A Brief Outline of International Humanitarian Law

by Stanislaw E. Nahlik

CONTENTS

	Page
I. Introduction: *Comments on terminology*	188
II. A Historical Review:	
1. *Precursors to humanitarian law*	189
2. *Origins of the Red Cross*	190
3. *Red Cross Principles*	191
III. The Development of humanitarian Law	192
IV. The Law of Geneva and the Law of The Hague	194
V. Some Facts and Figures on the Law of Geneva	197
VI. The General Scope of the Law of Geneva	197
VII. Persons Protected:	
1. *Wounded, sick, shipwrecked*	199
2. *Combatants—prisoners of war*	200
3. *Mercenaries*	203
4. *Civilians and civilian population*	203
5. *Medical and religious personnel*	205
6. *Staff of voluntary aid societies*	206
7. *Some extensions*	206
8. *Missing and dead persons*	208
VIII. Objects protected:	
1. *Objects serving a medical purpose*	208
2. *Civilian objects not used for medical purposes*	209
3. *Neutral or demilitarized zones*	211
IX. Distinctive sign	212

X. What is protection? 213
1. *Injunctions and prohibitions* 214
2. *Prohibition of reprisals* 216
3. *Escape clauses* 216
4. "*Safety valve*" 217
XI. Execution:
1. *By the parties themselves* 218
2. *Protecting Powers* 218
3. *Red Cross bodies* 219
XII. Sanctions:
1. *States* 220
2. *Individuals* 220
XIII. Non-international armed conflicts 222
XIV. Final remarks 225

I. Introduction: Comments on terminology

The term "humanitarian law" applies to those rules of international law which aim to protect persons suffering from the evils of armed conflicts as well as, by extension, objects not directly serving military purposes.

There is therefore an essential difference between humanitarian law and "human rights", for the latter do not apply only in time of armed conflict.

Note the use of "armed conflict" rather than "war". The centuries-old term "war" is still in everyday use but has tended to disappear from legal language over the past decades, for "war" has gradually been outlawed, even though resort to force, be it called "war" or not, continues to exist. Thus, it is at present more correct to use the term "armed conflict", as its very vagueness may be considered an advantage. Recently coined [1], it covers any occurrence, whatever its legal character, where two or more parties oppose each other in arms. However, it will be appropriate, indeed necessary, to use at times one or the other term.

The term "war", in Latin *bellum*, has been used in the traditional language of international law in two contexts : *jus ad bellum* when referring to the right to start a war, and *jus in bello* with reference to all the rules binding on the belligerent parties during a war already in course. Humanitarian law is an important, the most important perhaps, part of the latter.

[1] The term was first used in the *Convention for the Protection of Cultural Property in the Event of Armed Conflict*, The Hague, May 14, 1954 (text: United Nations, *Treaty Series*, vol. 249, pp. 216 ff).

II. A Historical Review

1. Precursors of humanitarian law

It has been said that war is the well from which the science of the law of nations was drawn. In fact, it was not until the seventeenth century that a treatise on the law of war and the law of peace, i.e. on international law as a whole, was first published. [2]

Monographs devoted to the law of war, however, started to appear as early as the fourteenth century [3], and chapters or at least paragraphs discussing certain aspects of this subject can be found much earlier, mostly in theological works.[4] In the Middle Ages, however, authors limited their discussions almost exclusively to *jus ad bellum*, pondering over the circumstances under which a war could be considered "just". Apart from the odd thought spared for sacred, i.e. ecclesiastical persons and objects, they rarely considered the possibility of limiting a belligerent's freedom of action in a war that had already broken out. Not until the Renaissance did the plight of those affected by the ills of war give rise to concern [5] and the true champions of what would later come to be called *humanitarian law* did not appear until the Age of Enlightenment. They formulated a fundamentally humanitarian doctrine according to which war should be limited to combat between soldiers, without posing a threat either to the civilian population or non-military objects. The prime movers of this concept were Jean-Jacques Rousseau (in a noteworthy chapter of his *Social Contract*) [6] and Emeric de Vattel (who discussed specific problems concerning the law of war in his *Law of Nations*).[7] Rousseau and Vattel were both born in cities, Geneva and Neuchâtel,

[2] H. Grotius (de Groot): *De jure belli ac pacis libri tres*, 1st ed., Paris, 1625.

[3] Bartolo de Sassoferrato: *Tractatus represaliarum*, 1354; Giovanni de Legnano: *De bello, de represaliis et de duello*, 1360.

[4] The most important of which include: St Augustin: *De civitate Dei*, Book XXII, chap. 6; St. Isidore of Seville: *Etymologiarum vel originum libri viginti*, Book II, chap. 1, and Book XVIII, chap. 1; St. Thomas of Aquino: *Summa totius theologiae, Secunda Secundae, Quaestio XL*; etc.

[5] First and foremost in the mind of the Spanish Dominican, Francisco de Vitoria: *De Indis noviter repertis* et *De Indis sive De jure belli Hispanorum in barbaros* (in Relectiones theologicae, read in 1532, published 1557), in Classics of International Law, Washington, 1917, esp. pp. 279 et seq.

[6] J.-J. Rousseau: *Du contrat social*, 1st ed. 1762, Book 1, ch. 4 (translated into English: *The Social Contract*).

[7] E. de Vattel: *Le droit des gens; ou Principes de la loi naturelle, appliqués à la conduite et aux affaires des nations et des souverains*, 1st ed. 1758, Book III, ch. VIII, para. 140, 145-147 and 158 (translated into English: *The Law of Nations; or, Principles of the Law of Nature, applied to the Conduct and Affairs of Nations and Sovereigns*).

that were shortly to enter the Swiss Confederation and become a part of French-speaking Switzerland. It was here, especially in Geneva, that humanitarian law was developed and it was from this area that knowledge and influence of this law spread to all the countries of the world, whence its frequently used name: the *Law of Geneva.*

2. Origins of the Red Cross

The initiative came from a citizen of Geneva, Henry Dunant. In June 1859, Dunant visited the plain of Solferino, in Lombardy, where French and Sardinian troops had just won a victory over the Austrians. Dunant was so horrified by the sight of the uncountable wounded soldiers abandoned on the battlefield that he was moved to devote the better part of his life to finding the ways and means — both in law and in practice — to improve the plight of victims of war. His book, *A Memory of Solferino,* which appeared in 1862, profoundly touched public opinion in Switzerland and in many other countries. At the instigation of the International Standing Committee for Aid to Wounded Soldiers, known as the "Committee of Five" and founded in Geneva with General Dufour as chairman — succeeded shortly thereafter by Gustave Moynier — and Dunant as secretary, the Swiss Government decided to convene, also in Geneva, a diplomatic conference which resulted in the signing, on 22 August 1864, of the Convention for the Amelioration of the Condition of the Wounded in Armies in the Field.

To emphasize the Swiss origins of the movement, the decision was soon taken to adopt, as the distinctive sign of the protection granted to wounded soldiers, the inversed colours of the Swiss flag (a white cross on a red ground), that is to say, a red cross on a white ground.[8] In 1880, the Committee of Five became the International Committee of the Red Cross (ICRC), a name it has kept to this day. One by one, numerous National Societies were created and they adopted the same emblem. At the request of certain Islamic countries, the red crescent was also admitted. The red lion and sun was used for a time by Iran, but was abandoned (in 1980) in favour of the red crescent.

In view of the increasing number of National Societies, the League of Red Cross Societies was founded in Paris in 1919; it transferred its headquarters to Geneva in 1939. The League is an international non-governmental organization in the literal sense, whereas the ICRC, although it has international competence, is a Swiss legal entity and only Swiss citizens can become members.

[8] On this subject, see below, ch. IX.

The exclusively Swiss character of the ICRC has at times been criticized. It is, however, this very characteristic that guarantees its complete neutrality and allows it to act without delay in time of armed conflict or disturbances. If its composition were "international" in the usual sense of the word, there would be several difficulties to overcome. First a system would have to be devised to distribute seats on the Committee among different countries or regions. Second, the decision to assist one or the other country could often be taken only after long and tiresome discussions reflecting ideological differences between members of the international community ; all action would be delayed and more difficult for the parties to a conflict to accept.

