considered it unnecessary to refer to "massive" bombardment, "target area" bombardment, or "carpet bombing", since all are covered by this prohibition, and use of such expressions might be construed to restrict the protection of civilians from other types of bombardment.

Sub-paragraph (b) was drafted only after article 50 had been settled, since both involved the same issue. A simple cross reference, rather than repetition, commended itself to the Working Group, although it was recognized that the Drafting Committee would ultimately have to decide whether to use a cross reference or the full text and, if the former, whether the text should appear in article 46(3) or in article 50.

The introductory sub-paragraph of paragraph 3 proved surprisingly troublesome. The main problem was that of defining the term "indiscriminate attacks". There was general agreement that a proper definition would include the act of not directing an attack at a military objective and both the use of means or methods of combat which cannot be directed at a specific military objective and those the effects of which cannot be limited as required by the Protocol. Formulation of the text proved, however, a stubborn task.

Article 48

The Working Group approved for transmission to the Third Committee the text contained in document CDDH/III/247, dated 14 March 1975. The Rapporteur believes that this text, which was accepted only after prolonged discussion and considerable amendment, could profit more than most of the articles sent to the Committee by refinement and polishing by a drafting committee. The following comments may assist any such committee in the future.

Paragraph 1 was accepted after considerable discussion as a useful statement of the basic principle from which the rest of the article flows. This principle should be an important addition to the law protecting civilians. Some concern was expressed about the scope of the principle, but the Rapporteur believes that the scope will be defined by the remainder of the article and by the other relevant articles in the Protocol,

particularly those dealing with relief actions. That the paragraph does not change the law of naval blockade is made clear by Article 44, paragraph 1.

In paragraph 2, drafting problems were posed by the fact that two of the objects listed, food producing areas and irrigation works, are useful to combatants only for purposes other than directly for sustenance. Thus, the phrase in paragraph 2 "for the purpose of denying them as such" was designed to cover both the denial of food and drink as sustenance and the denial of food producing areas and irrigation works for their contribution to the production of sustenance. On the other hand, it was not intended to cover their denial to the enemy for other purposes, including the general purpose of preventing the enemy from advancing. Thus, bombarding an area to prevent the advance through it of an enemy is permissible, whether or not the area produces food, but the deliberate destruction of food producing areas in order to prevent the enemy from growing food on them is forbidden. Similarly, cutting down a field of crops in order to clear a field of fire or to prevent the enemy from using it for cover is permissible, but cutting it down to prevent the enemy from consuming the crops is forbidden. This is a heavy burden of meaning to be carried by the two words "as such", and it is to be hoped that the drafting Committee will ultimately find a clearer form of words.

Another confusion in paragraph 2 is caused by the interplay of purpose and motive. The only attack, destruction, etc., that is prohibited by this paragraph is that which is done for the purpose of denying the objects to the adverse party or to the civilian population. In principle that is fairly clear, but the sentence does not read easily, because that statement is followed by the words "whatever the motive that produced that purpose, whether to starve out civilians, to cause them to move away, or any other motive". There seems to be surplussage here, but the Working Group was unable to come to an agreement on how to simplify it. The Rapporteur hopes the drafting Committee will have better luck.

The phrasing of paragraph 3 is only slightly more satisfying than that of paragraph 2. Here the drafter continues to be plagued by the necessity of distinguishing between uses of the objects as sustenance and other uses. The Rapporteur understands 3(a) to mean only those objects which clearly are assigned solely for the sustenance of the armed forces. The Rapporteur points out that the "civilian population" referred to in 3(b) was clearly not intended to mean the civilian population of a country as a whole, but rather of an immediate area, although the Working Group made no attempt to define how large an area that might be.

Finally, article 48 raised the question whether the prohibitions in paragraph 2 other than that on attack (which by definition is against the adversary) apply to acts by a State against objects under its control and within its own national territory. A number of representatives expressed the view that it was not intended to have such an effect and that an express reservation of rights within one's own territory was unnecessary. At the suggestion of the Rapporteur, it was agreed to review subsequently the extent to which the provisions of this Section were intended to have such an effect within a State's own territory and reflect the conclusions of the Group in some appropriate way in the text. It is apparent that some provisions for example article 46(5) on movement of civilians to shield military operations, are intended to apply to a State within its own territory. The Working Group has not yet made this review.

Article 49

The Working Group approved for transmission to the Committee the text contained in document CDDH/III/248 dated March 14, 1975. The Working Group found article 49 a difficult task. It was only when a decision was taken to limit the special protection of the article to dams, dykes, nuclear power stations, and other military objectives in the vicinity of these objects that it was possible to produce a generally acceptable text. That limitation made it possible to be more specific in describing the circumstances in which the special protection was lost, which had been the most difficult part of the drafting task. In the end, there remained certain elements of disagreement, shown by bracketed provisions, on which the decisions by the Committee will be required.

