

## CONDUCT OF HOSTILITIES THE LAW OF ARMED CONFLICTS AND DISARMAMENT

### *Methods and Means of Warfare*

This work <sup>1</sup> which received the prize as the best doctoral thesis awarded by the Faculty of Law of the University of Orléans, France, for 1983, deals in its first part with “The limited character of the choice of methods of war”, and accordingly with the rules of conduct defined in the Geneva Conventions and the Additional Protocols of 1977. The second part, “The limited character of the choice of means of war”, analyses the criteria for choosing the means of war, whether or not they are the subjects of specific regulations.

In his consideration of the conduct of combatants toward their adversaries, the author refers first to Part III of Protocol I. After clarifying the concepts of “combatant” and “belligerent” (pp. 11 and 12), he devotes a close analysis to Articles 43 and 44 and deals more generally with the well-known principle of distinction (pp. 26 to 35), giving extensive bibliographical references. In large part, his analysis is based on the work of the Diplomatic Conference from 1974 to 1977, and in particular the ICRC commentary on its draft proposal.

The author’s study of the conduct of combatants towards military objectives (Part IV) leads him to a positive conclusion: that Article 52 put an end to a long period of legal uncertainty (p. 116). Combatants must take both active and passive precautions (p. 120). The active precautions are objective (identification, choice of means, warning, renunciation) and also subjective (proportionality, choice of objectives). He considers that the rules for passive precautions eliminate a serious deficiency in the law of armed conflicts (p. 130).

Likewise, he notes that the rules of Protocol I concerning the conduct of combatants toward civilian persons and objects filled a virtual “legal

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<sup>1</sup> Mohammed Arrassen, *Conduite des hostilités, droit des conflits armés et désarmement*, Etablissements Emile Bruylant, SA, Brussels, 1986, 608 pages. (Preface by Philippe Bretton, former dean of the Faculty of Law of the University of Orléans).

vacuum" (p. 134). However, the definition he gives of civilian persons based on their activities (non-participation in hostilities) and not on their status (not belonging to the armed forces) does not appear to correspond either to the letter or spirit of Article 50 which defines civilians (p. 139). The author also notes that terrorist attacks are forbidden for the first time (p. 151) and that nothing remains of efforts to control reprisals but Article 89, providing for co-operation with the United Nations, which he regards as a pious hope (p. 154).

In his examination of the protection of civilians against the indirect effects of hostilities, the author analyses blockades (pp. 161-172), including operations relating to prevention and the right of hot pursuit. Because the Diplomatic Conference did not deal with the law of the sea, he draws the disputable conclusion that the only protection for civilians is that provided by Article 23 of the Fourth Convention.

Ideas about the human environment, the natural environment and disturbances of the stability of the ecosystem are discussed in pages 194 et seq, before taking up the problem of protecting cultural property, which should not be weakened by the derogations in the Unesco Convention (p. 199).

In conclusion, he notes that civilian persons and objects, for the first time, have been given broad protection against the direct effects of hostilities, adding however that protection against indirect effects is poorly assured in the event of the use of conventional weapons—and not at all if non-conventional weapons are used (p. 228).

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The second part of the book has an abundance of technical material but is nevertheless entirely readable. It deals with the criteria for limiting the choice of means of warfare. The author emphasizes that laws governing the use of weapons have never been able to keep pace with technical developments, but that a point has now been reached when the survival of humanity is at stake (p. 231). Stimulated by the Red Cross, a favourable trend seems to be emerging, with the support of the United Nations (p. 232). The basic principle is expressed in Article 35, para 1 of Protocol I, belonging to *jus cogens* (p. 234), from which is derived the banning of superfluous injury and indiscriminate attacks.

Examining specific regulations of the means of warfare, the principle of forbidding superfluous suffering is undisputed, but the author points out that if it were written in more explicit terms than at present it would enable the use of some weapons (small-calibre arms, certain bombs, etc.) to be challenged (pp. 239-241). He then proceeds to discuss, in terms of this criterion, dum-dum and explosive bullets and non-detectable fragments (pp. 242-246).