Within the Red Cross movement as a whole, each country and each region has many opportunities to make itself heard. On the national level, each Society, in accordance with the Statutes of the International Red Cross, is completely autonomous. On the international level, every National Society participates in the League's decisions, mainly to coordinate humanitarian action in case of natural disaster. International Red Cross Conferences, which are held every four years and are attended not only by the ICRC, the League and the National Societies, but also by the governments signatories to the Geneva Conventions, are a further occasion on which these different national and international components can express their views on all of the problems confronting the movement.

3. **Red Cross Principles**

In this context, what are the fundamental principles observed by the International Committee or by any other Red Cross body when carrying out its activities ?

These principles, which have been reiterated on numerous occasions [9] but which have not undergone any fundamental change since Henry Dunant published his moving account of the scene on the battlefield at Solferino, and since the Committee of Five induced the Swiss Federal Government to convene the First Geneva Conference, are as follows: humanity, impartiality, neutrality, independence, voluntary service, unity, universality. The four latter principles indicate the lines on which

[9] For their present-day version, formally adopted at the Twentieth International Red Cross Conference, Vienna, October 1965, see J. Pictet: *The Principles of International Humanitarian Law*, ICRC, Geneva, 1967, which classifies them somewhat differently from the present writer.

the Red Cross is organized. It is a social institution in the full sense of the term : it remains independent of any State power ; it seeks no profit ; there is only one Society in each country; it is a world-wide movement; when they meet, the representatives of each country are guaranteed complete equality of rights. The first three principles are the basis of every Red Cross action. The Red Cross is in no way interested in knowing which party to a conflict is right and which is wrong, or even which is the aggressor and which the victim of aggression.[10] It leaves it to bodies such as the United Nations Security Council or General Assembly to debate these issues which are often exceedingly difficult to resolve. At all times, the Red Cross sees only the *man* who is suffering and in need, sometimes desperately, of disinterested assistance.

III. The Development of Humanitarian Law

The ICRC feels that besides organizing protection and assistance activities in time of armed conflict, one of its tasks is to see that humanitarian law is developed and above all adapted to modern-day reality.

The very brief 1864 Convention was therefore merely the first step in a long historical process which has witnessed several major advances in the field of humanitarian law :

1906 — (new) Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field;

1907 — The (tenth) Hague Convention for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention;[11]

1929 — two Geneva Conventions: one covering the same ground (and with the same name) as the Convention of 1864 and 1906; the other relative to the Treatment of Prisoners of War;[12]

[10] This question was raised by some jurists after the Second World War. A categorical answer was given—along the lines of the above—by the former ICRC President, Max Huber, in "Quelques considérations sur une révision éventuelle des Conventions de La Haye relatives à la guerre", *Revue Internationale de la Croix-Rouge*, July 1955, p. 433 ff.

[11] This was a revised version of a similar Convention of the same name adopted at the first Hague Conference in 1899.

[12] According to its Article 89, this Convention was complementary to Chapter 2 of the Regulations annexed to the second 1899 Convention and to the fourth Convention of 1907; in practice, it replaced them.

1949 — four Geneva Conventions relative to the protection of victims of war: the First and Third Conventions are revised versions of the Conventions of 1929; the Second is a revision of the Tenth Hague Convention of 1907; the Fourth breaks fresh ground and deals with the protection of civilian persons in time of war;

1977 — two Protocols additional to the Geneva Conventions of 1949, the first relative to the protection of victims of international armed conflicts,[13] the second of non-international armed conflicts.

From the legal point of view, the 1977 Protocols are quite different from the previous treaties, each one of which, in principle, replaced a similar treaty relative to the same subject-matter. Thus, the Convention of 1906 replaced that of 1864, the first Convention of 1929 replaced that of 1906, the first and third Conventions of 1949 replaced the first and second Conventions of 1929 and the second Convention of 1949 replaced the tenth Hague Convention of 1907. On the other hand, the 1977 Protocols (or in any case, Protocol I applicable in international armed conflicts), far from replacing the 1949 Conventions, had in principle but one purpose: to clarify and supplement them. This explains why they are modestly called the *Additional Protocols*. Let us say right out that the participants in the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts (DCHL), once they had gathered in Geneva, in certain cases went beyond the limits of the ICRC's draft Protocols. It was for this reason, incidentally, that the Conference, which was to have met only once, actually convened four times (in 1974, 1975, 1976 and 1977).

Most of the Conventions that codify the law of war have been adopted by almost all the countries in the world.

At the outset, application could have been limited by the *si omnes* clause, stipulating that the Convention applied only if all the belligerents were parties to it. However, already during the First World War this clause was not observed, and it came to be considered obsolete. The lawyers of several defendants accused of major war crimes at Nuremberg invoked it in vain. The International Military Tribunal stated in its judgement that the rules contained in the Convention of The Hague and

[13] Note that the traditional term "war", which had still been used in the Conventions of 1949, has been replaced by the term "armed conflict" (see above, in our Introduction).

Geneva had become so implanted in the public conscience that they should be considered a part of *general* international law binding all countries, whether or not formally parties to them.[14] Let us also not forget that, at its first session, the UN General Assembly unanimously recognized what is known as the Law of *Nuremberg* as a branch of general international law.[15]

The Nuremberg Tribunal's opinion on the application of the pre-World War II Conventions could also hold true for the Conventions of 1949, since almost all the countries in the world are now bound by them. [16]

It would be premature at present to opine on the extent to which the 1977 Protocols will be *formally* accepted. We underline the word "formally", because a large number of the provisions of these Protocols were adopted unanimously; many others were adopted by a considerable majority; thus, we feel that they can be considered as reflecting the opinion held by the plenipotentiary representatives of the overwhelming majority of the countries forming the international community today. Consequently, even if the documents of ratification or accession are not as yet numerous,[17] the legal authority of the Protocols, not to mention their undeniable moral and political authority, cannot be ignored. A significant example in this regard is the Declaration concerning the Laws of Naval Warfare which was drafted in London in 1909 and never ratified, but was in fact observed by the belligerents in the First World War.

We shall therefore analyse in the following pages the provisions of the Protocols by comparing them to those of preceding treaties, considering that they constitute a new stage in the historical development of humanitarian law.

IV. The Law of Geneva and the Law of The Hague

With the progressive codification of the law of war, it became apparent that the rules of that law should be divided into two categories: the *Law of Geneva* and the *Law of The Hague*. One well-known author, in

[14] See International Military Tribunal, *Trial of the Major War Criminals*, Nuremberg, 14 November 1945 — 1 October 1946, Nuremberg 1947, vol. 1, pp. 253-254. See also M. Merle: *Le procès de Nuremberg et le châtiment des criminels de guerre*, Paris, 1949, p. 118.

[15] See Resolution 95 (I) adopted on 11 December 1946.

[16] By 1 January 1984, 155 States were Parties to the 1949 Conventions.

[17] By 1 January 1984, 38 States were Parties to Protocol I and 31 to Protocol II.

an attempt to explain the difference between the two, wrote that the Geneva Conventions concern the *protection of the individual* against the abuse of force, while The Hague Conventions constitute interstate rules on its actual employment.[18] According to this definition, the Law of Geneva has a precisely-defined subject area while the Law of The Hague covers all the other problems of the law of war.

In any case, this rather artificial delimitation between the two branches is slowly disappearing. Already during The Hague Conferences referred to by the author of the above lines, the intention was to codify the law of war as a whole. The Regulations annexed to the Convention [19] concerning the Laws and Customs of War on Land include a chapter called "The Sick and Wounded", which, in its only article (number 21) states that "The obligations of belligerents with regard to the sick and wounded are governed by the Geneva Convention". In the light of the fact that, during these two conferences, a special convention on the adaptation of the principles of the Geneva Convention to the specific conditions of maritime warfare was also adopted [20], it becomes clear that the delegates' intention on both occasions was to incorporate the Law of Geneva *into* the Law of The Hague so that the latter would constitute a complete system of the laws of war. This tendency would probably have been even more marked during the Third Hague Conference, planned for 1915 but never convened because of the outbreak of World War I.