The Rapporteur wishes to emphasize that article 49 provides a special protection to these objects and objectives which, although important, is only one of a number of layers of protection. First, if a dam, dyke, or nuclear power station does not qualify as a legitimate military objective under article 47, it is a civilian object and cannot be attacked. Second, if it does qualify as a military objective or if it has military objectives in its vicinity, it receives special protection under this article. Third, if, pursuant to the terms of this article, it may be attacked or a military objective in its vicinity may be attacked, such attack is still subject to all the other relevant rules of this Protocol and general international law; in particular, the dam, dyke, or nuclear power plant or other military objective could not be attacked if such attack would be likely to cause civilian losses excessive in relation to the anticipated military advantage, as provided in article 50. In the case of a dam or dyke, for example, where a great many people would be killed and much damage done by its destruction, immunity would exist unless the military reasons for destruction in a particular case were of an extraordinarily vital sort.

The brackets in paragraph 1 present two issues for decision. One is whether these objects should enjoy the special protection of this article against all attacks or only against those which would be likely to cause the release of the dangerous forces and consequent grave or severe losses among the civilian population. Assuming that the object in question becomes a military objective, the Rapporteur cannot see why it should be immune from attacks of a kind not likely to release the dangerous forces (which would presumably include infantry assaults), but complete agreement was not possible on this question, so it is referred to the Committee. The other issue is the choice between the phrase "would be likely to" and the word "may".

Paragraph 2 provides that the special protection accorded to a dam or dyke by paragraph 1 ceases only "if it is used for other than its normal function" and in support of military operations. This phrase, "normal function" may be less clear than is desirable, and perhaps a drafting committee may be able to find a better term. The Rapporteur understands the term to mean the function of holding back, or being ready to hold back, water. Thus, if a dam or dyke is used for no purpose, other than holding back water or being ready to hold back water, e.g., it is not made part of a fortified line or used as a road, the immunity from attack provided in paragraph 1 cannot be lost. Even if it is used for a function in addition to its normal function, the immunity is not lost unless it is used in "regular", significant, and direct support of military operations and if the only feasible way to terminate the support is by attack on the dam or dyke.

Additionally, it must always be recognized that an attack is not justified unless the military reasons for the destruction in a particular case are of such extraordinary and vital interest as to outweigh the severe losses which may be anticipated. Nevertheless, it should be noted that some representatives remain concerned about the problems that may arise from the use of dykes for roadways.

The Rapporteur wants to point out that the use of water stored by a dam for hydro-electric generating facilities cannot justify making the dam itself an object of attack, but the generating facilities could become "other military objectives located at or in the vicinity of these works or installations". If such a generating facility does become a military objective, it may not be attacked unless it is "used in regular, significant, and direct support of military operations" and, even then, only if "such attack is the only feasible way to terminate such support." Certainly, the greater the distance between hydro-electric generating facilities and the dam, the less risk there would be of collateral damage to the dam, in the event the hydro-electric generating facility were used for military purposes, in such a way as to become a legitimate military objective.

The Rapporteur also wishes to draw to the attention of the Committee the fact that the standard used in paragraph 2, "regular, significant, and direct support of military operations" is a higher standard than is used in article 47, i.e., "effective contribution to military action". Without trying to define the phrase in article 49, it seems clear that production of arms, ammunition, and military equipment would qualify as direct support of military operations, but the production of civilian goods which may also be used by the armed forces probably would not qualify in the absence of most unusual circumstances.

In the view of the Rapporteur, the second sentence of paragraph 3 is one of the most important contributions of this article. Even when attack on one of these objects is justified under all the applicable rules, this provision requires the combatants to take "all practical precautions" to avoid releasing the dangerous forces. Given the array of arms available to modern armies, this requirement should provide real protection against the catastrophic release of these forces.

With respect to paragraph 5, there was considerable discussion about the question of the types of armament to be permitted to the defensive installations. Ultimately, it was thought impractical to include any limitation other than that implied by the phrase "weapons capable only of repelling hostile action against the protected works or installations." The Rapporteur understands the intent of that limitation to be that weapons capable of attacking enemy forces passing at some distance from the protected work or installation are prohibited.

With respect to paragraph 7, the Working Group did not attempt to decide what sign should be used to indicate the objects protected by this article, although some representatives stated their disagreement with the proposal in the ICRC draft to use the sign authorized by the Geneva Conventions for hospital zones. This question will obviously have to be considered at a later stage of the Conference.

Finally, it should be noted that some representatives requested the inclusion in this article of special protection for oil rigs, petroleum storage facilities, and oil refineries. It was agreed that these were not objects containing dangerous forces within the meaning of this article and that, if these objects are to be given any special protection by the Protocol, it should be done by another article, perhaps by a special article for that purpose. The Rapporteur has agreed to consult further with interested representatives on this question.

