NEW CODE FOR THE PROTECTION
OF CIVILIAN POPULATION AND
PROPERTY DURING ARMED CONFLICT

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1. GENERAL CONSIDERATIONS

One of the principles underlying international law applicable in armed
conflicts is that no act of war is permitted against the civilian population,
consisting, by definition, of persons who take no part in the hostilities.

Until the holocaust of 1939-45, international law gave practically no
real protection to the civilian population in the event of war, and was not
even intended to do so since up to that time war was considered to be a
State activity from which civilians remained aloof. There were, none-
theless, general principles and rules in various international treaties
which, in one way or another, related also to the civilian population.

The principle, contained in the St. Petersburg Declaration of 1868,
that “the only legitimate object which States should endeavour to accom-
plish during war is to weaken the military forces of the enemy”—may
be so interpreted as to imply that the intention of the authors of that
document was to protect the civilian population against the risks to
which armed conflict gives rise.

Articles 25-27 of the Regulations appended to the IVth Hague
Convention of 1907 forbid the bombing of towns, villages, dwellings or
buildings which are not defended and compel commanders of attacking
troops to take all measures before bombardment to warn the authorities
and to spare as much as possible buildings dedicated to religion, art,
science and charitable work, historic monuments, hospitals and places
sheltering the sick and the wounded. In Section III of the same docu-
ment, entitled ‘Military Authority over the Territory of the Hostile
State’, several rules are devoted to the protection of the civilian popu-
lation (arts. 43-46).
These were the rules in force at the beginning of the Second World War for the protection of the civilian population: the losses incurred during that war were eloquent testimony to their uselessness. While about 10 million men lost their lives during the First World War—half a million of them civilians—conservative estimates of persons killed during the Second World War put the figure at 50 million, of which 26 million were in the ranks of the army and 24 million were civilians. This catastrophic result for the civilian population was the outcome of the irreversible development of the means of combat towards total warfare: from conventional bombardment to the V1 and the V2 and then to the atomic bomb, all of which are indiscriminate and terror weapons.

The initiative to protect the civilian population from the frightful danger threatening it in the event of war was taken by the ICRC. Rejecting the idea that the indiscriminate bombing of the First World War could be considered an acceptable expression of international law, it made a number of proposals.

In 1920, in a note to the first assembly of the League of Nations, it proposed that the League should concern itself with various war problems, and mainly with ways and means of making it more humane; “the International Committee, the central body of the Red Cross, to whom this task was originally assigned, has the honour to submit to you the following proposals...: 1. Limitation of aerial warfare exclusively to military objectives (such as fights between scouts), and prohibition of the dropping on towns of projectiles which carry death to the peaceable population, and to women and children unconcerned with the war”... The proposal was prompted by the idea that rules on bombardment in articles 25-27 of the Regulations to the IVth Hague Convention had lost nothing of their validity even though it appeared that they could hardly be adapted to the development of war techniques, especially to strategic bombing. Nonetheless, principles of a customary nature, setting imperative limits to hostilities, still held true.

Other proposals in 1920 related to the prohibition of asphyxiating gases, to the definition of ‘undefended locality’ as mentioned in the IVth Hague Convention of 1907.

At the Tenth International Red Cross Conference in 1921, the ICRC took the initiative to propose the prohibition of some forms of abuse by occupation authorities of their power over the civilian population (large-

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scale deportation of hostages, etc.). The Twelfth Conference (1925) also discussed the plight of civilian populations in territory occupied by their enemy. At that time a proposal was made for the founding of a mixed medical commission to draw up lists of detained civilians for communication to the ICRC, to testify to prisoners’ inability to fight, to speed up investigations, to visit places of internment, to facilitate the conclusion of agreements between belligerents for the benefit of civilians, etc.

Following the States’ refusal to ratify the Code drafted by the Commission of Jurists of The Hague in 1923 for the limitation of air bombing, the ICRC, between 1928 and 1931, sponsored four expert committees with a view to finding ways and means of protecting the civilian population against the dangers of chemical and bacteriological war, and against war in general. The conclusions reached by those expert committees were put forward for discussion at the first conference on the reduction and limitation of weapons convened by the League of Nations in 1931. In a report to the conference, a demand was made for the absolute prohibition of aerial bombing of conurbations. At Tokyo in 1934, the 15th International Red Cross Conference adopted a draft international treaty drawn up by a committee of ICRC experts. Known as the “Tokyo Draft”, it was to have been submitted to an international diplomatic conference for adoption. The outbreak of the world war nipped the initiative in the bud.

The failure of this attempt led the ICRC to turn its efforts in another direction: towards the designation of “hospital and safety localities and zones”. In 1938 the Assembly of the League of Nations adopted a resolution firmly condemning the deliberate bombing of civilian populations and stating the precautions—including the designation of such protected areas—to be taken in case of bombing military objectives.

On 12 March 1940, shortly after the outbreak of the Second World War, the ICRC, in a solemn appeal to States, proposed that they confirm the general immunity of the civilian population, define military objectives and refrain from indiscriminate bombing and reprisals. Although formally approved by 14 States, including the main belligerents, the appeal went unheeded. Confronted with that situation, the ICRC renewed its appeal several times—on 12 May 1940, 23 July 1943 and 30 December 1943—but to no avail.

The terrible events which afflicted mankind during the Second World War, resulting in tens of millions of victims and incalculable damage, again forced attention to the topical and vital problem of protecting civilian populations from the increasingly destructive effects of war.
"Total war", stated the ICRC in an appeal dated 5 September 1945, "has given birth to new techniques. Must we therefore admit that the individual will cease to be legally protected and considered no more than a mere unit of communities engaged in combat? To do so would mean the collapse of the principles underlying the international law which is intended to give the human being physical and spiritual protection".

But that is not the way things developed. In 1946 the Statutes of the Nuremberg International Military Tribunal condemned a whole series of inhuman acts against the civilian population: assassination, extermination, slavery, deportation and political, racial or religious persecution. On 9 December 1948 the Convention on the Prevention and Punishment of the Crime of Genocide was adopted. Then, in 1949, the Diplomatic Conference on humanitarian law endeavoured to include in the Conventions adopted more effective rules for the protection of the civilian population in armed conflicts. Because of the opposition from certain States to complex rules for the protection of human rights, the conference finally contented itself with a unilateral approach to the problem, namely the protection of the civilian population of territory occupied by the enemy; the result was the "Geneva Convention of 12 August 1949 relative to the Protection of Civilian Persons in Time of War".

International events, however, have proved that a well-founded approach and the effective regulation of civilian population protection should be grounded on the specific situation in which civilians find themselves in the event of armed conflict, namely:

1. In national territory, when they are directly exposed to military operations (bombardment, attacks, etc.);
2. In enemy territory, at the beginning of hostilities (residents, tourists, persons on mission, etc.);
3. In national territory occupied by the enemy, when they are at the latter’s mercy (deportation, internment, taking of hostages, etc.).