It was not until after that war ended that the difference between the Law of Geneva and the Law of The Hague became really clearer. Those who would have been called upon to continue the work started in The Hague before the war did not continue this task, on the grounds that it would be absurd to regulate that which one sought to totally abolish.

Let us not forget in this regard that in any codification pre-dating the First World War, warfare as such was considered lawful: the *law of war* was therefore a perfectly valid counterpart to the law of peace; they were the two traditional branches of the law of nations as a whole. Only one specific type of war, that undertaken to recover contract debts, was outlawed at the Second Hague Conference [21].

---

[18] H. Coursier: *Course of Five Lessons on the Geneva Conventions*, Geneva, 1963, p. 5 (italics in Coursier's text).

[19] Convention No. II at the First and No. IV at the Second Hague Conference.

[20] In 1899 the Third, in 1907 the Tenth Convention were adopted.

[21] The second Convention, adopted in 1907; it was called the "Porter Convention" after the American diplomat who was the main inspiring force behind it.

However, following World War I, first the League of Nations Covenant, then the Pact of Paris, called the *Briand-Kellogg Pact*, tended to abolish recourse to war. The United Nations Charter confirmed this trend by abolishing any recourse to *force* or any *threat* to employ force in international relations.[22]

From that time on, it was often held that since war had been abolished, issuing regulations to be observed in time of war would place strains on public confidence in the efficiency of the League of Nations and of the United Nations, both charged with maintaining peace. This to a large extent explains the limited development of the *Law of The Hague* during the interwar years.[23] A similar argument was used by the International Law Commission of the United Nations when it drew up its long-term programme in 1949 and refused to include in it the law of war.[24]

The ICRC was more pragmatic: it realized that armed conflicts, whatever their nature or denomination, took place in spite of all efforts to outlaw them, and that, furthermore, even the UN Charter admitted recourse to force in certain situations (for example, acting to maintain or restore peace by virtue of a Security Council decision, in self-defence, or on the basis of the principle of self-determination of peoples, which several General Assembly resolutions have interpreted as justifying recourse to force.[25]

On all such occasions, there are always people who suffer, and it is those persons' plight that is of particular concern to the ICRC; indeed, it is for them that international humanitarian law—the law which applies no matter what the causes of the conflict—is of paramount importance.

---

[22] See the *League of Nations Covenant*, Art. 12, para. 1; 13, para. 4; 15, para. 6-7; *Pact to renounce war*, signed in Paris on 27 August 1928, Art. 1-2; *United Nations Charter*, Art. 2, para. 3-4.

[23] The only instruments of some importance in this field were: The Protocol of Geneva of 17 June 1925 for the prohibition of the use in war of asphyxiating, poisonous or other gases, and of bacteriological methods of warfare; and the Procès-verbal relative to the rules of submarine warfare, signed in London on 22 April 1930. Draft regulations relative to aerial warfare, drawn up by a commission of experts in The Hague in 1923, were never adopted.

[24] Report of the International Law Commission to the United Nations General Assembly, included in the *Yearbook of the International Law Commission*, 1949, para. 18.

[25] Among the many resolutions based on Art. 1, para. 2 of the Charter, the most important is Resolution No 2625 (XXV), adopted on 24 October 1970 and containing a declaration on international law principles. The fifth of these principles refers to equal rights and self-determination of peoples.

V. Some Facts and Figures on the Law of Geneva

The Law of Geneva, far from fading into oblivion, is undergoing constant development. Every armed conflict of consequence brings to light new problems, and as a rule provokes reflexion which leads to an attempt to develop and perfect the rules drawn up to ease human suffering.

Thus, every new set of provisions drawn up is an advance over the previous one, at least in the number of rules. The first Geneva Convention, of 1864, had 10 articles; the 1906 Convention (and its corollary, the Tenth Hague Convention of 1907) had 56 articles; the two 1929 Geneva Convention contained 136 articles between them; the four 1949 Geneva Conventions had 429 articles, to which must be added the 128 articles of the 1977 Additional Protocols, which, as their name implies, do not replace but supplement the 1949 Conventions.

Note that these figures, impressive though they may be, do not include the various and at times voluminous annexes.

However, the development of the Law of Geneva is impressive above all for its content. We shall try to look at the most signal successes, from the point of view first of its general scope of application, then of the categories of persons and things it protects.

VI. The General Scope of the Law of Geneva

The general participation clause (clause *si omnes*) was so generally accepted before the First World War that not only was it included in all The Hague Conventions,[26] but also in the 1906 Geneva Convention, Article 24 of which states that the provisions of the Conventions shall be binding on the Contracting Parties only in case of hostilities between two or more of them and that those provisions shall cease to be binding if one of the belligerent Powers is not a signatory to the Convention.

The two 1929 Conventions did not contain such a clause. The 1949 Conventions specifically reject it in the articles common to all four, which state in particular that the Conventions shall be respected "in all circumstances";[27] they continue in even more explicit terms, stating that

[26] Concerning the Conventions on the adaptation of the principles of the Geneva Convention to maritime warfare, see: Third 1899 Convention, Art. 11, and Tenth 1907 Convention, Art. 18.

[27] Article 1, common to all four 1949 Conventions.

the Conventions shall apply "to all cases of declared war or any other armed conflict which may arise between two or more of the High Contracting Parties..."[28] Last but not least they stress the following: "*Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof*".[29]

In accordance with the traditional principles of international law concerning the subject thereof, application of the Conventions was limited to relations between "Contracting Parties", i.e. between sovereign States. However, Article 3 common to all four Conventions represents the first step towards extending the scope of humanitarian law beyond those traditional limits, stipulating that "In case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, *as a minimum*, the following provisions...."; there follows a sort of catalogue of rules to guarantee to the victims of any conflict of this type at least a minimum of protection.[30]

The Diplomatic Conference at which the two 1977 Protocols were adopted took this process a step further. According to the drafts drawn up by the ICRC after extensive preparation, Protocol I was to apply to international conflicts in the classic sense of the term, meaning conflicts involving only States, while all other conflicts were to be governed by Protocol II.[31] However, already at the first of the DCHL, in 1974, after long and bitter debate, struggles for national independence, classified in the ICRC's drafts as non-international conflicts, were transferred to Protocol I. The relevant provision states that the scope of the Protocol and therefore, for the parties to it, of the 1949 Conventions, is extended to include: "*armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration of Principles of International Law*

[28] Article 2, para. 1.

[29] Article 2, para. 3.

[30] Art. 3, first sentence. For the rules in question, see below, Chapter XIII. (Author's italics).

[31] See Art. 1 of Protocol I and Art. 1 of Protocol II in the text of the *Draft additional Protocols to the Geneva Conventions of 12 August 1949*, ICRC, Geneva, June 1973, pp. 3 and 33 respectively.

concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations".[32]

As a result of this extension of the scope of Protocol I, the scope of Protocol II was contracted. The relative provision reads as follows: "*This Protocol.... shall apply to all armed conflicts which are not covered by Article I of the Additional Protocol.... relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol*".[33]

It is thus evident to what extent the scope of humanitarian law was gradually enlarged, a process which could even, incidentally, be interpreted as modifying the traditional concept of subjects of international law by granting international legal personality, albeit in a limited sense, to certain entities other than States.

VII. Persons Protected

1. Wounded, sick, shipwrecked

The first Geneva Convention, that of 1864, was in truth only meant to protect *wounded* soldiers during a war on land—it was, after all, the sight of the thousands of wounded scattered on the battlefield that had so moved Henry Dunant. Although the sick also were mentioned in Articles 1 and 6 of that Convention, the subject was not developed in any detail until the Convention of 1906. While the 1864 Convention spoke in a general way about "combatants",[34] that of 1906 was more precise, speaking about "military combatants, and other persons officially attached to the armed forces".[35] Article 1 of the first 1929 Convention was worded along the same lines.[36]

---

[32] Protocol I, Art. 1, para. 4.

[33] Protocol II, Art. 1, para. 1.

[34] 1864 Convention, Art. 6, para. 1.

[35] 1906 Convention, Art. 1, para. 1.

[36] First 1929 Convention, Art. 1, para. 1.