Article 50

The Working Group decided to submit the text in document CDDH/III/249, dated March 14, 1975, to the Committee. Paragraph 2(a) of this article required much time and effort to work out, but the other paragraphs were fairly quickly agreed upon. Certain words created problems, particularly the choice between "feasible" and "reasonable" in 2 (a) (i) and 2 (a) (ii). The Rapporteur understands "feasible", which was the term chosen by the Working Group, to mean that which is practicable, or practically possible. "Reasonable" struck many representatives as too subjective a term.

The Working Group was unable to reach agreement on the choice of phrase, "cause" or "create a risk of" in sub-paragraphs 2 (a) (iii) and 2 (b). In fact, the Rapporteur is unable to illuminate the difference in meaning of the two terms, but each has its supporters, and the Committee will have to decide.

Similarly, the Committee will have to choose between the two bracketed phrases in sub-paragraph 2 (c). The difference here is one of nuance whether to imply that warning will usually be possible or that it will only sometimes be possible.

Article 51

The Working Group agreed to send to the Committee the text set forth in document CDDH/III/250, dated March 14, 1975. Agreement was reached fairly quickly on this draft after it was revised to have the phrase "to the maximum extent feasible" modify all sub-paragraphs. This revision reflected the concern of a number of representatives that small and crowded countries would find it difficult to separate civilians and civilian objects from military objectives.

Other representatives pointed out that even large countries would find such separation difficult or impossible to arrange, in many cases.

It was clearly understood in the Working Group that this article applies to all territory under the effective defacto control of a party, that is, including both its own national territory which is under its control and any foreign territory which it occupies.

In sub-paragraph 3 the word, "dangers", was retained from the ICRC draft after some discussion of possible alternatives. It was pointed out that article 18, paragraph 5 of the Fourth Geneva Convention of 1949 refers in a similar way to "the dangers to which hospitals may be exposed."

The phrase in sub-paragraph 1, "without prejudice to article 49 of the Fourth Convention," was chosen to make it clear that the provisions of the sub-paragraph are not intended to amend in any way that article. This sub-paragraph, on the contrary is intended to stand on its own in all cases except where action proposed to be taken under it would be contrary to article 49 of the Fourth Convention; in that rare case, article 49 would govern.

Article 52

The Working Group approved for transmission to the Committee the text contained in document CDDH/III/251 dated March 14, 1975. This text resulted from a compromise among five tendencies: (1) those who wished to see non-defended localities established by unilateral declaration; (2) those who wished to see them established only by agreement; (3) those who wished to limit them to an area in or near the contact zone; (4) those who wished to permit them also in the hinterland; and (5) those who wished to provide a mechanism for creating non-defended localities even where it would take some further time to remove all combatants from the locality. The result is an article that permits unilateral declaration of non-defended localities near or in a contact zone which are open for occupation by an adverse party and meet the other prescribed conditions and which requires agreement for the establishment of zones not meeting the geographical or other requirements.

Article 53

The Working Group approved for transmission to the Committee the text contained in document CDDH/III/252, dated March 14, 1975. One of the most controversial issues posed by this article was its title. The terms "neutralized zone", "demilitarized zone", and "non-militarized zone" were all considered, and each had its proponents. The Rapporteur even suggested the term, "civilized zone", but his idea, not surprisingly, received no support. The negative implications for the rest of the world outside of these zones were too stark to be tolerable.

The term finally chosen, "demilitarized zone" is understood to cover both zones from which military forces have been withdrawn so as to comply with the conditions prescribed by this article and by the agreement establishing them, and zones which had no military forces in them in the first place and otherwise satisfy the conditions prescribed by the article and by the agreement establishing them.

The article is intended to permit the establishment both of zones that must remain demilitarized no matter which party controls the area in which they are located and also zones that may lose their demilitarized character if occupied by the adverse party.

It was thought that this flexibility would give the maximum encouragement to the creation of such zones. This is the reason why the phrase, "if such extension is contrary to the terms of these agreements", is included in paragraph 1 and why the phrase, "if the parties to the conflict have so agreed", is included in paragraph 6. Similarly, the phrase "shall normally be" was inserted in paragraph 3 to permit the parties to agree upon zones which do not fulfil all the conditions of that paragraph. Although such agreement might be rare, it was thought that it should not be discouraged by the text of article 53.

Geneva, 3 February - 18 April 1975

Draft Protocol I,
Articles 48 bis, 48 ter, 33 (3)

Draft Protocol II, Articles 24 (2),
26, 26 bis, 28, 28 bis, 28 ter, 29.