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2 Revue internationale de la Croix-Rouge, September 1945, pp. 657-661.
3 Declaring that genocide, which in the course of history had caused much loss to humanity, was a crime in international law whether committed in time of peace or of war, the Convention extends condemnation as a crime to the following acts committed with the intention of partly or utterly destroying a national, ethnic, social or religious group: murder of members of the group, serious harm to their physical or mental integrity, inflicting on the group conditions of existence leading to part or complete destruction; measures to prevent births; forcible transfer of children from one group to another.
4 The basis of the Convention was a draft elaborated by a conference of government experts convened in Geneva in 1947. The project was submitted for study to the 17th International Red Cross Conference at Stockholm in 1948.
During the Second World War and in armed conflicts which have occurred since that time, most of the victims were civilians in their own national territory. It is ironic that it was precisely civilian populations who were denied any protection in international law.

Let us take a look at what new provisions in this respect have been introduced by the Geneva Convention relative to the Protection of Civilian Persons in Time of War.

This Convention, comprising 159 articles and three annexes, was intended to supplement sections II and III of the Hague Regulations of 1907, but not to replace those Regulations which are still valid.

In substance, the provisions of the Convention may be divided into two categories: those protecting civilians against abuse by the occupying power and those protecting them from "certain effects of war".

The dominant principle of the first category is stated in article 38: "The situation of protected persons shall continue to be regulated, in principle, by the provisions concerning aliens in time of peace". In that respect, the Convention forbids absolutely any harm to life and limb, torture, ill-treatment, taking of hostages, deportation, action prejudicial to human dignity, humiliating and degrading treatment, discrimination based on differences of race, nationality, religion, sex, wealth, and so on. At the same time, the Convention provides for a system of internment—as an exceptional measure necessary to safeguard the interests of the detaining State—with guarantees of humane treatment for all persons interned.

Among the provisions of the second category are those relating to hospital and safety zones and localities (article 14) and neutral zones (article 15), the protection of civilian hospitals (article 18), children (article 24) and the exchange of family correspondence.

The first conclusion emerging from an analysis of this Convention is that, in general, it is a considerable advance in civilian protection. This completely new instrument of international humanitarian law, the result of the awful experience of many States dominated by others during World War II, when 48% of the dead were civilians, met a need of the time: the need to avoid the recurrence of such horror. And yet, it too had limits and loopholes. Devised to protect civilian populations from the tyranny of an occupying power, the Convention has done little to protect civilian populations from bombing from the air during armed conflict, from new methods and weapons of war, etc. The problems involved in prohibiting weapons of mass destruction and new weapons were not a subject of concern to the diplomatic conference; those problems were transferred to the Disarmament Committee in Geneva, on
the pretext that they came within the *jus ad bellum* whereas the diplomatic conference was required to tackle essentially humanitarian problems, such as the protection of persons in the power of an enemy.

Moreover, some provisions of the 1949 Geneva Convention, especially those relating to hospital zones and localities and neutral zones, have rarely been applied. Statistics show that in armed conflicts since the adoption of the Convention more men have been killed than in the Second World War and that the proportion of civilians among them is alarming—as high as 90% in some situations. It is easy to see, therefore, that the protection of the civilian population in armed conflicts is more urgently necessary than ever.

Not until 1956-57 were efforts undertaken to achieve that objective; again it was the ICRC which took the initiative. The 20th International Red Cross Conference at Vienna in 1965 was a climacteric: it adopted a resolution on the “Protection of Civilian Populations against the Dangers of Indiscriminate Warfare”, which embodied a number of principles for protection. This was an outcome of the efforts of the ICRC which, in 1956, with the help of experts, had drawn up the “Draft Rules for the Limitation of the Dangers Incurred by the Civilian Population in Time of War”. In 1957 that draft was submitted to the 19th International Red Cross Conference in New Delhi.

In 1968 the United Nations General Assembly adopted Resolution 2444/XXIII, the operative paragraphs of which include general principles of protection, valid for all armed conflicts. These principles consist:

(1) in the prohibition of attack against the civilian population as such (para. 1. b), never before mentioned in an international document, and

(2) in the need to spare the civilian population as much as possible when conducting military operations (para. 1. c.)

Since then the U.N. General Assembly has adopted each year a resolution encouraging efforts in that direction. The ICRC, for its part, prepared and submitted, as a basis for discussions at the Geneva Diplomatic Conference on the Reaffirmation and Development of Humanitarian Law, the Draft Protocols additional to the Geneva Conventions of 12 August 1949. On that basis, on 8 June 1977, was adopted the Geneva Protocol I which, in Part IV, proposes fuller regulations on the protection of civilians.

2. DEFINITIONS

The essential innovation of Geneva Protocol I lies in the fact that, apart from affording immunity to the civilian population in general during
armed conflicts, it introduces into positive law a number of definitions of basic concepts. These are essential for effective protection.

(a) Definition of civilian persons and population

International humanitarian law is based on the fundamental difference between persons who do take a direct part in an armed conflict—i.e. combatants—and those who do not. Although the distinction is unanimously recognized in international law, the civilian population found itself in an unfortunate position: the distinction was difficult to draw because the basic concept was not defined. Positive international law did not answer the questions: “What is meant by civilian population?”, “What are military objectives?” and so on.

The difficulty was all the greater in practice: it is really difficult to draw the line between combatants and civilians, especially in present-day conflicts—as is proved, incidentally, by analysis of the combatant category. That is why debates on the subject inclined to the formulation of a negative definition. For instance, at the outset, it was proposed to exclude from that category persons participating directly in hostilities. In a restrictive interpretation, the expression “direct participation in hostilities”, as distinct from the war effort, assumes the commission of an act of war striking direct at the adversary’s military potential; “persons taking a direct part in hostilities”, the ICRC experts considered, even if their contribution to the war effort is indirect, may not be attacked on the grounds that they are ‘quasi-combatants’, for that would lead to abuse. For example, if a workman in a factory could be attacked, why not his wife who brings him food? In contrast, civilians in or near a military objective run the risks arising from attacks on that objective.

On the basis of conclusions, the ICRC submitted to Committee III at the second session of the Conference of Government Experts, a draft article defining civilian population as follows:

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5 This and other principles were reaffirmed in Resolution XXVIII of the 20th International Red Cross Conference and in Resolutions 2444/XXIII and 2675/XXV of the U.N. General Assembly.

6 The war effort is defined as all activities which in one way or another contribute to the continuation of hostilities. Civilian population may contribute to the war effort without losing the right to protection.


9 Ibid. This conclusion drawn by the ICRC is given in article 6 of the Draft Rules for the Limitation of the Dangers Incurred by the Civilian Population in Time of War.
"Article 41. (1) Any person who is not a member of the armed forces and who, moreover, does not take a direct part in hostilities is considered to be a civilian. (2) The civilian population comprises all civilians fulfilling the conditions stipulated in the foregoing paragraph. (3) Proposal I: The presence, within the civilian population, of individuals who do not conform to the definition given in paragraph 1 does not prevent the civilian population from being considered as such, reservation being made for articles 45 (5), 49, 50 and 51 of the present Protocol. Proposal II: The presence, within the civilian population, of individual combatants does not prevent the civilian population from being considered as such, reservation being made for articles 45 (5), 49, 50 and 51 of the present Protocol."  

