

Synopsis II

Protection of Civilian Populations against the Effects of Hostilities

by J. de Preux

I. CUSTOMARY LAW

Customary law concerning the protection of civilian populations against the effects of hostilities is essentially based on the rules of the law of The Hague. The general principle underlying it is set out in the Declaration of St. Petersburg (1868) which states "that the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy".

As regards war on land, "the attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended is prohibited" (The Hague Regulations of 1907, Article 25). Whenever a defended locality is being besieged, "the officer in command of an attacking force must, before commencing a bombardment, except in cases of assault, do all in his power to warn the authorities" (Regulations, Article 26).

The concept of military objectives, as derived from the IXth Hague Convention of 1907 respecting Bombardments by Naval Forces, gave rise to the precise formulation of these rules, especially as regards bombarding the area behind enemy lines. According to the terms of this Convention, it is forbidden to bombard "undefended ports, towns, villages, dwellings, or buildings" (Article 1). "Military works, military or naval establishments, depots of arms or war material, workshops or plants which can be utilized for the needs of the hostile fleet or army, and the ships of war in the harbour, are not, however, included in this prohibition" (Article 2). "All due measures shall be taken in order that the town may suffer as little harm as possible" (*ibid.*).

In any case, whatever the circumstances, “in sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes” (Hague Regulations, Article 27; XIth Hague Convention, Article 5).

Moreover, it is forbidden “to destroy or seize the enemy’s property, unless such destruction or seizure be imperatively demanded by the necessities of war” (Regulations, Article 23, subparagraph g).

Today, these rules have been supplemented by the Geneva Conventions which forbid any attack on the wounded, sick, shipwrecked, medical personnel, medical transports, medical establishments and units.

The provisions as regards cultural property are supplemented, in particular, by The Hague Convention of 1954 for the Protection of Cultural Property.

To sum up, customary law as a whole is a part of the fundamental principles, according to which Parties to a conflict do not have an unlimited choice of the means to harm the enemy, it is prohibited to cause superfluous suffering, civilians and combatants remain under the protection of the principles of the international law derived from established custom, from the laws of humanity and the dictates of public conscience.

II. PROTOCOL ADDITIONAL TO THE GENEVA CONVENTIONS *(Protocol I)*

For the protection of civilian populations against the effects of hostilities the Protocol contains two categories of rules, i.e. rules for general protection and rules for special protection.

A. General protection

Principle of distinction

At all times a distinction must be made between the civilian population and combatants and between civilian objects and military objectives (Protocol I, Article 48).

Definition of civilians and civilian population

Any person not belonging to the armed forces shall be considered to be a civilian. The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character (Protocol I, Article 50).

Definition of military objectives

In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, in the circumstances ruling at the time, offers a definite military advantage (Protocol I, Article 52).

Cases of doubt

In case of doubt whether a person is a civilian, that person shall be considered to be a civilian; likewise in case of doubt whether an object which is normally dedicated to civilian purposes is being used to make an effective contribution to military action, it shall be presumed not to be so used (Protocol I, Articles 50 and 52).

Prohibition of attacks against civilians and civilian objects

The civilian population as such, as well as individual civilians, shall not be the object of attack or of threats of violence, the primary purpose of which is to spread terror among the civilian population. Civilian objects shall not be the object of attack (Protocol I, Articles 51 and 52).

Prohibition of reprisals

Civilians and civilian objects shall not be the object of reprisals (Protocol I, Articles 51 and 52; Fourth Convention, Article 33).

Reservation

Civilians are not shielded from attack during the time in which they take a direct part in hostilities (Protocol I, Article 51).

Prohibition of indiscriminate attacks

Indiscriminate attacks are prohibited.

Indiscriminate attacks are those which are of a nature to strike without distinction military objectives and civilians or civilian objects either:

- (a) because they are not directed or cannot be directed, owing to the means or methods used, at a specific military objective; or
- (b) because they employ a method or means of combat the effects of which cannot be limited as required (Protocol I, Article 51).

Examples of indiscriminate attacks

Examples of indiscriminate attacks are:

- an attack 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 similar concentration of civilians or civilian objects;
- an attack which causes incidental loss of civilian life and damage to civilian objects, excessive in relation to the concrete and direct military advantage anticipated (Protocol I, Article 51).

Prohibition to shield military objectives

The civilian population and civilian objects shall, in so far as possible, be removed from the vicinity of military objectives; likewise, all other necessary precautions shall be taken (shelters, distinctive signs, etc.). Similarly, the presence or movements of the civilian population shall not be used to attempt to render military objectives immune from attack or to shield, favour or impede military operations (Protocol I, Articles 51 and 58; Fourth Convention, Article 28).