REPORT TO COMMITTEE III
ON THE WORK OF THE WORKING GROUP
SUBMITTED BY THE RAPPORTEUR

Articles 48 bis; 48 ter; and 33, paragraph 3, of Protocol I
Articles 24, paragraph 2; 26; 26 bis; 28; 28 bis; 28 ter; and 29
of Protocol II

The Working Group held a series of meetings during the period 17 March to 2 April 1975. It completed its work on Articles 48 bis; 48 ter; and 33, paragraph 3, of Protocol I and Articles 24, paragraph 2; 26; 26 bis; 28; 28 bis; 28 ter; and 29 of Protocol II. The reporting out of these articles completes consideration by the Working Group of Part V, Chapter I (General protection against effects of hostilities), of Protocol II, with the exception of Article 27. That Article is the counterpart of Articles 48 and 66 of Protocol I, the latter of which has not yet been taken up in Committee. It was thought that consideration of Article 27 of Protocol II should await the discussion of Article 66 of Protocol I.

As in the past, some areas of disagreement remain, and these must be resolved by the Committee.

A number of amendments to articles in Protocol II corresponding to articles of Protocol I were withdrawn or not pressed by their sponsors because the Committee had adopted texts for Protocol I and the Working Group as a whole thought it desirable, whenever possible, to use the same formulation and language in Protocol II that had been employed in Protocol I.

Like previous reports by the Rapporteur, CDDH/III/224, dated 24 February 1975, and CDDH/III/264, dated 13 March 1975 this report has not been approved by the Working Group and should be understood simply as the observations of the Rapporteur on the work of the group.

Article 48 bis and Article 33, paragraph 3,
of Protocol I

The Working Group agreed to submit to the Committee the texts set forth in documents CDDH/III/276, dated 4 April 1975, and CDDH/III/277, dated 4 April 1975. It was understood that, if the Committee should desire to include a provision on the environment in Protocol I, it might vote to approve either Article 48 bis or Article 33, paragraph 2, or both.

As this is the first occasion on which an attempt has been made to provide in express terms for the protection of the environment in time of war, it is not surprising that the question should have given a great deal of difficulty to the Working Group. Important theoretical questions about the relation of man and nature lay below the surface of the attempt to draft suitable language for what was generally agreed to be a highly desirable objective.

The Working Group was assisted in its work by the report of the Group Biotope, an unofficial working group formed in response to the request of the Rapporteur. Delegates from ten countries and representatives of the ICRC and of the United Nations Environment Programme participated in the work of the Group. Although the Working Group did not adopt the texts recommended by the Group Biotope or by the Rapporteur, these proposals provided an extremely valuable point of departure for the further discussions of this subject in the Working Group.

There were two views in the Working Group about the basic reason for the protection of the environment. Some delegates were of the view that the protection of the environment in time of war is an end in itself, while others considered that the protection of the environment has as its purpose the continued survival or health of the civilian population. The

proposed text of paragraph 3 of Article 33 reflects the first of these two approaches; the proposed text of Article 48 bis the second. The first approach points toward the inclusion of a provision on the environment in Article 33, which already contains provisions with respect to the prohibition of certain types of methods and means of warfare. The second looks to the inclusion of an article in Chapter III of Part IV, dealing with the protection of civilian objects.

The Committee might wish to adopt both proposed articles. Mindful of this, members of the Working Group alluded to the desirability of consistency between the two texts. If two articles were desired, that consistency is secured through adoption of the formula "to cause widespread, long-term and severe damage to the natural environment" in Article 33, so as to reflect the convergence of views observed in the Working Group with respect to the first sentence of paragraph 1 of Article 48 bis. *

It was recognized in the Working Group that environmental change or disturbances of the ecosystem might be on a very low scale. Trees may be cut down or destroyed as the result of normal artillery fire. Artillery fire also causes cratering. As the Group Biotope put it, "Acts of warfare which cause short-term damage to the natural environment, such as artillery bombardment, are not intended to be prohibited by the Article." That thought lies behind both proposed texts.

It was pointed out that there are a number of ecosystems in the natural environment, and the precise meaning attached to "the ecosystem" was left somewhat unclear. *

* This paragraph incorporates CDDH/III/275/Corr.1.

Because Article 48 bis would be inserted in a context of protection of the civilian population, the prohibition contained in that article was linked to prejudice to the health or survival of the population. The word "population" was used without its usual qualifier of "civilian" because the future survival or health of the population in general, whether or not combatants, might be at stake. The population might be that of today or that of tomorrow, in the sense that both short-term and long-term survival was contemplated. The bracketed term 'health' reflected the consideration that it would not be enough that the civilian population survived; impairment of the health of the civilian population in general could not be tolerated. *

In Article 48 bis, the first sentence enjoining the taking of care lays down a general norm, which is then particularized in the second sentence. Care must be taken to protect the natural environment against the sort of harm specified even if the health or survival of the population is not prejudiced. An instance would be environmental harm which is widespread, long-term and severe but in an unpopulated area.