With the idea of defining this concept in a manner taking into account the necessities involved in the application of humanitarian law, most of the delegates at the Diplomatic Conference opted for the adoption of a fuller text:

"Article 50. Definition of civilians and civilian population. 1. A civilian is any person who does not belong to one of the categories referred to in Article 4 A (1), (2), (3) and (6) of the Third Convention and in Article 43 of this Protocol. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian. 2. The civilian population comprises all persons who are civilians. 3. The presence within the civilian population of individuals who do not come within the definition does not deprive the population of its civilian character."  

The definitions contained in the above article of the Protocol is fairly extensive, taking into account also the objective sought, which gives it a functional aspect, and the people to be protected. The Protocol defines in this manner both individual civilians and the civilian population as a whole. In the category "civilian" the Protocol includes all persons in the territory of the parties to the conflict who are not members of the armed forces. This is because article 4 A of the Third Geneva Convention of 12 August 1949 on the status of prisoners of war relates only to persons protected against despotism by the occupying power and not to the civilian population as a whole, while article 43 of the Protocol defines

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11 Such a definition of civilian population is not given in Protocol II, although the Conference did discuss the problem.
armed forces. Consequently, all persons entitled to protection on the basis of article 4 A of the Third Geneva Convention and those not included in the category "armed forces" pursuant to article 43 of the Protocol are civilians. These persons as a whole form the civilian population. With a mainly humanitarian objective—protecting civilians from the effects of hostilities—the authors of the Protocol endeavoured to overcome practical difficulties in distinguishing the combatant from the civilian: they presumed to be non-combatant, and treated as such, any person about whom there were doubts.

The third paragraph was prompted by the idea that isolated members of the armed forces sometimes mingle with civilians in the event of armed conflict. In such a situation the status of the civilian population remains unchanged; its right to protection is retained. The situation changes and protection ceases when there are complete military units and formations among the civilian population.

(b) Definition of "attack"

In order to lay down objective standards for civilian population protection in armed conflict and to spare the civilian population from the effects of hostilities, the Geneva Diplomatic Conference undertook to define even more clearly a larger number of terms used to facilitate identification of illegal acts committed by a belligerent. As one of the basic rules of protection is the ban on attack of the civilian population, the Conference endeavoured to define the term. Consequently, paragraph 1 of article 49 of Protocol I states that "attacks" means acts of violence, whether offensive or defensive.

Paragraph 2 states: "The provisions of this Protocol with respect to attacks apply to all attacks in whatever territory conducted, including the national territory belonging to a Party to the conflict but under the control of an adverse Party."

This definition is seriously limited by paragraph 3 which specifies that such attacks are forbidden only on land, not at sea or in the air or outer space.12

Many States at the Conference argued in favour of deleting this limitation and of extending the meaning of "attacks" in order to protect

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12 This paragraph reads: "The provisions of this Section apply to any land, air or sea warfare which may affect the civilian population, individual civilians or civilian objects on land. They further apply to all attacks from the sea or from the air against objectives on land but do not otherwise affect the rules of international law applicable in armed conflict at sea or in the air."
civilian property at sea and elsewhere. The western States objected on the grounds that special rules applied to naval warfare.\textsuperscript{13}

The Geneva Diplomatic Conference defined the term “attack” in a manner to give it the minimum purport, and it did not elucidate a number of concepts used in the Protocol, such as military operations, hostilities, acts of violence detrimental to the protection which it is intended to grant the civilian population, etc.

(c) \textbf{The distinction between civilian property and military objectives}

Directly related to protection of civilian population in armed conflicts is the distinction between military objectives which may be attacked by the enemy and property of a civilian character falling into the category of objectives protected by international humanitarian law.

Positive international law contains no rule relating to this distinction which, nevertheless, is recognized as a customary principle in the St. Petersburg Declaration of 1869 (second Preambular clause), the Hague Regulations of 1907 (article 23.g) and the United Nations General Assembly Resolution 2675/XXV (5). As a source of law, the principle has been clearly defined by the Institute of International Law at its Edinburgh meeting in the Resolution of 9 September 1969.\textsuperscript{14}

The existence of this principle being unanimously recognized, the question of its function and scope arises: does it measure up to the realities of present-day armed conflicts? If so, is it sufficient to ensure that the civilian population is protected? Should other concepts, such as military objective, non-military objective, etc., be specified in law?

To the first question, some specialists and experts replied ‘no’. Weapons of mass destruction and certain methods of war, such as indiscriminate bombing, they said, had made the distinction obsolete.\textsuperscript{16} Others proposed omitting aspects relating to nuclear weapons, which corresponded to “an equilibrium intended especially to make widespread

\textsuperscript{13} The United Kingdom invoked the 1936 London Protocol which obliges submarines to pick up the passengers of shipwrecked merchant vessels.

\textsuperscript{14} The definition was repeated by the ICRC in article 43 of the Draft Protocol, as follows: “In order to ensure respect for the civilian population, the Parties to the conflict shall confine their operations to the destruction or weakening of the military resources of the adversary and shall make a distinction between the civilian population and combatants, and between civilian objects and military objectives.” Doc. CDDH/1 of the ICRC.

conflict improbable or impossible", and concentrating on military methods actually used.\textsuperscript{16} A third category of experts was of the opinion, and rightly so, that legal rules in force for the protection of the civilian population and non-military objectives applied to all types of armed conflicts.\textsuperscript{17} Other opinions were also expressed: to adopt a more flexible version of the principle, as its observance as it stood was very difficult because the attacker's information about the targets was necessarily limited.

To define the principle is no easy matter; more complicated still is the difficulty of giving a definition \textit{de lege lata}. Such a definition must be based on objective realities, must take into account the possibilities of translating into fact, and must especially aim to achieve a precise and clear objective.

Let us, in that case, examine the objective data involved. First, the existence of the principle of distinction. Immediately it is formulated and unanimously recognized, it becomes a legal standard binding on every State. It is operative solely in armed conflicts. Its enigmatically humanitarian potentials confer on it a universal function: it applies in all armed conflicts.

Application of this principle is closely connected with conditions of present and future wars; weapons, methods of fighting, etc. The problem on this point is solved. Weapons of mass destruction and methods of total war are already outlawed by international law. The metalegal arguments which we have already invoked, such as the existence of a balance of power as a reciprocal deterrent to the use of forbidden means and methods, are matters of fact; what interests us, however, are the matters of law to which we have referred above.

Our objective in formulating such a definition is to confer more effective and better immunity on protected persons. Would a "minimum" definition serve the purpose? Of course not! It would, in our opinion, only make it easier to transgress the principle legally. That is why we consider that the definition proposed by the Romanian delegation at the first session of the Conference of Experts fully achieves the objective proposed. It was worded as follows: "In the conduct of military operations, a clear distinction should at all times be made between, on the one hand, persons taking a direct and immediate part in military operations and, on the other hand, persons who are members of the civilian population, so that the latter and their dwellings, property and other

\textsuperscript{16} Ibid. p. 80.
\textsuperscript{17} Ibid. p. 80.
amenities which they use shall never be the object of military operations and shall in all circumstances be spared from the ravages of war."

