

IMPLEMENTATION OF THE PROTOCOLS

Most of the provisions of the 1977 Protocols to the Geneva Conventions are applicable only in time of armed conflict.

However, there are two types of provisions which may require States Parties to the Protocols to adopt certain measures upon ratification or accession, that is to say already in peacetime. These are :

- provisions which lay down a standing obligation, such as Article 83 of Protocol I and Article 19 of Protocol II, relating to dissemination of the Protocols;*
- provisions which need to be supplemented by domestic legislation or regulations, or which require practical action to be taken at an early stage so that they may be applied when the need arises.*

All the measures called for under one or other of these headings come under Article 80 of Protocol I, which reads :

“1. The High Contracting Parties and the Parties to the conflict shall without delay take all necessary measures for the execution of their obligations under the Conventions and this Protocol.

2. The High Contracting Parties and the Parties to the conflict shall give orders and instructions to ensure observance of the Conventions and this Protocol, and shall supervise their execution.”

Protocol II, which is very concise, does not contain a specific reference to this rule which, of course, is equally applicable to it.

This document lists the provisions, together with a brief commentary, which require the States Parties to the Protocols to take action already in peacetime.

The list is not intended to be exhaustive, and the commentaries are not intended to constitute an authentic interpretation of the texts. The only purpose of the document is to assist States that have become Parties to the Protocols to execute their obligations.

This task requires the co-operation, on national level, of many government and non-government bodies. The National Red Cross or Red Crescent Society is, of course, one of the institutions on which the government may rely.

The ICRC, for its part, shall be pleased to give governments any information needed with a view to the discharge of the commitments newly undertaken.

International Review quotes herunder from the memorandum which the ICRC sent to States parties to the Protocols and will send to others as they accede to them.

Provisions of the Protocols whose application may require the adoption of legislative or other measures upon ratification or accession

PROTOCOL ADDITIONAL TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949, AND RELATING TO THE PROTECTION OF VICTIMS OF INTERNATIONAL ARMED CONFLICTS (PROTOCOL I)

Article 6 — Qualified persons

The training of the qualified personnel referred to in this article constitutes a permanent task to be undertaken in peacetime as well as in time of war by States and National Red Cross (Red Crescent, Red Lion and Sun) Societies.

Article 12 — Protection of medical units

Paragraph 2 (b): Civilian medical units must be recognized and authorized as soon as possible.

Paragraph 4: Care should be taken already in peacetime to ensure that fixed medical units are so sited that attacks against military objectives would not imperil their safety.

Article 16 — General protection of medical duties

Effective protection of medical duties can only be ensured through appropriate legislation.

Article 18 — Identification

Measures to ensure that medical personnel, units and transports are identifiable should be taken as soon as possible.

*Article 22 — Hospitals ships and coastal rescue craft
and*

Article 23 — Other medical ships and craft

The regulations laid down in application of Chapter III of the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949 (Second Convention) must be adapted and extended to the ships and craft referred to in these two articles of the Protocol.

Articles 24 to 31 — Protection of medical aircraft

The conditions for notifications and agreements concerning medical aircraft under Article 29 must be laid down already in peacetime (see also Article 12 of Annex I).

It is in the interests of medical aircraft that measures should be adopted concerning their identification (see Articles 5 to 12 of Annex I).

Article 33 — Missing persons

Plans for the gathering, recording and transmission of information should be made in advance.

Article 34 — Remains of deceased

Arrangements should be made for this article to be implemented either by an organization to be established for the purpose or by an existing organization.

Article 36 — New weapons

Measures must be adopted to ensure that in the study, development, acquisition or adoption of a new weapon, means or method of warfare, the necessary action is taken to determine whether its employment would, in some or all circumstances, be prohibited by the Protocol or by any other rule of international law applicable to the High Contracting Party concerned.

Article 43 — Armed forces

Armed forces must be subject to an internal disciplinary system which enforces compliance with the rules of international law applicable in armed conflict.

Notifications under paragraph 3 may be made already in peacetime.

Article 45 — Protection of persons who have taken part in hostilities

A judicial procedure should be developed in advance to determine whether a captured person is entitled to prisoner-of-war status, should any doubt arise as to such entitlement.