In 1899 and 1907 in The Hague, when efforts were made to adapt the principles established in Geneva to the particular conditions of maritime warfare, a third category, shipwrecked persons, was added to those, wounded and sick, to be protected.[37] The Tenth Convention of 1907, however, was above all concerned with "sailors and soldiers on board, when sick or wounded, as well as other persons officially attached to fleets or armies", mentioning the "shipwrecked" rather *en passant*.[38]

Whether a person belonged to one of the protected groups was at times subject to doubt, especially during the Second World War; for this reason, an effort was made after the hostilities to draw up more precise rules. In the case of shipwrecked, it was stressed that "the term "shipwreck" means shipwreck from any cause and includes forced landings at sea by or from aircraft".[39]

In principle, the shipwrecked, wounded and sick must, in order to benefit from the protection accorded them under the 1949 Conventions, be "members of the armed forces of a Party to the conflict", or "members of militias or volunteer corps forming part of such armed forces".[40]

2. Combatants—Prisoners of War

However, an exact definition of membership in the "armed forces" gave rise to debate, especially when it came to deciding who was entitled to "combatant"status and therefore to "prisoner of war" status in case of capture. Not until the 1929 Conference were prisoners of war protected by the Law of Geneva, in the Second Convention; they had previously been mentioned only in the Law of The Hague. The debate on this subject started already at the first attempts to codify the whole of the rules of the law of war on land, at the 1874 Brussels Conference and at the 1899 The Hague Conference. There were fundamental differences of opinion between certain major powers, who wished to limit "combatant" status to members of the *regular* armed forces, and certain small and medium powers who wanted to extend it to include members of resistance movements not necessarily attached to the regular army. The compromise worked out on the occasion of the two above-mentioned conferences was also adopted by the Regulations annexed to the Fourth

[37] Third 1899 Convention, Art. 8; Tenth 1907 Convention, Art. 11.

[38] Tenth Convention of 1907: Art. 1 (1), 4 (1), 9 (2), 12, 13, 14, 15 and 16.

[39] Second 1949 Convention, Art. 12 (1).

[40] First 1949 Convention, Art. 13 (1) (Second Convention of 1949: same Article). As to the other provisions of that Article, see below: 2. Combatants—Prisoners of war.

Convention of The Hague of 1907, according to which "belligerents" (a term that would later be used to refer exclusively to States; "combatant" would be used to designate individuals taking part in a combat) were not only soldiers in the regular armed forces, but also members of "militias" and of "volunteer corps" who fulfilled four conditions: 1) they had to be commanded by a chief responsible for his subordinates; 2) they had to have a "fixed ... emblem recognizable at a distance"; 3) they had "to carry arms openly"; and 4) they had to observe the laws and customs of war.[41] The two final conditions served to classify as belligerents also "the inhabitants of a territory which has not been occupied, who, on the approach of the enemy, spontaneously take up arms".[42] During the Geneva Conference of 1929, the treatment of prisoners of war was separated from the Law of The Hague and placed under the Law of Geneva, and a Convention on that subject, containing the conditions enumerated in the 1907 Regulations, was drawn up.[43]

The dramatic experience of World War II led the 1949 Conference to somewhat loosen the rigid conditions set down in the Regulations. The new conditions to be met by those wishing to claim the status of prisoner of war contained three elements of prime importance: the grant of such status, until then contested, to members of "organized resistance movements ... operating in or outside their own territory, even if this territory is occupied"; the grant of the same status to persons "who profess allegiance to a government or an authority not recognized by the Detaining Power" (author's note: for example, a national committee set up abroad); and the presumption of the right to enjoy the status of prisoner of war in case of doubt.[44]

These conditions certainly represented a major change from the previous ones. However, some of the participants in the 1974-77 Conference—especially those whose countries had recently experienced foreign occupation or a struggle for national liberation in which regular troops had given battle to a movement based exclusively or almost exclusively on resistance—felt they were still too restrictive. The representatives of States whose peoples had in the not-too-distant past been involved in that type of struggle maintained that in such a situation the resistance movement's only chance of success, counteracting to a certain extent the mainly technological superiority of the adversary, was not to

[41] 1907 Regulations, Art. 1.

[42] Ibid., Art. 2.

[43] Second 1929 Convention, Art. 1.

[44] Third 1949 Convention, Art. 4A, para. 2 and 3; Art. 5, para. 2.

observe some of the strict conditions (above all the second and third) set down in the 1907 Hague Regulations and the Third 1949 Geneva Convention. After a long and arduous debate, which threatened to cause the entire conference to fail, a compromise was finally reached which divided the conditions in question into two categories.

The first and fourth of the traditional conditions were to be observed by the "armed forces", meaning groups of persons; the second and third conditions by the individuals forming those forces. The armed forces were now meant to include "all *organized armed forces, groups and units which are under a command responsible to the Party for the conduct of its subordinates... Such armed forces shall be subject to an internal disciplinary system which,* inter alia *shall enforce compliance with the rules of international law applicable in armed conflict.*" [45]

The second and third traditional conditions were to be observed by individuals wishing to be treated as "combatants" and consequently, in case of capture, as "prisoners of war". They were made considerably more lax. Instead of having a "fixed distinctive sign", "*combatants are obliged to distinguish themselves from the civilian population while they are engaged in an attack or in a military operation preparatory to an attack.*"

Regarding the obligation to carry arms openly, it was recognized "that there are situations... where, owing to the nature of the hostilities, an armed combatant cannot so distinguish himself"; it was stipulated that "*he shall retain his status as a combatant, provided that, in such situations, he carries his arms openly: a) during each military engagement, and b) during such time as he is visible to the adversary while he is engaged in a military deployment preceding the launching of an attack in which he is to participate*".[46]

The forty-odd declarations made in relation to the vote on this important article indicate how difficult its interpretation would be in specific cases.[47] In order to avoid those difficulties, another important article was drawn up which stipulated that, in case of doubt, the status of prisoner of war (and therefore of combatant) was to be presumed.[48]

---

[45] Protocol I, Art. 43, para. 1 (author's emphasis).

[46] Protocol I, Art. 44, para. 3.

[47] As to the history of this problem, see M. Veuthey: *Guérilla et droit humanitaire*, Geneva, 1976 (2nd ed., 1983) and S.E. Nahlik: "L'extension du statut de combattant à la lumière du Protocole I de Genève de 1977", in *Recueil des cours de l'Académie de droit international*, vol. 164 (1979).

[48] Protocol I, Art. 45, paras. 1 and 2.

3. Mercenaries

Although the DCHL adopted a more liberal attitude towards combatants engaged in a struggle for independence, it denied another category of persons—mercenaries, or those who fight not in defence of a principle but for private gain—any right to protection except that accorded by the fundamental rules protecting any person affected by an armed conflict. The definition of the term mercenary gave rise to another long debate which culminated in the adoption of the definition of mercenaries, containing a list of characteristics intended to avoid as far as possible having somebody wrongly classified in this category. Accordingly, a mercenary is not a citizen of a party to the conflict and, apparently most importantly, he is a person to whom a party has promised "*material compensation substantially in excess of that promised or paid to combatants of similar rank and functions in the armed forces of that Party.*[49]

4. Civilians and civilian population

One characteristic of the rules of the Law of Geneva before the Second World War was that they protected military personnel only. This would seem to be a reflection of the law of war as it was understood during the Age of Enlightenment, i.e. that war should be exclusively limited to combat between armed forces. Only the members thereof would therefore be exposed to the dangers inherent in any armed conflict, whereas the civilian population would be far removed from any threat.[50] There is no other way to explain that the subject of civilians was passed over in the law of war, with the exception of certain clauses in the Hague Regulations [51] which indirectly afford civilians some guarantee.

The events of the Second World War clearly showed that these rules were insufficient. The alarming increases in civilian casualties during the twentieth century proved that civilians were not at all spared during an armed conflict. The Law of Geneva took that bitter lesson into account immediately after the war. The most significant innovation and the most important success of the 1949 Geneva Conference was the fourth Convention "Relative to the Protection of Civilian Persons in Time of

[49] Ibid. Art. 47, in particular para. 2 (c).

[50] See for instance J.-J. Rousseau, *The Social Contract*, Book I, ch. 4.