18 To make this principle effective, it is necessary to define exactly the concepts "military objective" and "non-military objective", and to do so in order also to distinguish unlawful acts from those which are permitted.

What is a military objective?

In 1957 the ICRC drew up a text which it submitted to the International Law Commission for discussion and approval. Since then discussion of this problem has continued and efforts are still being made to determine what the problem is exactly. In general the enemy's combat forces, the means of warfare and specifically military installations are considered to be military objectives. In contrast, non-military objectives are individual civilians, the civilian population, objects and installations protected by the humanitarian Conventions, cultural property and so forth.

In the draft rules limiting the dangers incurred by the civilian population in time of war, drawn up at the 19th International Red Cross Conference, two conditions were required of an objective to be considered "military", namely: 1. it should, by its very nature be recognized to be of military interest; 2. that in that case its complete or partial destruction would give the attacker a military advantage.

The ICRC definition, considered as a good starting point by the experts, was not endorsed by specialists. Some suggested dividing objectives into two categories: direct military and indirect military; the latter, including food processing factories and harvests of which the destruction would weaken the enemy's resistance, would sometimes be more important than direct military objectives.

Georg Schwartzenberger proposed, at the Institute of International Law, a three-point distinction referring solely to persons affected by war and not to objects and objectives: 1. All persons involved in the war effort, whether members of the armed forces or civilians, are military


19 Various international laws refer to, but do not define, "military objective" (see art. 8 of The Hague Convention of 14 July 1954 on the protection of cultural property in armed conflict, and art. 19 of the Fourth Geneva Convention of 12 August 1949 on the protection of the civilian population in war).


21 The term implies both actual military operations and the production of equipment of war.
objectives; 2. Persons in zones considered to be the object of war, i.e. actual or likely zones of operation, such as the objectives described by the 1949 and 1954 Conventions, should run all the risks their presence involves; 3. Persons not referred to in (a) and (b) are the only ones who may not lawfully be affected by war.\textsuperscript{22}

Who would be protected by this definitions? In the first case: with the exception of children and old people, all the population participates in one way or another in the war effort; in the second case: because of methods of combat, particularly aircraft, rockets, etc. in contemporary conflicts, the whole territory of a State is a war zone, or at least a possible war zone. In conclusion, since in present-day conflicts the whole population participates in the war effort and the entire territory of the State is a possible zone of operations, a person's involvement in the war effort and his location may not, in our opinion, be taken as criteria for the distinction between military and non-military objectives.

Discussions at the United Nations, although they have not led to the formulation of any such definition, have consolidated military interest and defensive value as essential criteria for distinction. These criteria were endorsed also by the resolution of the Institute of International Law which states that the only objectives which may be considered as military are those which by their nature or their military use for another purpose are of generally recognized military interest, and of which the partial or complete destruction would afford a substantial military advantage to the attacker.\textsuperscript{23}

After the Second World War, interest in defining non-military objectives increased, for the Western powers especially showed a constant inclination to include in the concept of military objective everything which was not expressly protected by the Geneva Conventions. That interest was shown in the effort to give a positive definition to the term. This proved to be difficult, however. In the first place, conditions prevailing in an armed conflict in which the whole population takes part and to which all State resources contribute make it difficult to separate clearly military objectives from non-military objectives. For example, the experts pointed out that there were objectives which were not by nature military but could be military in conditions of genuine military interest (e.g. the undermining of the population's morale). According to one expert the dropping of the atomic bomb on Japan testified to an international custom based on the legal conviction that the rules of war

\textsuperscript{22} See Goerg Schwartzenberger, in \textit{Les problèmes que pose... op. cit.}, p. 22.

\textsuperscript{23} \textit{Les problèmes que pose...}, \textit{op. cit.}, p. 22.
conventions may be nullified.24 There are also complex objectives in which are associated, at the same time and by an almost indissoluble link, special military objectives and non-military—and even protected—objectives. 25

Mindful of this, some specialists opted for the inclusion, in the definition of non-military objective, of specially protected persons and things, such as prisoners of war, the wounded, the sick, the shipwrecked, pregnant women, old people, Red Cross medical personnel, civilian hospitals, ambulances, etc.26 Von de Heydte and Eustotheiades would split non-military objectives into two categories: objectives protected pursuant to customary and treaty rules, and “simple” non-military objectives which, because of their natural or occasional purpose may not serve military ends. The attempt to formulate a positive definition—which would have been an important contribution to the development of international humanitarian law—was abandoned on the grounds that the definition was too restrictive.

It is not in the difficulties to be overcome—fairly big, incidentally—that the cause must be sought, but in the conflicting interests. Certain Western States, speaking for military circles, sought to impose on the conference a minimum definition, introducing “military necessity” which would have made the definition practically senseless and of a nature to favour the attacker. In contrast, the small and medium-sized States, the non-aligned States, wished to reach a binding and more objective definition which would not leave the attacker any scope for its interpretation in his favour. The proposal by the Romanian delegation was in line with that wish. It suggested the following wording: “Objects considered to be non-military are those not directly producing arms, military equipment and means of combat, or which are not employed directly and immediately by the armed forces, even if, as a result of a change in their utilization, they might subsequently assume a preponderantly military character.” 27

Finally, the Diplomatic Conference reached a compromise in which the definitions of the two concepts “military objectives” and “civilian property” are interdependent. Paragraph 1 of article 52 of Protocol I

24 Such a point of view is a flagrant inexactitude, for State practice alone cannot constitute customary international law. To become customary, a practice must be of long standing, i.e. it must have been repeated, constant and general, in other words, practised also by other States. In addition, it must be based on subjective grounds: e.g. the general public conviction that law admits of such behaviour by a State.


27 Doc. CE/COM III/27.
states: "Civilian objects are all objects which are not military objectives as defined in paragraph 2." Paragraph 2 specifies: "... 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, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage."

The first conclusion to be drawn from this is that whereas civilian property is defined vaguely and negatively, military objectives are defined with precision, their essential characteristics being three in number, namely, their nature, their location, and their military use; their actual contribution to military action; definite military advantage.

With a view to further limiting latitude in interpretation, paragraph 3 lays down that "In case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used." The subsequent articles of the Protocol dealing with the problem of protection relate to specific categories of civilian property, such as cultural property and places of worship (article 53), objects essential for the survival of the population (article 54), the environment (article 55), and works and installations containing dangerous forces (article 56). Incidentally, article 52 includes two new rules, formulated for the first time in positive law: the first, in paragraph 1, is that civilian property should not be the subject of attack or reprisal; the second restricts attacks strictly to military objectives.

