

PROHIBITION OF CERTAIN WEAPONS OR RESTRICTION OF THEIR USE

The second Conference of Government Experts on weapons that may cause unnecessary suffering or have indiscriminate effects, which was convoked by the International Committee of the Red Cross to meet in Lugano in February 1976, is one of the many attempts to reduce human suffering in war. Those attempts, desired by governments and carried out within the United Nations, at the Diplomatic Conference on the development of humanitarian law and within the Red Cross movement, are intended to meet a need which has been expressed innumerable times throughout history. We publish below the following informative text.

A review of the past

In ancient times there was already a tendency to prohibit some weapons (poison, poisoned or burning arrows, barbed weapons, and so forth). Beside the notion of just war, the idea of prohibited weapons was known to the Romans. They called “bellum nefarium”—heinous war—a war which was indiscriminate and obeyed no law.

In the Middle Ages, the church made halfhearted efforts to prohibit projectile-propelling weapons but its attempts were frustrated by the theory of “just war”.

Likewise at the beginning of modern times. In the seventeenth century Vattel stated that belligerents did not have an unlimited choice in weapons of war and that unnecessary suffering had to be avoided. However, it is still too frequently thought that anything is permissible by way of reprisals, or justifiable on a plea of necessity.

The law as it stands

Today, we must not only protect the civilian population by banning weapons of indiscriminate effect; we must determine whether the use of some weapons even against military personnel must be prohibited because of the extreme suffering which they cause.

The general principles of the law of war may be invoked:

- (a) Belligerents should not inflict harm out of proportion to the objective of war, that is to say the destruction or weakening of the enemy's power (St. Petersburg Declaration).
- (b) Belligerents do not have an unlimited choice of ways and means to harm an enemy (St. Petersburg Declaration 1868 and Article 22 of the Hague Regulations of 1899 and 1907).
- (c) It is forbidden "to employ arms, projectiles, or material calculated to cause unnecessary suffering" (Article 23 (e) of the Annex to the Hague Convention of 1907 concerning the Laws and Customs of War on Land).

Where is the limit? What suffering is not "useless"? What harm is not "unnecessary"? For each weapon the balance between military advantage and humanitarian considerations must be found. If a soldier can be put *hors de combat* by being captured he should not be injured; if he can be disabled by injury, he should not be killed; if a slight wound is sufficient, a serious one should not be inflicted. If two methods of attack will produce the same result, the one causing least harm must be used. In short, what the Hague Conferences sought to ban were weapons which caused excessive suffering or harm going beyond the permissible threshold.

Specific bans

- (a) The St. Petersburg Declaration of 1868 prohibits projectiles which weigh less than 400 grams, are explosive or convey inflammable substances.
- (b) Under Article 23 (a) of the Hague Regulations, it is "forbidden to employ poison or poisoned weapons".
- (c) The 1899 Hague Declaration prohibits bullets "which expand or flatten easily in the human body" (dum-dum bullets).
- (d) Under the Hague Declaration of 1889—renewed in 1907—it is forbidden to launch "projectiles and explosives from balloons or by other new methods of similar nature".

- (e) Under the Hague Declaration of 1899, the parties thereto “agree to abstain from the use of projectiles the sole object of which is the diffusion of asphyxiating or deleterious gases”.
- (f) The Hague Convention No. VIII of 1907 forbids the laying of unanchored underwater mines which do not become harmless when they are out of control, and the use of underwater torpedoes which do not automatically become defused when they miss the target.
- (g) The 1925 Geneva Protocol prohibits “the use in war of asphyxiating, poisonous or other gases and of bacteriological methods of warfare”.
- (h) The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxic Weapons and on Their Destruction (1971) implicitly forbids the use of such weapons by States bound by that Convention.

Weapons classification

The weapons which it is desired to ban or restrict include ABC weapons (atomic, biological and chemical) which are at present the subject of thorough study within the United Nations. By contrast, the work under the auspices of the ICRC is intended to cover five other categories, namely: incendiary weapons; high muzzle-velocity small-calibre projectiles; blast and fragmentation weapons; delayed-action and treacherous weapons; and future weapons.

In this article, we shall describe only the weapons examined by the Lugano Conference of Experts.

(a) Incendiary weapons

Fire weapons have been employed since antiquity. It is said that in the third century B.C. Archimedes set naval vessels on fire with the help of mirrors. In the Middle Ages, a combustible composition of naphtha and other substances, known as “Greek fire”, was used and was inextinguishable by water. The destructive effect of incendiary weapons is coupled with a psychological fear, for man has an instinctive terror of fire.

The Disarmament Conference sought, as early as 1932, to ban incendiary weapons, which it considered to be on the same plane as bacteriological and chemical weapons. Unfortunately, it was unsuccessful.

These weapons have come to be widely used in modern warfare. A large proportion of bombs dropped during the Second World War were incendiaries, which proved to be more effective than high-explosive

bombs. In the bombing attack on Hamburg 43 000 people died; the attack on Tokyo caused the death of 83 000 people.

Incendiary bombs, containing phosphorus, sodium or magnesium, reach temperatures of 2 000 to 4 000 degrees Centigrade.