Both the expressions "may be expected" and "are intended" are included out of an abundance of caution. The term "are intended" refers to deliberate harm directed at the natural environment as a method or means of warfare, such as the destruction of natural resources. "May be expected" imports an objective standard of what the state or the individual does realize or ought to realize would have the effects described.

Article 48 ter of Protocol I

The inclusion of this article came as the result of a recommendation from the Group Biotope. It is shown in brackets in the text because it did not receive the support of all of the members of that Group or of the Working Group. A requirement that the reserves be "publicly recognized" was added to the text submitted by the Group Biotope in order to assure that the establishment of such areas would come only from governmental action.

While the desirability of protecting such reserves both in time of peace and of war was recognized, a number of delegates expressed concern that nature reserves might be designated with the express purpose of impeding the military operations of the enemy.

* This paragraph incorporates CDDH/III/275/Corr.1.

Article 24, paragraph 2, and Article 28 ter

The Working Group agreed to submit to the Committee the texts set forth in documents CDDH/III/278, dated 4 April 1975. It was understood that a choice was involved and that the Committee would probably not wish to adopt both provisions.

A basic choice is posed here between a short and a long form of article on the precautions to be taken in military operations in order to protect the civilian population. The short form is Article 24, paragraph 2, which is the ICRC text as originally presented; the long form is a new Article 28 ter, which draws upon Article 50 of Protocol I, as adopted by the Committee (CDDH/III/268, dated 26 March 1975). The differing approaches reflect basic differences in the Working Group about the role and the scope of application of Protocol II, which may be worth recording here.*

The argument for the longer form of the article was based on the threshold of application established for Protocol II in Article 1, as adopted in Committee I (CDDH/I/274, dated 26 March 1975). That level of application, according to some, made Protocol II applicable to conflicts of substantial duration in which relatively large numbers of persons would be involved in military operations over areas of some size. Indeed, the intensity of non-international armed conflicts may well be greater than that of some international armed conflicts. It would therefore be desirable to provide protection to the civilian victims of war at the same level and with the same specificity of legal prescription as in Protocol I. This would call, at least so far as to the protection of the civilian population is concerned, for the inclusion in Protocol II of articles corresponding in substance and in wording to those in Protocol I. Deviations from the language of Protocol I would also permit an a contrario argument that conduct prohibited in Protocol I but not referred to in Protocol II would be lawful. Also, although some of the provisions on the protection of the civilian population in Protocol II might not have application in all internal armed conflicts, they would control conduct in any non-international armed conflict which reached the requisite level of violence.

Others argued, however, that there was a certain range of ambiguity in Article I and that each attempt to import detailed provisions from Protocol I would in fact raise the level of application of Protocol II, because states would regard the Protocol as applicable only if it seemed that hostilities had escalated to the scale of requiring application of all or most of the provisions of Protocol I. The complexity and onerousness of the obligations might deter states from signature, ratification,

* This paragraph incorporates CDDH/III/275/Corr.1.

or application of Protocol II. Rebels might refuse to carry out the Protocol because they would be unable to reach the standards set in the Protocol, while the authorities in power might use the inability of the insurgents to carry out the detailed provisions of the Protocol as an excuse for not complying with the Protocol. An approach placing emphasis on the protection of human rights, rather than on the conduct of military operations, should be preferred. And the Protocol should be as short and cogent and direct as feasible in order that the parties might clearly see their obligations. No argument a contrario would be possible, as it would be understood that Protocol II is drafted in terms different from those of Protocol I and does not simply echo the norms in that Protocol. The two Protocols therefore did not have to be read together; each would be complete and self-contained, and no inferences a contrario could be derived from the two texts.

In other articles, it was possible to reconcile these two views to a certain extent through the presentation of a text that would incorporate some but not all of the text used in Protocol I. But this did not prove possible in connection with the subject-matter of these two draft articles.

It seems desirable that at some point or other the relationship of the texts of the two Protocols should be spelled out, so as to foreclose dispute about the application of the a contrario principle. This might be done by express language in the texts, by a statement in committee reports, or by a provision in the Final Act of the Diplomatic Conference.

Article 28 ter (the precise location of which will be subject to later adjustment) was drafted as a counterpart to Article 50 in Protocol I, but with certain omissions. The terminology of "military objectives" has not been used in this Part of Protocol II because some of the objectives attacked in a non-international armed conflict, especially at the lower ranges of intensity, are not readily described in the terminology used for international armed conflicts. Therefore the language of subparagraph 2(a)(i) of Article 50 beginning with the words "but are military objectives" has been omitted, there being in any event no literal counterpart in Protocol II to Article 47 of Protocol I. *

There was general agreement that the introductory language of subparagraph 2 (b) should be retained in principle but with the wording changed to "an attack shall be cancelled or suspended if it becomes apparent

* This paragraph incorporates CDDH/III/275/Corr.1.

that the object is not a permitted one under Article 26 bis or that the object is subject to special protection," because the term "military objective" is not generally used in Protocol II and a simple reference to the prohibition in Article 26 bis must therefore suffice.