3. FUNDAMENTAL RULES OF PROTECTION

The Geneva Diplomatic Conference on the Reaffirmation and Development of Humanitarian Law has to its credit, among other things, the fact that it included in the documents it adopted some fundamental rules for the protection of civilian population during armed conflict. It undertook to promulgate rules to protect civilian persons as such and the civilian population as a whole, together with their belongings, in situations arising in all types of armed conflict, from the direct effect of hostilities and from possible tyranny of an occupying power. For the first time international positive law contains a basic rule having the force of a principle and according to which belligerents shall in all circumstances distinguish civilian population from combatants and objects of a civilian character from military objectives, and limit their attacks to the latter.
It may be a cause of general satisfaction that this conference reaffirmed, gave precision to and sometimes defined standards to which no more than allusion had been made in international instruments, and that it drew up new rules designed to protect the civilian population, its property and certain places from the risks in which they are involved during armed conflict. These rules consolidate the status of the civilian population of territory occupied by an enemy.

(a) Status of civilian population on its own territory

Analysis of the two Protocols drawn up by the Conference corroborates the idea that, by the regulations mentioned, the Conference intended to solve two types of problem: protection of the civilian population and protection of objects of a civilian character.

1. Rules for civilian population protection

What are the categories of protected persons according to the law in force, and against what acts are they protected? As a result of previous developments, international humanitarian law provides protection for certain categories of persons. Originally it provided special protection for combatants withdrawn from the fighting—wounded, sick, shipwrecked and prisoners of war—and for the medical and religious personnel who tended them. The changes which have occurred in the structure of armed conflicts raised the serious problem of special protection for certain categories of persons among the civilian population, and of general protection for civilian persons and population as such.

As the concepts “civilian persons” and “civilian population” have been analysed in the preceding paragraph, we shall deal below solely with the problem of protection for civilian persons and population.

A new rule in international humanitarian law—article 51 (1) of Protocol I—confers general protection on the civilian population and individual civilians against dangers arising from military operations. Some rules, in addition to those which already existed, supplement this one to make it effective. They are prohibitive rules, forbidding deliberate attack on the civilian population, acts or threats of violence of which the

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28 I.e. civilians carrying out a humanitarian function—civilian medical personnel, civil defence personnel—and those protected by reason of their condition (age, sex, state of physical or mental health, functions, etc.): children, women, journalists, police, fire-brigade staff, etc.

29 Civilian persons taking a direct part in hostilities are not entitled to protection so long as they continue taking such a part.
main aim is to terrorize the population, indiscriminate attacks and attacks by way of reprisals.

The Protocol introduces a distinction between attacks in general, which may not be aimed against the civilian population and civilian persons, and indiscriminate attacks defined as: (a) attacks which are not directed against specific military objectives; (b) attacks by methods or means of combat which cannot be directed against a specific military objective; or (c) attacks which employ a method or means of combat whose effects cannot be limited as required by the Protocol, and which, consequently, are of a nature, in each such case, to strike military objectives and civilians or civilian objects without distinction. The following types of indiscriminate attack are given as examples: (a) attack by bombardment by any methods or means which treat as a single military objective a number of clearly separate and distinct military objectives in a locality or area with a heavy concentration of civilians or civilian objects; (b) attacks which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination of loss and damage which would be excessive in relation to the concrete and direct military advantage anticipated.

One rule forbids the use of the civilian population or persons to shield certain points or areas from military operations, or to shield, favour or impede military operations. It is also forbidden to direct the movement of the civilian population or individual civilians to shield military objectives from attack or to shield military operations. Depriving civilians of food, as a method of warfare, is absolutely forbidden.

These prohibitions have acquired a general and absolute nature. No breach or pretext may exonerate a transgressor of legal responsibility or relieve him of the obligation to take the necessary precautions. These precautions, laid down in articles 57 and 58, supplement the provisions of the Hague Regulations of 1907. For example, after stating a general rule to the effect that military operations should be conducted with constant care to spare the civilian population, civilians and civilian objects, the Protocol lists the protective measures to be taken by both the attacker and defender. Those who plan or decide upon an attack shall do everything possible to verify that the objectives to be attacked are neither civilians nor civilian objects and are not subject to special protection; they must also take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any case to minimizing, loss of civilian life, injury to civilians, damage to civilian objects, or loss and damage which would be excessive in relation to the concrete and direct military advantage anticipated. An attack shall be
cancelled or suspended if it becomes apparent that the objective is not a military one or is subject to special protection or that the attack may be expected to cause incidental loss of life or injury to civilians and damage to civilian objects. In case of attacks which may affect the civilian population, effective warning must be given in good time whenever circumstances permit. When a choice is possible between several military objectives to obtain the same military advantage, the objective selected shall be the one on which an attack is least dangerous for civilians and civilian property.

One of the rules relates to naval and aerial operations. It requires the parties to a conflict, pursuant to their rights and duties under the rules of international law applicable in armed conflict, to take all reasonable precautions to avoid civilian loss of life and damage to civilian objects.

These rules, too, are absolute and general, as a result of article 57 (5): "No provision of this article may be construed as authorizing any attacks against the civilian population, civilians or civilian objects."

To protect the civilian population and objects from the effects of attack, the defending State is duty bound to take the following precautions:

(a) remove the civilian population, individual civilians and civilian objects under its control from the vicinity of military objectives;
(b) avoid locating military objectives within or near densely populated areas;
(c) take all other necessary precautions to protect the civilian population, individual civilians and civilian objects against the dangers resulting from military operations.

Many of these provisions repeat to a considerable extent the wording of proposals made by the Romanian delegation to the first conference of government experts.30

The rules laid down in Protocol I provide the civilian population, for the first time, with well-defined legal status protecting it from possible risks during armed conflict, e.g. direct attacks, unlawful methods and means of warfare—indiscriminate bombardment, economic warfare methods, etc.—but not against weapons of mass destruction, so that the extent of protection afforded is limited. Moreover, the reluctance to extend protection of the civilian population to include protection from weapons of mass destruction was clear during the proceedings of the

30 CE/COM.III/6; CE/COM.III/13.
Committee on Weapons of the Diplomatic Conference on the Reaffirmation and Development of Humanitarian Law, at which the large nuclear powers adopted a common ‘play-it-down’ attitude.

2. Rules for the protection of civilian objects

Inspired by the humanitarian idea of sparing everything not directly and immediately related to hostilities, the regulations decided upon by the Diplomatic Conference are intended to confer general protection on objects normally used for civilian purposes. Defined, as already mentioned, by the Geneva Protocol I, they are, for the first time, the subject of a rule that “Civilian objects shall not be the object of attack or of reprisals”.31

The protective measures specified in the regulations differ, depending on the nature of the category of object protected and on the function of the object in the material and spiritual life of the people. Some objects are covered by general protection and others by special protection.

New rules were added to the system of special protective measures for cultural property, on which attention had been focused also in the past, in the 1907 Hague Regulations and, especially, the Hague Convention of 14 May 1954 for the Protection of Cultural Property in the Event of Armed Conflict. For instance, the new rules of the Protocol forbid any acts of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples, the use of such objects in support of the military effort, and to make such objects the object of reprisals.