[51] In this regard, see in particular the 1907 Regulations, Arts. 23 (g) and (h), 28, 43-47 and 50-53.

War". This important Convention is nonetheless limited in scope; indeed, only certain rules of a general nature in Part II concern "the whole of the populations of the countries in conflict".[52] The Convention's other rules are more limited in their field of application: "*Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation,* in the hands *of a Party to the conflict or Occupying Power of which they are not nationals*".[53]

This amounted to condemnation of the most shocking human tragedy of World War II: the heinous treatment and even extermination of civilians sent to concentration or labour camps.

The 1977 Protocols attempted to fill any remaining gaps. In the future it will be difficult to point to a deficiency in the rules contained therein, which stipulate that Parties to a conflict "shall at all times distinguish between the civilian population and combatants",[54] that the "civilian population comprises all persons who are civilians",[55] and that the rules that aim to protect "against dangers arising from military operations" [56] shall apply in all circumstances to protect the whole of the civilian population and individual civilians. The Protocol also stipulates that in case of doubt civilian status is to be presumed.[57]

Both the 1949 Geneva Convention and the 1977 Protocol, the latter in much clearer terms, reflect the opinion that it was necessary to include specific clauses according special protection to women [58] and children.[59]

Furthermore, the rules concerning the wounded, sick and shipwrecked, which had previously applied to soldiers only, were extended to civilians by the Additional Protocol, for the purpose of which: "*wounded*" *and* "*sick*" *means persons, whether military or* civilian, *who, because of trauma, disease or other physical or mental disorder or disability, are in need of medical assistance or care and who refrain from any acts of hostility. These terms also cover* maternity cases, new-born babies *and other persons who may be in need of immediate medical assistance or care, such as the* infirm or expectant mothers. . . "[60]

---

[52] Fourth 1949 Convention, Art. 13. See also Articles 14-26 of the same Part II.

[53] Fourth Convention of 1949, Art. 4 (1) (author's emphasis).

[54] Protocol I, Art. 48 ("Basic Rule").

[55] Ibid., Art. 50 (2).

[56] Ibid., Art 51 (1); see also para. 2 of the same article.

[57] Ibid., Art. 50 (1).

[58] Fourth 1949 Convention, Art. 16 (1); Protocol I, Arts. 75 (5) and 76.

[59] Fourth 1949 Convention; Arts. 24, 50, 68 (4); Protocol I, Arts. 77-78.

[60] Protocol I, Art. 8 (a) (author's emphasis).

The notion of shipwrecked was similarly widened to the extent that the very notion of "shipwreck" includes the wreck not only of boats, but also of aircraft: "*shipwrecked*" *means persons, whether military or* civilian, *who are in peril at sea or in other waters as a result of misfortune affecting them or the vessel or aircraft carrying them.....*"[61]

5. Medical and religious personnel

The wounded, sick, shipwrecked and other persons that the Conventions and Protocols place in comparable categories must be cared for. For this reason, medical personnel derives the right to be protected. This category of protected persons was also at first defined in general terms; later, in order to avoid any abuse, the definition was made more specific. First hospital and ambulance personnel were spoken of;[62] then it was specified that the term referred to those engaged "in the search for, or the collection, transport or treatment" of the wounded or sick, and that only personnel "exclusively" engaged in such tasks could claim the right to protection.[63] There is, however, an exception to this rule, namely those soldiers who are specially trained for employment, should the need arise, as "hospital orderlies, nurses or auxiliary stretcher bearers" [64]; they are obviously protected only for such time as it takes them to accomplish these tasks.

The administrative staff of medical units are also mentioned—justifiably, for without them these units could not function—as are chaplains "attached to the armed forces"[65], or, in more general terms, "the religious personnel".[66]

An important privilege is accorded to medical or religious staff who fall into the hands of the adversary: they are not to be considered as prisoners of war. The Detaining Power can however retain them if they are needed to care for the prisoners of war of the Party to the conflict to which they belong.[67]

---

[61] Ibid., Art. 8 (b) (author's emphasis).

[62] 1864 Convention, Art. 2.

[63] 1906 Convention, Art. 9; First 1929 Convention, Art. 9 (1); First 1949 Convention, Art. 24.

[64] First 1929 Convention, Art. 9 (2); First 1949 Convention, Art. 25.

[65] 1864 Convention, Art. 2; more specifically: 1906 Convention and First Convention of 1929, Art. 9 (1); First 1949 Convention, Art. 24.

[66] Tenth 1907 Convention, Art. 10 (1); Second 1949 Convention, Art. 36.

[67] 1906 Convention, Art. 9 (1) *in fine*; Tenth 1907 Convention, Art. 10 (1) *in fine*; First 1929 Convention, Art. 9 (1) *in fine*; Third 1949 Convention, Art. 33.

The Fourth 1949 Convention, specifically drawn up for the protection of civilians, included a provision granting protection under the Convention to: "*Persons regularly and solely engaged in the operation and administration of* civilian *hospitals, including the personnel engaged in the search for, removal and transporting of and caring for wounded and sick* civilians, *the infirm and maternity cases...*" [68]

The Additional Protocol I considerably widened the circle of persons protected by virtue of their medical or religious fonctions. It stipulates that: "*medical personnel*" *means those persons assigned... exclusively to the medical purposes ... or to the administration of medical units or to the operation or administration of medical transports*".[69]

Such assignments may be "permanent or temporary" and the term includes "medical personnel, whether military or *civilian*". The notion of "religious personnel" was also enlarged to include both military or civilian persons, "*such as* chaplains" (who are mentioned only as an example); they may also be attached to the armed forces or to medical units on a permanent or temporary basis.[70]

6. Staff of voluntary aid societies

Another category of persons, the medical staff of voluntary aid societies, are also accorded a privileged status in time of war by virtue of their tasks. These persons are referred to in the treaties as early as 1906,[71] and the societies of both belligerent and neutral countries are mentioned.[72] Nonetheless, it was not until 1949 that the treaties mentioned specifically and before all else the bodies of the Red Cross, by classifying in the same category as military medical personnel, provided they are employed for the same purpose, "*the staff of National Red Cross Societies and that of other voluntary aid societies, duly recognized and authorized by their Governments*".[73]

7. Some extensions

These are the categories of persons granted privileged treatment by virtue of the legal documents leading up to and including the 1949 Con-

[68] Fourth 1949 Convention, Art. 20 (1) (author's emphasis).

[69] Protocol I, Art. 8 (c).

[70] Ibid., Art. 8 (d) (author's emphasis).

[71] 1906 Convention and First 1929 Convention, Art. 10.

[72] Ibid., Art. 11; First 1949 Convention, Art. 27.

[73] First 1949 Convention, Art. 26 (1); Protocol I, Art. 8 (c) (ii).

ventions. It must nonetheless be remembered that the scope of the concepts in question has been considerably broadened in most cases.

It remains to be seen if other groups not yet protected are now covered under the "additional" codification of 1977.

The most important extension does not concern one particular group, but is general in nature: civilian medical personnel are accorded prerogatives until then exclusively reserved to military medical personnel. Moreover, it was felt that certain other groups should also be expressly mentioned; they include persons who, in case of armed conflict, are exposed to extreme danger or who have not appeared in situations of armed conflict until quite recently. A careful study of Protocol I brings to light several groups of this kind:

a) "enemies *hors de combat*", meaning those persons who are already in the power of an adverse Party, who clearly express an intention to surrender, who have lost consciousness or who are otherwise incapable of defending themselves; [74]

b) persons parachuting from an aircraft in distress; [75]

c) persons participating in the transportation and distribution of relief consignments; [76]

d) the personnel of civilian defence organizations whose characteristics and functions, after long debate, were made the object of a detailed set of regulations; [77]

e) journalists engaged in "dangerous professional missions", meaning those running particularly serious risks.[78]

With the exception of the first and possibly of the second group, the persons protected are for the most part civilians [79] for whom it was felt special legal regulations should be adopted, because of the particularly noteworthy character or the social significance of their activities.

[74] Protocol I, Art. 41 (1).

[75] Ibid., Art. 42.

[76] Ibid., Art. 71 (1) and (2).

[77] Ibid., Art. 62 et seq.