Article 26 of Protocol II

The Working Group agreed to submit to the Committee the text set forth in document CDDH/III/279, dated 4 April 1975.

This article is the counterpart of Article 46 of Protocol I, as adopted in Committee (CDDH/III/272, dated 26 March 1975); and its structure and much of its language are derived from that article. However, there were differing views in the Working Group about the degree of detail that there should be in this article and much of the language is bracketed to reflect this lack of agreement. In essence, the choice to be made is one between a long or a short form of this article.

The introductory paragraph was agreed upon in the Working Group. It is the same text as in the introductory paragraph of Article 46 of Protocol I, with the omission of the words "in addition to other applicable rules of international law." Those words were deleted in view of the fact that the only general international law with respect to non-international armed conflicts is Article 3 common to the four Geneva Conventions of 1949, which contains no provision pertinent to the subject-matter of this article of Protocol II.

The Working Group agreed on the language of paragraph 1, which is the same as that of paragraph 1 of Article 46 of Protocol I. Agreement was also reached on the text of paragraph 2, which is likewise cast in the language of Article 46, but some delegates were of the view that the bracketed language "and for such time as" is not appropriate in a non-international armed conflict in which there may be a greater likelihood that combatants will be part-time.

With respect to paragraph 3, two formulations are presented. Some delegates expressed a preference for the text appearing in paragraph 3 of the original ICRC text. Others favoured the more elaborated text of paragraph 3 of Article 46 of Protocol I, but without the reference to "(b) An attack of the type Prohibited by Article 50 (2)(a)(iii)." Yet other delegations were of the view that no paragraph 3 was needed at all, on the ground that the intermingling of civilians and combatants in non-international

armed conflicts makes a rule against methods or means of combat which affect civilians indiscriminately or a rule against indiscriminate attacks unsuitable for application in an internal armed conflict. The sentence beginning "An attack by bombardment by any methods or means" was bracketed for separate consideration by the Committee because it was thought that delegations voting for one or the other of the preceding formulations might wish to have this sentence included. "The employment of means of combat, and any methods . . . are prohibited" should be examined by the Drafting Committee, as the language is not consistent with terminology used elsewhere in the Protocols and does not in any event appear to be internally correct.

It was agreed to bracket paragraph 4 about reprisals until the question of reprisals has been resolved for Protocols I and II.

The Working Group agreed to the inclusion of paragraph 5, identical to the like-numbered paragraph of Article 46 of Protocol I. It was agreed to delete paragraph 6. The view seemed to be taken that its deletion would simplify and shorten the article somewhat.

Article 26 bis of Protocol II

The Working Group agreed to submit to the Committee the text set forth in document CDDH/III/280, dated 4 April 1975. The article was the subject of general agreement in the Working Group. The bracketed language concerning reprisals is, as in other instances, an indication that a decision must await the resolution of the entire question of reprisals in the two Protocols.

This article corresponds to Article 47 of Protocol I, as adopted by the Committee (CDDH/III/263, dated 26 March 1975). Reference to "military objectives" was deleted in Article 26 bis because a number of delegations considered that the term was inappropriate for use in connexion with non-international armed conflicts, both because it evokes large-scale hostilities and because the objectives attacked in non-international conflicts may not necessarily be "military" ones. Instead, it was decided that attacks should be limited to "those objects which by their own nature, location, purpose, or use make an effective contribution to the armed action of the parties to the conflict," and the Article was so drafted. "Armed action" was substituted for "military action," because of the unwillingness of some to use the term "military" in a limitative way in internal armed conflicts. It is recommended that the Drafting Committee consider whether "armed action" is the apposite phrase to use in Protocol II in place of "military operations" or "warfare" and that the terminology be made consistent throughout Protocol II.*

* This paragraph incorporates CDDH/III/275/Corr.1.

Article 26 bis is thus a compressed version of its counterpart Article 47 in Protocol I.

Article 28 of Protocol II

The Working Group agreed to submit to the Committee the text set forth in document CDDH/III/281, dated 4 April 1975.

This article corresponds to Article 49 of Protocol I, as adopted by the Committee (CDDH/III/267, dated 26 March 1975), but with the text substantially shortened, even when account is taken of the bracketed language.