Article 56 — Protection of works and installations containing dangerous forces

The following rules in particular are applicable at all times: military objectives should not be located at or in the vicinity of such works or installations; efforts should be made to provide additional protection for such works and installations through agreements concluded among Contracting Parties; the objects protected by the article should be marked with the special sign (see Article 16 of Annex I).

Article 58 — Precautions against the effects of attacks

To the maximum extent feasible, steps should be taken to avoid locating fixed military objectives near densely populated areas, and the necessary precautions to protect the civilian population should be laid down in advance.

Article 60 — Demilitarized zones

Agreements for the creation of demilitarized zones may be concluded already in peacetime.

Articles 61 to 67 — Civil defence

In order to benefit from the protection afforded by Protocol I, civil defence must be organized so as to meet the requirements laid down in Articles 61 to 67. Particular attention should be paid to the question of the use of the distinctive sign.

Article 74 — Reunion of dispersed families

Steps must be taken to ensure that the security regulations applicable in wartime do not hinder the reunion of dispersed families.

Articles 75 — Fundamental guarantees

The guarantees relating to humane treatment and judicial protection provided under this article must be embodied in appropriate national legislation which should be applicable in time of armed conflict.

Article 76 — Protection of women

Same comment as for Article 75.

Article 77 — Protection of children

Same comment as for Article 75. In addition, all feasible measures should be taken to prohibit the recruitment into the armed forces of children under fifteen years of age.

Article 78 — Evacuation of children

The organization to be responsible for this task in wartime should be appointed.

Article 79 — Measures of protection for journalists

Measures should be taken to prepare the identity card under this article, so that it should be available when the Protocol enters into force.

Article 80 — Measures for execution

This list enumerates the measures to be taken in peacetime. Furthermore, the orders and instructions aimed at ensuring observance of the Conventions and the Protocol should be set out in the form of regulations and a military handbook.

Article 82 — Legal advisers in armed forces

Legal advisers must be trained and available already in peacetime.

Article 83 — Dissemination

Dissemination of the Conventions and the Protocol is a standing obligation. The High Contracting Parties undertake to include the study thereof in their programmes of military instruction and to encourage the study thereof by the civilian population.

Article 84 — Rules of application

The translations of the Protocol as well as the laws and regulations adopted to ensure its application are to be communicated as soon as possible.

Article 85 — Repression of breaches of this Protocol

The national penal law must be supplemented so as to cover the breaches listed in this article.

Article 86 — Failure to act

If necessary, the national penal law must be brought in line with this provision.

Article 87 — Duty of commanders

Governments must issue appropriate instructions to military commanders already in peacetime with a view to ensuring that the measures laid down in the article are taken, particularly with regard to the observance of the Conventions and the Protocol by their subordinates.

Article 88 — Mutual assistance in criminal matters

Legislation providing for mutual assistance in connexion with criminal proceedings and co-operation in the matter of extradition should be enacted already in peacetime.

Article 90 — International Fact-Finding Commission

The declaration of recognition of competence referred to in paragraph 2 (a) and (b) may be made at any time and must be deposited with the depositary State.

Article 98 — Revision of Annex I

If and when Annex I is revised, the amendments which have been adopted and accepted must be incorporated in the corresponding domestic regulations.

Annex — Regulations concerning identification

See the comments relating to Articles 18, 24 to 31, 56, and 61 to 67.

Annex II — Identity card for journalists on dangerous professional missions

See the comment relating to Article 79.

PROTOCOL ADDITIONAL TO THE GENEVA CONVENTIONS OF
12 AUGUST 1949, AND RELATING TO THE PROTECTION OF
VICTIMS OF NON-INTERNATIONAL ARMED CONFLICTS
(PROTOCOL II)

Article 4 — Fundamental guarantees

The fundamental guarantees laid down in this article must be embodied in appropriate national legislation which is applicable in time of non-international armed conflict.

Article 5 — Persons whose liberty has been restricted

The regulations relating to the detention of persons referred to in this article must be consonant with the provisions laid down in the article.

Article 6 — Penal prosecutions

The fundamental judicial and other guarantees provided under this article must be embodied in appropriate national legislation which is applicable in time of non-international armed conflict.

Article 10 — General protection of medical duties

Effective protection of medical duties can only be ensured through appropriate legislation.

Article 19 — Dissemination

Dissemination of the Conventions and the Protocol is a standing obligation.