Obligations of the attacking party

The attacker shall:

- do everything feasible to verify that the objectives to be attacked are indeed military objectives;
- choose means and methods of attack which avoid, or in any event minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects;

- refrain from launching any attack in which the aforesaid losses, injury or damage can be expected to exceed the concrete and direct military advantage anticipated;
- cancel or suspend an attack, or choose another target for attack, as soon as it becomes apparent that the above-mentioned condition is no longer respected;
- give effective advance warning to the civilian population whenever the latter's own interest so requires and whenever circumstances permit (Protocol I, Article 57).

Unconditional nature of the above-mentioned obligations

The above-mentioned obligations shall be respected in all circumstances whatever the nature or origin of the armed conflict or whatever the causes espoused by the Parties to the conflict or attributed to them (Protocol I, Preamble; Article 1 common to the four Geneva Conventions).

Cases not covered

In cases not covered by international agreements, civilians remain under the protection and authority of the principles of the law of nations derived from established custom, from the laws of humanity and from the dictates of the public conscience (Hague Convention No. IV of 1907, Preamble; Protocol I, Article 1).

B. Special protection

In addition to this general protection, the Protocol and the Conventions confer special protection on:

- certain specifically designated objects;
- certain zones by decision of the beneficiaries or the Parties to the conflict;
- relief operations for civilians.

(a) Specially protected objects

Cultural objects

Unlike ordinary civilian property which may, should the eventuality arise, be transformed into military objectives, historic monuments, works of art or places of worship which constitute the

cultural or spiritual heritage of peoples cannot be used in support of the military effort nor can they be attacked (Protocol I, Articles 53 and 85; The Hague Regulations, Article 27).

Objects indispensable to survival

It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas, crops, livestock, drinking water installations and supplies and irrigation works (Protocol I, Article 54).

The natural environment

It is prohibited 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 (Protocol I, Articles 35 and 55).

Installations containing dangerous forces

Dams, dykes and nuclear electrical generating stations shall not be made the object of attack, even where these objects are military objectives, if such attack may cause the release of dangerous forces and consequent severe losses among the civilian population (Protocol I, Article 56).

(b) Specially protected zones

Safety zones

Hospital and safety zones and localities created to protect from the effects of war, wounded, sick and aged persons, children under fifteen, expectant mothers and mothers of children under seven, cannot be transformed into military objectives, neither can they be attacked. Special Commissions can be set up to inspect these zones (Fourth Convention, Article 14 and Annex I, Articles 8 and 9).

Neutralized zones

By common agreement between the Parties to the conflict, neutralized zones may be established in regions where fighting is

taking place, to shelter all those who take no part, or who are no longer taking part, in hostilities (Fourth Convention, Article 15). From then on, these people can no longer be attacked in any way.

Non-defended localities

Any inhabited place near or in a zone where armed forces are in contact which is open for occupation may be declared a non-defended locality on condition that:

- all combatants and their equipment be evacuated;
- no hostile use be made of fixed military installations;
- no acts of hostility be committed;
- no activities in support of military operations be undertaken.

As long as these conditions are fulfilled, such a locality can in no way be attacked. If there is an infringement of these conditions, only military objectives may be attacked. The presence of police forces to maintain law and order does not constitute a breach of these conditions (Hague Regulations, Article 25; Protocol I, Article 59).

Demilitarized zones

Under no circumstances may demilitarized zones recognized by the Parties by mutual agreement be attacked. Usually, the agreement specifies the same conditions as for non-defended localities. If there is a breach of the agreement only military objectives may be attacked (Protocol I, Article 60).

(c) Relief operations

Over and above the special immunity accorded by the Conventions and the Protocol to the civilian and military medical services and to the recognized relief agencies assisting them (First Convention, Articles 19 to 37; Second Convention, Articles 22 to 40; Fourth Convention, Articles 18 to 20; Protocol I, Articles 12 to 31; The Hague Regulations, Article 21) the following bodies also enjoy special protection:

- *International Committee of the Red Cross*

The ICRC shall be granted all facilities so as to enable it to carry out the functions assigned to it by the Conventions and the

Protocol in order to ensure protection and assistance to the victims of conflict and to carry out any other humanitarian activities in favour of these victims, subject to the consent of the Parties to the conflict (Article 9 common to the First, Second and Third Conventions, Article 10, Fourth Convention; Protocol I, Article 81).

— *Red Cross and Red Crescent Societies*

These Societies shall be granted all facilities necessary for carrying out their humanitarian activities in favour of the victims of the conflict (Hague Regulations, Article 15; Protocol I, Article 81).

— *Other recognized relief agencies*

Other humanitarian organizations duly authorized by the respective Parties to the conflict shall be granted similar facilities to those granted to the Red Cross and Red Crescent Societies (Protocol I, Article 81).

— *Personnel engaged in the protection of cultural property*

Personnel engaged in the protection of cultural property (there is nothing to prevent civilians finding refuge there), shall be respected (Hague Convention of 1954, Article 15).

— *Personnel participating in relief actions*

Such personnel shall be respected and protected (Protocol I, Article 71).

— *Civil defence organizations*

Such organizations and their personnel shall be respected and protected (Protocol I, Article 62).

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