Two further categories of civilian objects are covered by the rules established for the protection of civilians. The first is of objects essential to the survival of the civilian population. Apart from laying down a series of measures to protect the population from the direct effects of attack, the Protocol aims to protect the civilian population from certain indirect effects of war which are inseparable from war. International conflicts have proved that one objective the belligerents seek is the destruction of the enemy’s economic potential, his means of subsistence, and the weakening of his resistance. The first to feel the effects are the civilians. The Diplomatic Conference endeavoured to change that, and the Protocol forbids economic warfare methods which consist in starvation by the destruction of objects essential to the civilian population. For example, it is forbidden to attack, destroy, remove or render useless

31 Article 52(1), Protocol I, entitled “General protection of civilian objects”.

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objects of this category, or to make them the object of reprisals. This prohibition does not apply to objects used as sustenance solely for the members of the armed forces or in direct support of a military operation, provided, however, that in no event shall action against these objects be taken which may be expected to leave the population with such inadequate food or water as to cause its starvation or force its movement.

Also protected are objects whose destruction might have disastrous or incalculable effects, such as works and installations containing dangerous forces, e.g. dams, dykes, and nuclear electrical generating stations. Such works and installations may not be the object of attack or reprisals even if they constitute military objectives. Neither may military objectives near such works and installations be attacked. In view of the disastrous consequences which the destruction of such objects might have for the civilian population of a State, their special protection shall not cease in any circumstances: dams and dykes may not be attacked even when used in regular, significant and direct support of military operations and if attack is the only feasible way of terminating their military function. The same applies to nuclear power stations even if they supply current in regular, significant and direct support of military operations. It is also forbidden to attack other military objectives on or near such works or installations, even if they are used in regular, significant and direct support of military operations.

The Protocol recommends States not to locate military objectives in the vicinity of such works or installations, unless solely to defend such works and installations. Such military objectives shall not be the object of attack, on condition that they are not used in hostilities except to respond to attack upon the works or installations protected and that their armament is limited to weapons capable only of repelling an attack.

To provide extra protection for this category of object the parties are urged to conclude agreements among themselves and, to facilitate identification of such objects, to mark them with a special sign consisting of a group of three bright orange circles placed on the same axis.

Some observations may be made and conclusions drawn from an analysis of the rules for the protection of civilian objects. The underlying idea was to protect civilian objects in terms of the protection of the civilian population, with a view to shielding the civilian population and the objects indispensable to it from the consequences of armed conflict.

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32 A rule to that effect had been proposed by the Netherlands at the 1907 Hague Conference, but was not approved.
should it break out. Thus, for the first time, a broad range of protection has been granted to human beings and objects which have no direct and immediate relationship with operations of war. How effective are those rules likely to be? While these rules are cause for satisfaction, it must be admitted that there are serious limits to their effectiveness. In the first place, the general protection conferred by article 52 of the Protocol is no more than a declaration, with no measure or guarantee provided to ensure its implementation. Secondly, civilian objects are protected solely from direct attack, but not from the indirect risks consequent upon attack directed against military objectives. In addition to these shortcomings, the vague definition of civilian object and the noticeably subjective nature of the “military objective” definition—the two definitions being interdependent—may allow a military commander to make his own assessment of a situation. In our opinion, a list of examples of civilian objects would considerably have reduced the scope for subjective judgement.

3. Protection of places and localities organized for special purposes

The Protocol being intended to confer genuine immunity from the effects of war on the population, two of its articles are designed to protect populated areas or those of special economic, cultural, historic, scientific and other importance.

The first of these two regulates the status of non-defended localities. This is not a recent concern. The first rules in that direction were contained in the 1907 Hague Regulations, article 25 of which forbade the attack or bombardment by any means whatsoever of undefended towns, villages, dwellings or buildings. Article 1 of the 1907 Hague Convention on Bombardment by Naval Forces in Time of War prohibited such bombardment of undefended ports, towns, villages, dwellings or buildings.

Restating that prohibition, the Geneva Protocol regulates the establishment of non-defended localities, the conditions with which they must comply, their marking and the loss of non-defended status.

The undefended locality shall be declared as such by the competent authorities to the adverse party, and at the same time its limits shall be communicated. Any inhabited place near or in a zone where armed forces are in contact and which is open for occupation by an adverse party may be declared a non-defended locality. Such a locality shall fulfil the following conditions: combatants, mobile weapons and mobile military equipment must have been removed; no hostile use shall be made of fixed military installations and establishments; the authorities
and population shall commit no hostile act; no activities in support of military operations shall be undertaken. Arrangements for the marking of a non-defended locality shall be agreed upon with the adverse party and the markings shall be placed on clearly visible places.

Legally, a locality acquires non-defended status when it meets the aforesaid conditions and loses that status when it no longer fulfils those conditions. In the latter event, the locality continues to enjoy the protection provided for in the other provisions of the Protocol or of international law applicable in armed conflicts.

**Demilitarized zones** differ from non-defended localities in the manner in which their status is established, namely by agreement concluded between the parties orally or in writing, direct or through a protecting power or a humanitarian organization. Such an agreement consists in reciprocal and concordant declarations and may be concluded in peacetime as well as after the outbreak of hostilities. It should define as precisely as possible the limits of the demilitarized zone and if necessary lay down the methods of supervision. The subject of such an agreement should comply with the conditions which such a zone must fulfil. These conditions are almost the same as those required of non-defended localities. Upon the conclusion of such an agreement and conformation of the zone concerned with the agreed conditions, the zone acquires the status of a demilitarized zone. It will be marked by signs agreed upon by the parties: any military operation in such a zone shall be forbidden. No party to a conflict having concluded an agreement to that effect may use the zone for purposes related to the conduct of military operations or unilaterally cancel the agreement. The zone loses its status in the event of a material breach thereof by one of the parties.

In theory the establishment of non-defended localities or demilitarized zones increases the protection of the civilian population, but in practice their establishment is highly unlikely, for the conclusion of such agreements during armed conflict is very difficult. It is common knowledge that the similar provisions of the Geneva Convention on hospital zones and localities have seldom been put into effect.

(b) **New factors in the status of civilians on territory occupied by the enemy**

In practice there are two distinct types of occupation of enemy territory, depending on the objective of such occupation and the conditions in which it takes place. First there is the classic *ocupatio bellica*, consisting in the armed invasion of a territory and its occupation for
the purpose of exercising temporary authority over it. The second type is foreign occupation, to which reference is made in recent documents of international law, including the Geneva Protocol (para. 4 of article 1) which covers all possible forms of penetration by foreign troops into the territory of a State: i.e. at the invitation of the authorities in the case of an internal conflict, on the pretext of such an invitation, on the basis of an agreement, on the basis of a treaty imposed by force, etc.

Occupation of foreign territory, whatever the form it takes and whatever the motive invoked, is an unlawful act, an act of aggression which is a crime under the rules and principles of contemporary international law. Notwithstanding, when such an act is committed, the occupying power has certain duties, for both the administration of the territory occupied and the protection of civilians remaining in the territory.