The two options which are presented for paragraph 1 reflect two different approaches: the first is that the standard with respect to the protection of works or installations containing dangerous forces should be cast in the same terms as in international armed conflicts. This option reproduces the language of paragraph 1 of Article 49 of Protocol I. The second approach is that the protection of these installations in internal armed conflicts should be absolute and not subject to the qualification that "such attack may cause the release of dangerous forces and consequent severe losses among the civilian population." The Working Group appeared generally to be in agreement that one or the other formulation of paragraph 1 should be included in Protocol II, although some interventions in the discussions were directed to the point that articles parallel to those in Protocol I on the protection of the civilian population are not needed in Protocol II.

The bracketed language "even where these objects are military objectives" reflected the view of some delegations that this expression, found in Article 49 of Protocol I, should also appear here so that no negative inference could be drawn from the absence of the expression.

Paragraph 2 is the language of the ICRC text, with the addition of a sentence about armed guards. It was pointed out that such installations, particularly nuclear generating stations, are often guarded in time of peace and would certainly be guarded in time of a non-international armed conflict and that such works or installations should not lose their immunity on that account.

The bracketed language of paragraph 3 is yet another instance in which final action will have to await resolution of the general problem of reprisals.

The language of paragraph 7 of Article 49 of Protocol II was carried over into paragraph 4 of this Article. The provision permits but does not require conduct, and such markings might in any event already have been applied in connection with an international armed conflict in which the state may have been involved.

The remaining paragraphs and language of Article 49 of Protocol II were generally felt to be too detailed for inclusion in Protocol II, although there have been some delegations which would have preferred to have had much more of Article 49 incorporated in the present Article.

Article 28 bis of Protocol II

The Working Group agreed to submit to the Committee the text set forth in document CDDH/III/282, dated 4 April 1975. This provision, if adopted, properly belongs as a paragraph of Article 20.

Article 28 bis corresponds to Article 48 bis and Article 33, paragraph 3, of Protocol I, as set forth in documents CDDH/III/276, dated 4 April 1975, and CDDH/III/277, dated 4 April 1975. However, it generally adopts the approach of Article 33, paragraph 3, and should appear in the context of restriction on types of weapons employed in Article 20, rather than in that of the protection of the civilian population. Presumably the same standard that appears in Article 33 should appear in Article 20 of Protocol II as well.*

There was widespread support for the idea that there should be an article on the protection of the environment in Protocol II, although some delegations were opposed to the idea. Several delegations were of the view that there needed to be, especially for non-international conflicts, some express relationship between the standard "widespread, long-term, and severe damage to the natural environment", and the survival of the civilian population. There was no objection to the suggestion by one delegation which was specifically agreed to by others, that this report should reflect that widespread, long-term and severe damage to the natural environment would constitute such damage as to jeopardize the survival of the civilian population.*

* This paragraph incorporates CDDH/III/275/Corr.1.

Article 29 of Protocol II

The Working Group agreed to submit to the Committee the text set forth in document CDDH/III/283, dated 4 April 1975.

Paragraph 1 is the same text proposed by the ICRC, with the addition of the words "for reasons relating to a non-international armed conflict" and a reference to the "circumstances under which this provision is operative".

Displacement may be necessary in certain cases of epidemic, natural disasters, and the like, and such displacements would not come within the scope of paragraph 2.

The bracketed language in paragraph 2 incorporates certain exceptions thought to be desirable in the view of some delegations.

Paragraph 3, which appears in bracketed form, has been added to the text because, in the view of some delegations, it would be desirable to have a prohibition on certain forms of transfer of property out of a state, to serve as a counterpart to the prohibition on the displacement of persons. The paragraph is drafted in these terms, borrowed in part from the language used with respect to the protection of the environment, in order to preserve the right of a state to send cultural property abroad for safekeeping and to maintain the right to operate a general export trade in time of non-international armed conflict.

Geneva, 3 February - 18 April 1975

Draft Protocol I, Part III
Section I, Articles 33, 34, 36 and 37

REPORT TO COMMITTEE III
ON THE WORK OF THE WORKING GROUP
SUBMITTED BY THE RAPPORTEUR

The Working Group held a series of meetings during the period April 3-9, 1975. It completed its work on Articles 33, 34, 36 and 37. With the exception of one bracketed phrase in Article 33, general agreement was reached on the texts of each of these articles. As with the previous reports, this report has not been approved by the Working Group and should be understood simply as the report of the Rapporteur on the work of the group.

Article 33

The Working Group agreed to submit to the Committee the text set forth in document CDDH/III/290, dated April 10, 1975. The principal difficulties encountered by the Working Group arose from the need to reaffirm the existing law and overcome inadequate prior translations which have achieved a certain acceptance through time and usage.