To sum up, he argues that a more precise text would make it possible to set up a system for a standardized evaluation of weapons and thus reinforce Article 36 of Protocol I—New weapons—with exact data.

The author expresses regret that the rule forbidding indiscriminate attacks was not included in Article 35, para 2. Among the factors that result in indiscriminate attacks, he refers to excessive explosive power, the release of harmful substances, weapons whose detonation is uncontrolled, imprecise delivery systems, poor qualifications of the users of weapons, deficient maintenance of weapons, inaccuracies in localizing targets, the non-observance of precautions, etc. (pp. 262-263).

The author then examines the anti-environmental effects of different means of warfare, including conventional weapons with or without delayed action and ABC weapons, in land or sea areas where ecosystems are particularly vulnerable. This is followed by an analysis of Article 35, para 3 of the Protocol and of the United Nations Convention against geophysical warfare.

In conclusion—and this is important—the author says that what has already been achieved in the field of general rules is far from negligible, but should on the contrary serve as the basis for a major technical codification, specifying precisely what is permissible and what is not.

The second chapter of this part of the book, focusing on specific regulation of the means of warfare, has the particular merit of providing a commentary on the United Nations Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which May be Deemed to be Excessively Injurious or to have Indiscriminate Effects and on its Protocols (1980).

Biological and chemical weapons are discussed in the next section, which includes a detailed examination of the Geneva Protocol of 1925 (pp. 368-387). The author concludes that the confusion is so great that in this area, as in others, rules for restricting the means of war should be based on certain measures of disarmament. This leads to an analysis of the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction before reviewing current efforts on chemical disarmament. These analyses are supported by excellent documentation.

Finally, the author studies in depth the work of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law and the United Nations Conference on Prohibitions or Restrictions on the Use of Certain Conventional Weapons. He examines points of agreement and disagreement and investigates future prospects—and does not arrive at a negative conclusion. While recognizing that it is impossible to halt the introduction of small-calibre weapons, he believes that attempts could be made to modify their characteristics (p. 433). To increase the protection of the civilian population, the author says that there must be a ban on indirect fire and high-altitude bombing; that effective security zones must be established around civilian areas,

ranging from 500 to 3,000 metres, depending on the weapon system being used (p. 445).

The book ends with a study of radiological and nuclear weapons.

In his conclusion, the author says that much still has to be done to make sure that the international texts on the law of armed conflicts are not limited to efforts "to manage death and suffering with scraps of paper". His image is deliberately pessimistic. It is stated in order to stress the need for unremitting effort, not for surrender.

In this sense, Lieut. Colonel Arrassen's book, abundantly documented, rich in ideas and open to the future, merits the attention of everyone interested in the use of conventional and non-conventional weapons and their legal, diplomatic and military background.

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## THE AID INDUSTRY UNDER ATTACK

### *Reports on the African Famine \**

*"Dawn, and as the sun breaks through the piercing chill of night on the plain outside Korem, it lights up a biblical famine, now, in the twentieth century. This place, say workers here, is the closest thing to hell on earth."*

(BBC Television, October 1984.)

How can it be, asks the Independent Commission on International Humanitarian Issues in its book *Famine — A man-made disaster?*, that the widespread African famine remained "undiscovered" by world public opinion until the BBC television broadcast of October 1984? And, more important, why was this tragedy, which killed hundreds of thousands in some 20 African countries, not prevented?

The questions as well as the answers provided are devastating for the international aid industry. Together with *Africa in Crisis* from Earthscan, *Famine — A man-made disaster?* has been at the centre of the recent intense

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\* *Famine — A man-made disaster?*, a report for the Independent Commission on International Humanitarian Issues, Pan Books, London/Sydney, 1985, 160 pp.

Lloyd Timberlake, *Africa in crisis*, Earthscan, London, 1985, 230 pp.