Napalm bombs consist of a reservoir containing a petroleum gel, to which is attached a detonator. On impact the gel ignites and is released in all directions at a temperature of 800 degrees Centigrade. This "Greek fire" of our time adheres to the skin, burns and asphyxiates its victims (fifty percent mortality rate), and it is practically impossible to extinguish it.

There are no legal provisions banning the use of napalm.

Authorities do not agree on whether it is forbidden by general legal principles. In actual fact, it is extensively employed. It would seem that in any case its use against civilians should be considered to be unlawful.

Flamethrowers, which are even more widely used, are fitted with a compressed air nozzle through which a petroleum fuel is propelled and ignited as it is ejected.

(b) High muzzle-velocity small-calibre projectiles

For tactical reasons, the current tendency is to make lighter armaments and munitions. Reduction in calibre means higher velocity, kinetic energy being equal to the square of the velocity multiplied by half the mass. Projectiles having a smaller calibre than the 7.62 mm rounds in common use have therefore a muzzle velocity which may be as much as twice that of the normal bullet. Some experts have said that small-calibre bullets had a similar effect to that of the dum-dum bullet, the hard metal casing of which did not go as far as its point, leaving the soft core uncovered. On impact, the core expanded, inflicting much graver wounds (dum-dum bullets were prohibited in 1899). All the same, following discussions between military, medical and legal experts who met in Lucerne in 1974 under ICRC auspices, further tests are in progress to see whether or not high-velocity projectiles do in fact cause similar effects.

High-velocity projectiles also include tiny fin-bearing flechettes fired in salvos from rifles. On impact, being in unstable equilibrium, they have a tumbling effect, lacerating the flesh.

(c) Blast and fragmentation weapons

These weapons were developed from grape-shot, which has been in use for a very long time, and from shells packed with bullets (shrapnel). The blast created by the fuel-air explosive, together with the fragmentation effect (scattering of a great many projectiles), makes these armaments

particularly cruel. Recently developed fragmentation bombs are so constructed that they may, for example, break up into 700 bomblets each containing 300 pellets which are scattered at a high velocity over a very wide area. There exist also fléchette bombs constructed on the same principle. These are essentially “antipersonnel” (as contrasted with “antimatériel”) weapons and they cause multiple wounds.

(d) *Delayed-action weapons*

The function of such weapons is to hamper enemy forces' mobility. The element common to them all is that they cause casualties among civilians and soldiers without discrimination, especially under modern warfare conditions, where fighting does not take place on a well-defined battlefield. A common example is the antipersonnel landmine, which is detonated by means of tripwires or other devices. After hostilities, there is the tricky question of defusing the minefields.

Time-fused bombs, which explode after a certain time, used in conjunction with high-explosive shells are contrary to all humanitarian principles, because no assistance to wounded persons is possible.

The stipulations regarding the laying of contact mines at sea have been mentioned above (Hague Convention No. VIII of 1907). But there are today other types of mines (acoustic, magnetic, etc.) concerning which rules should be drafted.

With regard to the banning of the many different types of booby-traps, of more or less improvised construction, article 23 (b) of the 1907 Hague Regulations, says that it is forbidden to kill or wound treacherously.

(e) *Future weapons*

It is not yet known whether lasers could be used as weapons against humans. Similarly, methods upsetting the geophysical balance—the causing of droughts, tidal waves and earthquakes, the destruction of ozone thus exposing people to the lethal effects of the sun's rays, modification of the climate, etc.—still belong to the realm of speculation verging on the fantastic, and would be unlawful, as they would harm civilians and military persons alike.

Follow-up

The weapons currently to be found in the arsenals of countries throughout the world constitute a grave threat to all people.

All the prohibitions in force date back a long time and are partly obsolete. Considerable technical innovations have made it necessary for old rules to be revised and new ones to be developed.

This process is already under way. Despite necessities of a political and military nature, which complicate to a certain extent the work now being undertaken, a very clear desire to attain positive results may be discerned among the international community, which is anxious to work out rules taking reality into consideration while observing the sacrosanct general principles of respect for man in all circumstances.

THE "CONVENTION TRAVEL DOCUMENT"

In this issue we print an article on the "ICRC travel document". But there is also another paper called the "Convention Travel Document" (CTD) issued, under article 28 of the Convention Relating to the Status of Refugees, by the competent authorities of the country of asylum. This is the modern-day equivalent of the "Nansen passport" which bears the name of the famous explorer and philanthropist Fridtjof Nansen who made a lasting contribution to the protection of displaced persons when he created the "identity and travel certificates" for refugees.

An article on the CTD—not to be confused with the ICRC travel document—appeared in the Bulletin of the United Nations High Commissioner for Refugees.¹ We give below some extracts:

The liberty of any human being to travel without impediment is ideally expressed in Article 13 (2) of the Universal Declaration of Human Rights, which proclaims: "Everyone has the right to leave any country, including his own, and to return to his country."

In practice, such a right may have existed in ancient times when people could walk or ride for hours or days before they met another human being. But with the creation of nations and of state frontiers, border posts and other obstacles have been erected to prevent men from exercising a human right which nowadays is restricted by innumerable laws.

¹ H.C.R., Geneva, No. 6, December 1975.