[78] Ibid., Art. 79.

[79] During the DCHL, the characteristics of persons belonging to civilian defence organizations were the subject of long debate. Most of the participants felt they should be considered as exclusively civilian. However, in view of the observations made by certain other delegates, it was finally admitted that such organizations could in some cases also consist of members of the armed forces (see Protocol I, Art. 67), provided that they are assigned to such organizations on a permanent basis and never to military tasks.

8. Missing and dead persons

Of course, humanitarian law is first and foremost concerned with the plight of the living. It does not, however, entirely ignore the dead. Each of the four 1949 Conventions contains provisions [80] on interment or cremation (burial at sea in the appropriate case), stipulating honourable burial and due respect for graves; there are also provisions on wills and death certificates of prisoners of war and civilian detainees, and on notification to be made to the Tracing Agency concerned. During the DCHL, greater attention than in 1949 was paid to certain aspects of these problems, and a whole new Section was given over to them [81], stressing the right of families to know the fate of their relatives. As a result, the Parties undertake to search for missing persons and to communicate the results of such search to the Central Tracing Agency. New provisions were added to the previous ones on the subject of maintenance of gravesites, facilities accorded to members of families wishing to visit them, and the possibility of exhuming and repatriating mortal remains. Domestic legislation on cemeteries and burial procedure must nonetheless be observed.

VIII. Objects protected

1. Objects serving a medical purpose

The protection of *objects*, in the broadest sense of the word, developed in parallel with the protection accorded to the groups of persons using those objects. Therefore, since the Law of Geneva started out as a set of rules to protect wounded and sick soldiers, the first objects protected under that law were those that facilitated their care: military ambulances and hospitals.[82] Each of the later treaties described objects of this type in ever-greater detail, without, however, making any significant change to the principle involved. According to the 1949 text,

[80] 1949 Conventions: First, Art. 17; Second, Art. 20; Third, Arts. 120-121; Fourth, Arts. 129-131.

[81] Protocol I, Arts. 32-34 (very detailed).

[82] 1864 Convention, Art. 1 (1); later, see 1906 Convention and First 1929 Convention, Art. 6.

protection is extended to "fixed establisments" as well as "mobile medical units of the Medical Service".[83]

As technology became more advanced, one specific group of objects developed gradually: means of transport. On the subject of medical means of transport, one finds, as early as 1899, references to "military hospital ships" and "hospital ships" equipped by private individuals or relief societies, and, starting in 1929, to "aircraft".[84] Reference is made above all to means of transport constructed and especially equipped for medical purposes, and to those merely to be "used" to such ends. One can therefore conclude that the actual use to which a vehicle is put is more important than the use for which it was designed.

Civilian hospitals and civilian medical transports, whether by train, boat or aircraft, were not accorded similar treatment until the 1949 Convention relative to the protection of civilians.[85]

According to the Additional Protocols, the term "medical units" refers to "establishments and other units, whether military or *civilian*, organized for medical purpose".[86] By giving the broadest possible acceptation to the terms "medical transportation", "medical transports", "medical vehicles", "medical ships and craft" and "medical aircraft" [87], it was possible to draw up detailed provisions on the protection of medical transports (and especially of aircraft) in an important section of Protocol I.[88]

2. Civilian objects not used for medical purposes

For a long time, the Law of Geneva did not concern itself with civilian objects not used for medical purposes. Such objects enjoyed an indirect form of protection—like civilian persons—by virtue of certain rules of the Law of The Hague, in particular those of the 1907 Regulations relative to the conduct of hostilities (restricting the right of belligerents in their choice of means of injuring the enemy),[89] or to the

[83] First 1949 Convention, Art. 19 (1).

[84] Third 1899 Convention, Arts. 1-3; Tenth 1907 Convention, Arts. 1-3; Second 1949 Convention, Arts. 22 and 24-27. As to aircraft: First 1929 Convention, Art. 18 (1); First 1949 Convention, Art. 36 (1); Second 1949 Convention, Art. 39 (1).

[85] Fourth 1949 Convention, Arts. 18 (1), 21, 22 (1).

[86] Protocol I, Art. 8 (e). The passage quoted is followed by a list of numerous examples of types of units understood to be covered by this definition (author's emphasis).

[87] Ibid., Art. 8 (f) to (j).

[88] Ibid., Arts. 21-31.

[89] 1907 Regulations, Arts. 23, 25, 27 and 28.

conduct of the occupying authority (setting down certain rules to be observed by it in the treatment of persons and objects in the occupied territory).[90] Some of these rules were reproduced or developed in the 1949 Convention relative to the protection of civilians.[91]

Once again, the role of the 1977 Protocol is twofold: it gives a broader meaning to terms that had already been used in previous documents, and it provides for the protection of objects that had hitherto gone unmentioned. The key rule in this respect is that which forbids attacks on civilian objects and stipulates that in case of doubt objects are presumed to be civilian: "*Civilian objects are* all *objects* which are not *military objectives*..."[92]

This rule, retained from previous acts, is of prime importance. Not content with this declaration, the Protocol's authors felt that certain other groups of objects merited special attention.

From the humanitarian point of view, the most important of these is undoubtedly that group which it is forbidden to attack, destroy, remove or render useless, i.e. those "*objects indispensable to the survival of the civilian population, such as foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works* ..." [93]

It was not until the DCHL that consideration was given also to man's *spiritual* needs, not just to his physical needs, and in consequence to the objects necessary to fulfil them, especially "cultural objects", on the protection of which a special Convention had been signed in The Hague in 1954. Besides urging those States that had not yet done so to become parties to that Convention,[94] the DCHL inserted a text in the Protocol itself prohibiting acts of hostility against "historic monuments, works of art or places of worship", stipulating that such objects "constitute the cultural or spiritual heritage of peoples" (author's note: it should perhaps have said: mankind as a whole).[95]

Finally, two provisions were drawn up to protect the population of a country in conflict and, who can say, perhaps the human race as a

[90] Ibid., Arts. 46, 47 and 56.

[91] Fourth 1949 Convention, e.g. Art. 53.

[92] Protocol I, Art. 52, para. 1 (author's emphasis).

[93] Protocol I, Art. 54, especially para. 2.

[94] This appeal was the subject of Resolution 20 (IV) annexed to the Final Act of the DCHL.

[95] Protocol I, Art. 53.

whole, from irreparable catastrophes. The Protocol protects works and installations "containing dangerous forces", such as dams, dykes or nuclear electrical generating stations.[96] The belligerents are also required to conduct hostilities in such a way as to protect the environment "against widespread, long-term and severe damage".[97]

3. Neutral or demilitarized zones

In view especially of the ever-increasing range of modern weapons, a need was felt to create zones and localities to which the wounded and sick, along with the medical and administrative personnel necessary to organize and run medical services, could be evacuated,[98] and neutral zones where, among others, civilians not taking part in the hostilities could seek refuge.[99] The creation of such zones must be the subject of an agreement between the parties to the conflict.

Here again, the authors of the Additional Protocols took matters a step further by taking over in part the provisions of the Law of The Hague which forbid attack on "undefended" localities.[100] In practice (and in theory), this allowed for the possibility of declaring a town "open", which should protect it from attack.

Since this concept had never been expressly clarified and was therefore subject to widely differing interpretations, declaring a town open often had no effect. In the 1977 Protocol, it was provided that certain localities could be formally declared "open": the declaration (made by the party on whose territory the locality is situated) has to be communicated to the adverse party, which, in principle, must accept it and the consequences thereof, subject, of course, to certain conditions ensuring that the locality in question no longer is used for any military purpose of the party making the declaration. [101] Similar conditions and consequences come into play if the parties formally agree to form a demilitarized zone.[102]

---

[96] Ibid., Art. 56, especially para 1.

[97] Ibid., Art. 55 (1).

[98] First 1949 Convention, Art. 23.

[99] Fourth 1949 Convention, Art. 15.

[100] 1907 Regulations, Art. 25.

[101] Protocol I, Art. 59.

[102] Ibid., Art. 60.