The status of civilian persons in enemy-occupied territory is covered by section III of the 1907 Hague Regulations and by the Fourth Geneva Convention of 12 August for the protection of civilian persons in time of war. However, as we have seen, the provisions of these documents have many times been ignored in recent armed conflicts.

In anticipation of such situations and to consolidate the protection of the civilian population, the Geneva Diplomatic Conference attempted to supplement the rules of the Fourth Geneva Convention relative to the humanitarian protection of civilians and civilian objects in the power of a party to a conflict. For example, in Part IV of the Protocol adopted by the Conference, Section II, “Relief in favour of the Civilian Population”, in principle, supplements articles 23, 55, 60, 61 and 62 of the Fourth Convention, and Section III, “Treatment of Persons in the Power of a Party to the Conflict”, supplements, in particular, Parts I and III of the said Convention.

One of the occupying power’s obligations is to ensure provision of essentials to the survival of the population. Article 55 of the Fourth Convention placed on that power the onus of ensuring, to the fullest extent of the means available to it, the food and medical supplies of the population; when these are lacking in the occupied territory, the occu-

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33 In the classical concept of the law of war, *ocupatio bellica* was actual occupation without conveyance of sovereignty; it involved only the temporary and limited substitution of authority. For details, see Col. Vasile Gherghescu and Dr. Ionel Cloșca, *Règles de droit international relatives à l'état de paix et à l'état de guerre*. Editions Militaires, Bucharest, 1972, pp. 229-232.

34 See para. 4, art. 2 of the U.N. Charter; the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States (principle 1); the 1977 definition of aggression.
pying power should obtain them from other sources. It was forbidden for the occupying power to requisition food or medicaments in the occupied territory except for use by the occupation forces and administration personnel, and then only to the extent that such food was surplus and provided that fair value was paid for it. The protecting powers were entitled at any time to verify the state of the supplies available in the occupied territories. Article 69 of Protocol I supplements these regulations by adding that "... the Occupying Power shall, to the fullest extent of the means available to it and without any adverse distinction, also ensure the provision of clothing, bedding, means of shelter, other supplies essential to the survival of the civilian population of the occupied territory and objects necessary for religious worship." If the civilian population of any territory under the control of a Party to the conflict, other than occupied territory—says article 70 of the Protocol—is not adequately provided with food and other supplies, humanitarian relief action shall be undertaken. In the distribution of relief priority shall be given to children and expectant and nursing mothers. The parties to the conflict and the Contracting Parties to the Protocol shall allow and facilitate the rapid and unimpeded passage of relief consignments, equipment and personnel. They may prescribe the technical arrangements. They may make their transit authorization conditional upon the on-the-spot supervision of the relief distribution by a protecting power. They shall not divert relief consignments from their destination nor delay the forwarding thereof. Relief consignments shall be protected and relief actions shall be encouraged and facilitated by the international co-ordination of the parties to the conflict and the Contracting Parties.\textsuperscript{36}

The Protocol also provides that personnel participating in relief actions, in particular for the transport and distribution or relief, must be approved by the party on whose territory they will carry out their activities. Such personnel shall be respected and protected and, provided that they do not exceed the terms of their mission and that they take account of the security requirements of the territory concerned, their activities and movements may be restricted only when necessary.

This rule gives rise to one observation: neither the State national central bodies nor the National Red Cross Society being involved, the relief action assumes to some extent a "supra-state" character which, in our opinion, impairs its efficiency.

\textsuperscript{36} Relief action for the civilian population of occupied territory is governed by articles 59-62 and 108-111 of the Fourth Geneva Convention of 1949 and by article 71 of Protocol I of 10 June 1977.
Section III of Part IV of the Protocol, as we have just said, regulates the treatment of persons in the power of a party to a conflict. It comprises three chapters: Chapter I entitled “Field of Application and Protection of Persons and Objects”; Chapter II, “Measures in Favour of Women and Children”; and Chapter III, “Journalists”.

Parts I and III of the 1949 Geneva Convention are concerned with the detailed protection of persons and civilian objects in enemy-occupied territory. Protocol I merely adds a few new rules concerning refugees and stateless persons (article 73), the reuniting of dispersed families (article 74) and some fundamental guarantees. The purposes of these new rules are: to include among the beneficiaries of the protection afforded by the two parts of the Fourth Convention persons who, before the outbreak of hostilities, are considered to be stateless or refugees within the meaning of international instruments or the national legislation of the State of asylum or residence; to facilitate as much as possible the reuniting of families dispersed by armed conflict; and to encourage humanitarian organizations in their work for such families.

The guarantees provided for in article 75 of Protocol I are intended to define the status of this new category of persons entitled to protection. The provisions of this article fill one of the loopholes in positive law which excluded from the benefit of protection the citizens of a State not bound by treaty, the citizens of a neutral or co-belligerent State on the territory of a party to a conflict, and the citizens of parties to a conflict (cf. article 4 of the Fourth Convention).

In their favour the following rules, laid down in the Fourth Convention for the benefit of other categories of persons, have been enunciated: they shall be treated with humanity in all circumstances; the protection afforded to them shall be applied on an equal basis whatever their race, colour, sex, language, religion, wealth or other criteria; their person, honour and religious convictions and practices shall be respected. It is forbidden for civilian or military agents at all times and in all places to commit any of the following acts against such persons: violence to life, health and physical or mental well-being (murder, physical and mental torture, corporal punishment, mutilation, outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution, etc.), the taking of hostages, collective punishments, and threats to commit any of the foregoing acts. Some guarantees are provided for persons arrested, detained or interned for actions related to armed conflict, and there are others relating to the passing and enforcement of sentences, etc.
Chapter II of this section is concerned with persons entitled to special protection by reason of their condition, namely, women and children.

The Fourth Geneva Convention contains a whole series of rules for the protection of women and children. However, the origin of the provisions contained in article 76 of the 1977 Protocol is a resolution of the U.N. Economic and Social Council of April 1970 on the protection of women and children in time of emergency, war, struggle for peace, national liberation and independence, inviting the U.N. Secretary-General to give special attention to this problem.36

The Protocol contains three special rules relating to women in the power of an enemy or in enemy-occupied territory: (1) they shall be the object of special respect and shall be protected against rape, forced prostitution and any other form of indecent assault; (2) pregnant women and mothers with young dependent children, who are arrested, detained or interned for reasons related to armed conflict shall have their cases considered with the utmost priority; (3) parties to a conflict shall endeavour, to the maximum extent feasible, to avoid pronouncing the death penalty on pregnant women or mothers having dependent infants for an offence related to the armed conflict. The death penalty on such women for such an offence shall not be put into effect.

