

The Geneva Conventions and Additional Protocols as a cornerstone of peace-loving Japan

by Sumio Adachi *

International humanitarian law is, so to speak, a legal measure for moral enforcement which in turn bridges the gap between law and politics. It prescribes minimum duties of contending parties in case of an international or non-international armed conflict.

As the Japanese Constitution has been uniquely and strictly limiting use of its forces against others, the Japanese Government in 1970 clarified its political defence posture as "exclusive self-defence". Hence the protection of its own civilian population, as well as defence of its territory and sovereignty, forms the nucleus of its national defence. This is the political and military posture of Japan as a peace-loving country.

The two Additional Protocols are mainly devoted to the protection of the civilian population in case of an international or non-international armed conflict. Considering the political and strategic position of Japan, the provisions of the Additional Protocols are of the highest practical value not only for the amelioration of conditions of war victims but also for the earlier restoration of peace between nations. However, taking into account our specific situation and lessons learned after the end of the Second World War, we shall here pay special attention, among other matters, to the following provisions of Additional Protocol I: (1) appointment of Protecting Powers and role of humanitarian organizations, (2) methods and means of warfare affecting the civilian population, and (3) identification of medical transport by means of modern technology. We will refer to these one by one.

* The views expressed herein are presented by the author in his personal capacity.

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Soon after the end of the Second World War there were some six million Japanese soldiers and civilians left overseas. The Japanese Red Cross Society provided invaluable humanitarian support to those who had been repatriated to their homeland. However, there were still a sizable number of Japanese left in China, the Soviet Union and Viet Nam while formal diplomatic relations had not yet been opened. The Japanese Red Cross Society took the initiative to get information on missing persons, to bring about family reunions and their repatriation with the co-operation of the respective National Red Cross Societies concerned during 1946-1956. In addition to those humanitarian activities relative to war victims, the Japanese Red Cross Society undertook the rapatriation of Korean residents in Japan to the Democratic People's Republic of Korea (North Korea) because of the absence of formal diplomatic relations between the two countries. From 1959 to 1986, more than 93,000 North Koreans returned to their home country under the auspices of the Japanese and North Korean Red Cross Societies.

Present international humanitarian law has established the existence of a right to intervene or mediate to protect war victims by an international and/or a national humanitarian organization. Furthermore it has been shown that the activities of national humanitarian organizations have developed into peace-time transnational humanitarian activities and those activities will evolve into customary international law. These trends are endorsed, for instance, by the Resolutions of the Seventeenth (No. XXVII) and Twenty-first (No. XXI) International Conferences of the Red Cross. The Japanese Red Cross Society has been carrying out a truly independent function in many humanitarian fields with the co-operation of Government authorities and other social bodies.

Common articles of the four Geneva Conventions relative to Protecting Powers and humanitarian organizations (in the case of the First Convention, Articles 8-11) and Article 5 of Additional Protocol I should be highly praised. In fact, the role of the International Committee of the Red Cross and National Red Cross and Red Crescent Societies (Article 81 of Protocol I) would certainly bridge the gap between law and politics in the present and foreseeable complicated political and social environment.

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Next we will refer to certain methods and means of warfare affecting the civilian population. During the last five months of the War, more than fifty-six major cities in Japan suffered heavy damage from air raids during which a total of 154,000 tons of bombs were dropped. 330,000 citizens were killed, 430,000 injured and 9,700,000 became homeless. Article 51 of Additional Protocol I prohibits indiscriminate attacks on the civilian population. According to current geo-political statistics, more than sixty per cent of our total population occupies the rather narrow land area between Tokyo and Northern Kyushu along the coastline of the Pacific Ocean extending about ten miles by six hundred miles. Military science and technology have drastically upgraded attack capabilities. Therefore attacks on cities should be carefully avoided.