IX. Distinctive sign

It was stipulated already in the 1864 Geneva Convention that a distinctive and uniform sign—a red cross on a white ground—should be adopted by all medical units.[103] The sign was chosen "as a tribute to Switzerland", the country where the movement was founded and the host country to the 1864 Conference. It was thus purposely composed by reversing the Swiss Federal colours.[104] The sign is heraldic and was not intended to bear any religious connotation. However, first Turkey, then other Islamic countries preferred to adopt the sign of the red crescent. The Persian Empire wished, for its part, to adopt the red lion-and-sun. These two new signs were recognized by the Diplomatic Conference of 1929. On the other hand, later proposals to introduce new signs were rejected, since most States and the movement as a whole realized that too many signs would inevitably weaken their protective value. The most well-known attempt is that of the State of Israel, which tried on several occasions, including the DCHL, to obtain recognition of the red shield of David. Later, in 1980, Iran gave up use of the red lion-and-sun, so that there are now but two distinctive signs. Attempts to return to the use of just one sign have, however, met with failure.

Detailed regulations describe how the protective emblem is to be used by medical ships—which must be painted white—and aircraft.[105]

The same sign serves to identify medical staff members, who must wear it as conspicuously as possible when working in dangerous areas.[106]

A technical annex to the Additional Protocol sets out detailed instructions for a system of radio and light identification signals to be used mainly by aircraft.[107]

A completely different sign, a blue equilateral triangle on an orange ground, was adopted during the DCHL to allow identification of civil defence units and personnel.[108]

---

[103] 1864 Convention, Art. 7.

[104] 1906 Convention, Art. 18; First 1929 Convention, Art. 19 (1); First 1949 Convention, Art. 38 (1), etc.

[105] Tenth 1907 Convention, Art. 5 (1); Second 1949 Convention, Art. 43 (1) (a).

[106] Apart from previous documents, see: First 1949 Convention, Arts. 40-41; Second 1949 Convention, Art. 42; Protocol I, Annex I, Arts. 1-2.

[107] Protocol I, Annex I, especially Arts. 5-13.

[108] Ibid., Art. 15.

There are detailed instructions on the use of the signs described in the treaties.[109] Any use of the emblem for purposes other than those relating to the protection of victims of armed conflicts is forbidden and subject to prosecution. For this reason, since 1949, the international humanitarian law Conventions contain numerous provisions on penal sanctions.

X. What is protection ?

After having studied the groups of persons and objects which are of concern to humanitarian law, we must consider *what* is meant by "protection".

The 1864 Convention thought it had found a simple and relatively ingenious answer to that question, one that was probably based on Swiss tradition: it granted military hospitals and ambulances and their personnel "neutral" status.[110] It was nonetheless quickly recognized that this formula was lacking in precision, and it was replaced in 1906 by another one that was to prove its worth, as it was used in each of the later documents in reference to almost all the groups of persons and objects to be protected: they must be "respected and protected".[111] It is also often stipulated that such persons must be "treated humanely",[112] and that the wounded, sick and other persons in need of care must be "cared for".[113]

From the strictly legal point of view, the rules of humanitarian law, like the rules of any other branch of law, could be divided into two categories: injunctions, requiring the parties thereto to act, and prohibi-

[109] 1906 Convention, Arts. 19-23; First 1929 Convention, Arts. 20-24; First 1949 Convention, Arts. 39-43; Second 1949 Convention, Arts. 43-45; Protocol I, Art. 18.

[110] 1864 Convention, Arts. 1-2.

[111] See: 1906 Convention, Art. 6; First 1929 Convention, Arts. 1 (1), 6 and 9 (1); First 1949 Convention, Arts. 12 (1), 19 and 24 *in fine*; Second 1949 Convention, Arts. 12 (1), 22 and 36; Fourth 1949 Convention, Arts. 18 (1), 20 (1) and 21 (1); Protocol I, Arts. 10 (1), 12 (1), 15 (1), 21, 23 (1), 24, 48, 62 (1), 67 (1), 71 (2), 76 (1) and 77 (1) (in the latter two articles, the expression is slightly different, but the two essential words have remained unchanged). Only the word "protected" is used in Protocol I, Art. 79 (2) (referring to journalists on "dangerous missions").

[112] See for example: First 1929 Convention, Art. 1 (1); Second 1929 Convention, Art. 2 (2); First 1949 Convention, Art. 2 (2); Second 1949 Convention, Art. 12 (2); Protocol I, Arts. 10 (2) and 75 (1).

[113] An expression often used along with another word. See for example: 1864 Convention, Art. 6; 1906 Convention, Art. 1 (1); Tenth 1907 Convention, Art. 11; First 1929 Convention, Arts. 1 (1) and 3 (1-2); First 1949 Convention, Art. 12 (2); Second 1949 Convention, Art. 12 (2); Protocol I, Art. 10 (2); etc.

tions, requiring the parties to abstain from acting. However, the difference between the two categories is so hazy that this is hardly a useful criterium for classifications.

There is however, another way to classify the rules of humanitarian law: there are those that are to be observed *principally*, if not exclusively, during actual combat, and there are those that are to be observed *principally*, if not exclusively, in situations other than combat situations, for the benefit of the persons and objects in one's power. Of course, it would be impossible to give here a detailed analysis of the hundreds of articles in the Conventions and Protocols that constitute present-day humanitarian law; we shall have to limit ourselves to what seems to us to be essential.

1. Injunctions and prohibitions

The most important of the rules to be observed during hostilities is that the choice of means of injuring the enemy "is not unlimited".[114] The more specific rule prohibiting attack on undefended localities "by any means whatsoever"[115] certainly follows along the same lines. Note that these rules were both borrowed from the 1907 Regulations concerning the Laws and Customs of War on Land,[116] again showing that the 1977 Geneva Protocols were not excluding the ground that seemed to have been covered until then by the Law of the Hague. Another general principle of no less importance, traditionally included in numerous texts for over a century, prohibits the belligerents from employing weapons "of a nature to cause superfluous injury".[117] Yet another provision, this time a contemporary one, attempts to protect persons and objects from weapons of mass destruction by prohibiting "indiscriminate attacks".[118] The prohibition of any resort to "perfidy" [119] can also

[114] Protocol I, Art. 35 (1).

[115] Ibid., Art. 59 (I).

[116] 1907 Regulations, Arts. 22 and 25 respectively. In the latter article, the phrase in question was added on the suggestion of General Amourel, the French military delegate.

[117] Protocol I, Art. 35 (2). This phrase was first used in the St. Petersburg Declaration of 29 November—11 December 1868, then repeated in the Declaration of Brussels of 27 August 1874, Art. 13 (c), in the Laws of War on Land, a Manual adopted by the Institute of International Law at Oxford on 9 September 1880, Art. 9 (a) and in the Regulations of the Hague of 1899 and 1907, Art. 23 (e).

[118] Protocol I, Art. 51 (4-5) (in the chapter on protection of civilian population and civilians).

[119] Protocol I, Art. 37, contains a detailed explanation of this notion (Arts. 38 and 39 contain examples which had hitherto been included in the 1907 Regulations, Art. 23 (f)).

be classified as a general principle to be observed by any party to a conflict.

There are also general rules concerning the treatment of persons in the hands of the enemy, especially in occupied territory.

The pattern was set in the Conventions relative to the treatment of prisoners of war, on the basis of which similar regulations were drawn up for the treatment of civilian internees in the Fourth 1949 Convention.[120] It is most of all in these two sets of rules that it would be rather difficult to draw a clear distinction between prohibitions and injunctions. They are supplemented by "fundamental guarantees" that apply to persons affected by an armed conflict who do not "benefit from more favourable treatment under the Conventions or under this Protocol".[121] The list of these guarantees is extensive; it forbids, for example, murder, torture, collective punishment, the taking of hostages—all of which are, unfortunately, still far too common in today's world.

Two types of clauses add weight to both the injunctions and the prohibitions in the documents studied.

First, since 1949, protected persons "may in no circumstances renounce in part or in entirety the rights secured them" either by the Geneva Convention in question or by any special agreements concluded as supplements thereto.[122] The DCHL added some specific examples to this rule: it is forbidden to carry out on detained persons from the adverse party physical mutilations, medical or scientific experiments or removal of tissue or organs "even with their consent", unless for the purpose of donations of blood for transfusion or skin for grafting.[123] These prohibitions were deemed necessary in view of the cruel practices which achieved notoriety during the Second World War.