Protection of children is more far-reaching and more complex than in the Fourth Geneva Convention. Post World War II tragedies in which children so greatly suffered have strengthened the conclusion that the protection of the child must be consolidated in three essential aspects: against attack, against their use in armed conflicts, and in the relationship between children and the party in whose power they are.37

For the protection of children in armed conflicts, the Geneva Diplomatic Conference, on the basis of a mandate from the U.N. Secretary-General and from the Economic and Social Council Resolution 1515/XLVIII dated April 1970, and on the basis also of an ICRC proposal inspired by article 16 of the Fourth Geneva Convention, included in Protocol I two articles—Nos. 77 and 78—for the special protection of children. “Children”, says article 77 (1) “shall be the object of special respect and shall be protected against any form of indecent assault. The parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason.”

36 Resolution 1515/XLVIII/ECOSOC.
37 In 1959 the U.N. General Assembly, by Resolution 1386/XIV, adopted the “Declaration of the Rights of the Child”, intended to ensure special protection for all children in all circumstances. The Declaration contains ten principles for all who have responsibility—parents, charitable organizations, local authorities and governments—who are invited to recognize and ensure the application of the rights of the child.
personae, the rule is very broad: it regulates the protection of children not only in enemy-occupied territory but in the territories of all parties to the conflict without distinction.

The involvement of children of less than 15 years of age in conflict is regulated in article 77 (2)-(5): parties to a conflict must take every feasible measure in order that such children take no direct part in hostilities, particularly by refraining from recruiting them into their armed forces. In other words, belligerents shall not tolerate or encourage in any form their indirect participation in sabotage, transport of arms or munitions, dissemination of news, etc. If, in exceptional cases, children who have not reached the age of 15 years take a direct part in hostilities and fall into the power of the adversary they shall continue to benefit from the special protection, whether or not they are prisoners of war. If arrested, detained or interned for reasons related to the armed conflict, they shall be in quarters separate from adults, and if sentenced to death for an offence related to the conflict the sentence shall not be put into execution on persons who had not attained the age of 18 at the time the offence was committed.

One practice current in armed conflicts is to transfer children to foreign countries to use them for various work or simply to deprive them of their nationality. For example, during the Second World War the Nazi authorities transferred children from occupied countries to the territory of the Reich and integrated them into German families in order to germanize them. This became more frequent and widespread in certain recent conflicts. To shield children from such practices, the Diplomatic Conference inserted article 78 into the 1977 Protocol, forbidding the removal abroad by a party to a conflict of children other than its own nationals, except for a temporary period made necessary for reasons of health or safety. Even in such a case the consent of the parents or guardians is required; if this cannot be obtained the written consent of the person who by law or custom is responsible for the care of the child is required. Any such evacuation shall be supervised by the Protecting Powers in agreement with the parties concerned, i.e. the party arranging for the evacuation, the party receiving the children and any party whose nationals are being evacuated. Throughout the whole period of evacuation each child shall be given adequate education. To facilitate their return to their families, the party which arranged the evacuation and, as appropriate, the authorities of the receiving country, shall establish for each child a card, with a photograph and the fullest possible information, and send it to the Central Tracing Agency of the International Committee of the Red Cross.
These rules for the protection of children during armed conflicts, laid down in recent international documents, supplement the provisions of the Fourth Geneva Convention of 1949 (para. 1, article 14—establishment of hospital and safety zones and localities; para. 1, article 23; para. 4, article 68).

(c) **Status of journalists in areas of armed conflict**

The problem of journalists who exercise their trade in dangerous conditions was mentioned in international law as early as at the beginning of the century. The Regulations annexed to the 1907 Hague Convention contain the following provision: "*Article 13. Individuals who follow an army without directly belonging to it, such as newspaper correspondents and reporters, sutlers and contractors, who fall into the enemy's hands and whom the latter thinks expedient to detain, are entitled to be treated as prisoners of war, provided they are in possession of a certificate from the military authorities of the army which they were accompanying.*" This was repeated in the Geneva Conventions of 1929 and 1949 on the treatment of prisoners of war.

This rule governed the status of journalists in both the First and the Second World Wars when, in view of the danger to which they were exposed, they had a well-defined status: being accredited to the army they were obliged to obey the orders of the military commanders with respect to their movements and the information they transmitted.

The journalists' situation became much more dangerous in the post-1945 conflicts: without a front line, they could find themselves face to face with the enemy or might unwittingly wander into an enemy position. Indeed, there has been an increase of victims among journalists in recent conflicts. In view of the ever-greater danger they have to face, the protection afforded by international law has proved inadequate. For that reason several international fora have discussed the problem and the U.N. General Assembly has adopted resolutions related to it. For example, on 9 December 1970, Resolution 2673/XXV was adopted, expressing the necessity of drawing up a new international humanitarian agreement to provide better protection for journalists on perilous missions, especially in an area of armed conflict. On 20 December 1971 another U.N. resolution (2854/XXVI), taking into account the many documents ³⁸ drawn up and the initiative of some States in that direc-

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³⁸ Doc.A/8371 and Add. 1-3, including the draft annex to the Protocol relative to the composition and functions of the international professional committee for the protection of journalists on dangerous missions; Doc.A/8438 and Add.1 containing a draft international convention on the protection of journalists on dangerous missions; Doc.A/8371 and Add.1, containing general comments on the respective documents.
tion, invited the Economic and Social Council to demand that the Human Rights Committee examine the documents in question as a matter of urgency, and that governments communicate their comments thereon.

The ideas put forward in these documents were very ambitious. Special uniforms and distinctive insignia (helmet, armband, a conspicuous distinctive sign) were suggested for journalists, and an identity card attesting to the bearer’s bona fide journalist status. At the same time, it was to be made compulsory for all journalists to observe ethical rules, including those prohibiting direct or indirect participation in hostilities and the conveying of information of a military character from one belligerent to another, and imposing the obligation to restrict themselves to “pure” information without any expression of opinion on the justice or injustice of the belligerents’ causes.

Finally, obstacles forced the abandonment of all these ideas and such regulations were deemed unrealistic. Other reasons were also invoked: the profession would be limited; a category of civilians with privileged status would be created; other civilians exposed to danger (members of the medical profession, of fire-brigades, of the police, etc.) would not have such status; the journalist profession would not be adequately organized nationally or internationally; etc.

Thus it was that the regulation issued by the 1977 Geneva Diplomatic Conference was of modest scope. It is contained in article 79 of Protocol I and expresses three ideas: 1. journalists engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians; 2. they shall be protected as civilians provided they take no direct or indirect part in hostilities; 3. an identity card issued by the respective governments shall attest to their status as journalists.

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Measures advocated for the protection of civilians and their property against risks occurring in armed conflicts do, of course, represent a new advance gained by mankind in its fierce struggle to limit the gravity and extent of such risks as much as possible. However, will they—even if strictly applied—suffice to protect the civilian population against the dangers of war?

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39 Doc.A/C.3/L 1902 (draft convention proposed by Australia); Doc.A/C.3/1 1903 (U.S. working document); Resolutions 1597 (L) of the Economic and Social Council of 21 May 1971 stating the Council’s decision to submit to the General Assembly a draft international convention on the protection of journalists on dangerous missions.