During the last few months of the War, the Japanese mainland was blockaded by some 12,000 air-dropped sea mines which could not be regulated by The Hague Convention No. 8 of 1907. At that time Japan had been relying on food imported from Manchuria (now North-East Province of China). Imports dropped to one tenth before pre-attack. Consequently the Japanese Government could not maintain a daily ration of 1,400 calories per capita and most of the civilian population suffered starvation.

The Geneva Conventions and their Additional Protocols do not uphold military strategy and tactics whose purpose is to starve the civilian population. On the contrary, Article 17 of the Fourth Geneva Convention modified the customary law of siege, permitting the passage of medical supplies and personnel. Article 23 of the same Convention emphasized the obligation of High Contracting Parties to allow the free passage of all consignments of medical supplies, food and clothing. Article 54 of Protocol I prescribes the protection of objects indispensable to the survival of the civilian population. These provisions as well as Article 70 of Protocol I should be interpreted as intending to spare the civilian population from starvation. As for specific means of warfare, the Conference on Prohibitions or Restrictions on the Use of Certain Conventional Weapons of 1980 in its Protocol II regulated the use of land mines. But the question of modern, scattered types of sea mines is left open. It is hoped that as soon as possible some restrictions on the use of sea mines, as well as other important aspects of sea warfare, will be adopted.

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Lastly we will refer to the identification of medical transport by means of modern technology. The Japanese mainland consists of four major

islands extending about 2,000 kilometres from north to south. In the event of armed conflict, rapid evacuation of the sick and wounded should be carried out, partly by air and mostly by sea. Articles 21-22 of the Fourth Geneva Convention, supplemented and strengthened by the provisions of Part II, Section II of Additional Protocol I, are of utmost importance in saving lives in densely populated areas. Medical transport, whether operating independently or in convoy, should have modern means enabling their clear identification. The above provisions are limited in scope to the sick and wounded and the shipwrecked as defined by Article 8 of Additional Protocol I. However, the evacuation of the civilian population in general from a threatened theatre of operations must also be carried out by land, sea and air. There are no special safeguards. During the last war, our civilian vessels came under enemy attack while evacuating children, women and the aged from areas imminently threatened by military operations. Without sufficient naval escort, children, women and the aged would certainly be exposed to danger in spite of the fact that the Geneva Conventions are specifically devoted to the protection of such persons. It seems to us that the Fourth Geneva Convention and the Additional Protocols have been drawn up mainly with land warfare in mind. Therefore, it is hoped that the provisions for sea- and air-warfare should be improved as soon as possible.

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In spite of the fact that international humanitarian law seeks to ensure respect for the individual and protect his well-being even in case of an armed conflict, and that its character is universal and of a mandatory nature, there is imperfect knowledge or even some misunderstanding of it among Japanese people in general, because they have been exposed to a political ideology of merely evading war or of the so-called "war allergy" for the past forty years. Some Japanese people even preclude the idea that international humanitarian law is ultimately designed to maintain world peace and to solve disputes between nations.

On the other hand, Japanese people are well informed that the Government, the Japanese Red Cross Society, the media and other social bodies have been sending relief supplies, medical and rescue teams, and financial resources to foreign people who had been subjected to hardship due to armed conflict, disaster, or political disturbances. Japanese people are increasingly aware of foreign efforts and are contributing sizable amounts in voluntary donations. Thus the sense of international co-operation in humanitarian fields is deeply felt among the public.

The Japanese Red Cross Society has been undertaking step-by-step dissemination of the Geneva Conventions. In the military field, the Defence Agency, quite naturally, strengthened the teaching of humanitarian law to junior officers and cadets.

The Japanese Government has not yet acceded to the Additional Protocols. It seems to us that there are no true technical obstacles except for a widespread desire of merely wanting to avoid matters relating to war. Therefore dissemination of international humanitarian law, most urgently of the Additional Protocols, should be accelerated as an immediate necessity among government officials, the media and scholars. We hold the unshakeable belief that the Geneva Conventions and the Additional Protocols are the product of the conscience of mankind.

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