With respect to paragraph 1 and to various other provisions in this Section, the term "methods or means of warfare" was preferred to "methods or means of combat" for the reason that "combat" might be construed more narrowly than "warfare". No effort was made, however, to define either term, and the choice of words should, perhaps, be considered further by a drafting committee.

The Committee should decide whether or not to include the phrase "and methods of warfare", which is in brackets. A large majority of those who spoke in the Working Group favoured retention of the phrase. Those who wished it deleted asserted that it would make an important change in the law and that this should not be done without further careful consideration.

It should also be noted that the phrase "superfluous injury or unnecessary suffering" was chosen by the Working Group as the preferred translation of the French, "maux superflus", which includes both physical and moral injury. One delegate wished to have it recorded that he understood the injuries covered by that phrase to be limited to those which were more severe than would be necessary to render an adversary hors de combat.

The Working Group decided to defer consideration of proposed paragraphs numbered 3 and 4 in CDDH/III/238, dated 25 February 1975, until the proposal in document CDDH/III/284, dated 4 April 1975, is considered at the next session of the Conference. Some representatives stated the view that the objectives of these two paragraphs were dealt with in part in Articles 46, 48 and 48 bis and would be dealt with in part by the proposal in CDDH/III/284. Other representatives disagreed and urged the inclusion of provisions along the lines of these two paragraphs in Article 33 or elsewhere in the Protocol.

Paragraph 3 of this Article is the paragraph recommended by the Working Group on April 3, 1975 in the Rapporteur's Report, document CDDH/III/275, voting on which was deferred at the last session of the Committee. It was not rediscussed by the Working Group and is incorporated unchanged in the text in CDDH/III/290.

Article 34

The Working Group approved for transmission to the Committee the text contained in document CDDH/III/291, dated 10 April 1975.

In the first place, it should be noted that the determination of legality required of States by this article is not intended to create a subjective standard. Determination by any State that the employment of a weapon is prohibited or permitted is not binding internationally, but it is hoped that the obligation to make such determinations will ensure that means or methods of warfare will not be adopted without the issue of legality being explored with care.

It should also be noted that the article is intended to require States to analyse whether the employment of a weapon for its normal or expected use would be prohibited under some or all circumstances. A State is not required to foresee or analyse all possible misuses of the weapon, for almost any weapon can be misused in ways that would be prohibited.

Article 36

The Working Group approved for transmission to the Committee the text contained in document CDDH/III/288, dated 10 April 1975. The idea behind this article was easily accepted by the Working Group, but the text proved surprisingly difficult to formulate. A number of representatives stated that their governments could not, in this Protocol, accept an obligation to avoid or prevent improper use of an emblem provided for in a convention to which their governments were not parties. On the other hand, these governments could agree that they would not themselves deliberately misuse such an emblem. This distinction was expressed ultimately in the words of the second sentence of paragraph 1 of CDDH/III/288.

When this article is reviewed by the Drafting Committee, one question that should be examined is whether, in the first line, the word "distinctive" should be inserted before the words "protective

emblem". This form of words has apparently been used by Committee II, and it seems clear that there should be a harmonization of approaches within the Conference.

Article 37

The Working Group approved for transmission to the Committee the text contained in document CDDH/III/289, dated 10 April 1975.

With respect to paragraph 1, the Working Group considered it desirable to deal with the question of neutral flags, emblems, etc. separately and in more absolute terms than the question of flags, emblems, etc. of an adverse party. Still, the prohibition in paragraph 1 is not absolute. Neutral flags, emblems, etc. can be used so long as they are not used "in an armed conflict", that is to say so long as they are not used in a way to promote the interests of a party to the conflict in the conduct of that conflict. Also, it is clear that this article does not prohibit neutrals ... or indeed any States ... or their agencies from using their own flags, emblems, etc.

A number of representatives pointed out the need to provide better protection for insignia and uniforms of personnel of the United Nations, particularly of peacekeeping forces. It was decided not to try to do that in this article but to consider further how such protection could best be provided. The Rapporteur pointed out that, quite apart from this Protocol, the United Nations itself could try to improve that protection through agreements concluded with the States concerned with a particular U.N. force.

Several representatives pointed out that paragraph 2 would have the effect of increasing the legal vulnerability of escaped spies to subsequent punishment. Although a spy who escapes successfully is not thereafter subject to punishment as a spy, he could still presumably be punished for violations of the laws of war, including this article. Certainly it seems questionable wisdom to make it even marginally safer for spies to disguise themselves as civilians than as military personnel. It is conceivable that this question will be considered further by the Conference in connection with the articles concerning repression of breaches. In any event, the Rapporteur notes that there was not in the Working Group any apparent intent to change the law as it applies to espionage by means of this article.

Finally, several representatives wished to record their view that, if more exceptions are developed in the Protocol in order to avoid affecting the law of naval warfare, they would wish to see these exceptions brought together in a single provision.