Second, any adverse distinction is expressly prohibited. In this context, pre-World War II conventions limited themselves to mentioning distinction of nationality.[124] Later texts were more specific: the 1949 Conventions prohibited any "adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria".[125] At the DCHL, it was felt advisable to add to this already some-

[120] Fourth 1949 Convention, Arts. 79-141.

[121] Protocol I, Art. 75.

[122] 1949 Conventions: First, Second and Third, Art. 7; Fourth, Art. 8.

[123] Protocol I, Art. 11 (2-3).

[124] 1906 Convention and First 1929 Convention, Art. 1 (1).

[125] 1949 Conventions, Art. 3 common to all four, para. 1 (1).

what pleonastic list, "language", "political or other opinion", "national or social origin", and "other statuts or . . . similar criteria".[126]

2. Prohibition of reprisals

The prohibition of reprisals is a subject on its own. Reprisals originated in the ancient *lex talionis*, and had traditionally been considered as a form of sanction peculiar to international law, in view of the inexistence of any supranational power in the international community.

Often falling on innocent persons, reprisals have long given rise to opposition from several quarters.[127] Opinions on this subject were so divided, however, that it was impossible to draw up any sort of rule in any of the Conventions before the First World War. During the inter-war period, a prohibition on measures of reprisal was included only in the Convention relative to the treatment of prisoners of war.[128] It was the atrocities committed during World War II that led the 1949 Conference to give more attention to this problem and to include in each of the four Conventions it drew up a clause categorically prohibiting reprisals.[129] At the DCHL, two attempts to draw up a general rule on this subject failed, but an understanding was reached on inserting in seven places of Protocol I a clause prohibiting reprisals;[130] the gaps, although noticeable, are not numerous and it is hoped that they will prove to be theoretical rather than practical.

3. Escape clauses

There are in humanitarian law at least two types of escape clause. First, since any privilege accorded under the treaties applies only to a

[126] Protocol I, Art. 9 (1); Protocol II, Art. 2 (1).

[127] Starting with F. de Vitoria, *op cit.*, pp. 289-290. In contemporary literature, see, among others, Y. de la Brière: "Evolution de la doctrine et de la pratique en matière de représailles", in *Recueil des cours de l'Académie de droit international*, vol. 22 (1931), pp. 263 ff; F. Kalshoven: *Belligerent Reprisals*, Leyden 1971, *passim*, esp. p. 367; S.E. Nahlik: "Le problème des représailles. . .", in *Revue générale de droit international public*, 1978, No. 1, p. 130 ff., and "Belligerent Reprisals. . ." in *Law and Contemporary Problems*, Duke University School of Law, 1978, p. 36 ff.

[128] Second 1929 Convention, Art. 2 (3).

[129] 1949 Conventions: First, Art. 46; Second, Art. 47; Third, Art. 13 (3); Fourth, Art. 33 (3).

[130] Protocol I, Art. 20 (persons and objects protected in Part II dealing with Wounded, Sick and Shipwrecked), Art. 51 (6) (civilian population and civilians), Art. 52 (1) (civilian objects), Art. 53 (cultural objects and places of worship), Art. 54 (4) (objects indispensable to the survival of the civilian population), Art. 55 (2) (environment) and Art. 56 (4) (works and installations containing dangerous forces).

person "refraining from any hostile act", no unit or individual carrying out an activity "detrimental" to the adverse party can claim protection. Such is the case, for example, of a wounded person who continues to shoot. Here the notion of "neutrality", a word used in the first Geneva Convention, was particularly appropriate, for it covered two aspects of the legal statuts of the unit (or individual) in question: what can be required of it and what it is entitled to. This qualification attached to any privilege granted under humanitarian law appears in so many provisions in the treaties that is seems unnecessary to cite any examples.[131]

The case is not the same for the reservation of *military necessity*. This oft-critized notion is expressed frequently in the Law of The Hague, but rarely in the Law of Geneva.[132] It must therefore be considered as an exception to the general rule of humanitarian law, whose essential aim is *to protect*. Consequently, anything derogating from the principle of protection is but an exception. For the interpretation of any legal act, however, one of the principles most solidly implanted in the general theory of law since Antiquity is that any exception must be expressly stated: it cannot be presumed. Numerous rules have nonetheless been somewhat blunted by the addition of reservations such as "to the extent possible", "insofar as possible", etc.

4. « Safety valve »

Even the most perfect set of rules could not provide for all possible contingencies. The more detailed the list, the greater the danger of leaving something out. Rules of a general nature are therefore of prime importance. Some have existed for a long time. Some of them appeared in the Law of The Hague, and have been incorporated in Protocol I of 1977. Others, which we have just mentioned, have been a part of the Law of Geneva since its inception.

---

[131] There were already some in the older treaties, e.g. the 1864 Convention, Art. 1 (2) and Art. 2; 1906 Convention, Art. 7; Tenth 1907 Convention, Art. 8; First 1929 Convention, Art. 7; First 1949 Convention, Art. 21; Second 1949 Convention, Art. 34; Fourth 1949 Convention, Art. 19 (1); Protocol I, numerous examples — see especially the categories of persons and units mentioned in Art. 8 and, for example, Art. 13 (1), Art. 15 (3), etc.

[132] See however: 1906 Convention, Art. 12 (2) and Art. 15; First 1929 Convention, Art. 15 (2). The 1949 Conventions have no such provisions. Military necessity was next mentioned in the 1954 Hague Convention for the Protection of Cultural Property (Arts. 4 (2) and 11 (2) - (3). It is mentioned in Protocol I only in Arts. 54 (5) (objects indispensable to the survival of the population), 62 (1) and 67 (4) (civil defence organizations), and 70 (3) (c) and 71 (relief action). Parts of Arts 52 (2) and 56 (2) bring however the military necessity clause to mind as well.

There is a "safety valve" to which recourse could be had in an entirely unforeseen situation, for which no rule in the Conventions, however general, could be invoked. The authors of the Hague Conventions provided for this contingency as early as 1899 and included, in the preamble to two successive versions of the Convention on the Laws and Customs of War on Land, a noble declaration generally known as the Martens Clause, after its principal author. Fortunately, the DCHL decided to include it in Protocol I. Here is its text by way of conclusion to our review of the regulations protecting the victims of armed conflicts: "*In cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.*" [133]

XI. Execution

1. By the parties themselves

The instruments of humanitarian law must be observed first and foremost by the parties thereto, who undertake to respect and ensure respect for them "in all circumstances".[134] It is therefore up to the parties to take measures to this effect, to give the necessary instructions and supervise their execution,[135] if need be through the intermediary of the Commander-in-Chief,[136] and to try to make available to the armed forces competent legal advisers.[137] They must also disseminate knowledge of the instruments of humanitarian law as widely as possible, in particular, by including the study thereof in the programmes of instruction, especially to military personnel.[138]

2. Protecting Powers

During an armed conflict, the application of the Conventions' provisions should be ensured, to a certain extent, with the aid of Protecting

[133] Protocol I, Art. 1 (2).

[134] 1949 Conventions, Art. 1; Protocol I, Art. 1 (1).

[135] Protocol I, Art. 80.

[136] 1949 Conventions: First, Art. 45; Second, Art. 46.

[137] Protocol I, Art. 82.

[138] 1949 Conventions: First, Art. 47; Second, Art. 48; Third, Art. 127; Fourth, Art. 144; Protocol I, Art. 83.

Powers entrusted with safeguarding the interests of a party to the conflict with the adverse party.[139] The Protecting Power may, if need be, be replaced by an "organization which offers all guarantees of impartiality and efficacy".[140]

3. Red Cross bodies

The above-mentioned clause, which mentions a substitute organization, is preceded, in all four 1949 Conventions, by another provision specifically mentioning the International Committee of the Red Cross and granting it a sort of right of initiative in humanitarian activities.[141] Furthermore, the ICRC could be called upon to fill the role of substitute for the Protecting Powers, as is clearly indicated in the 1977 Protocol.[142]

Among the numerous and difficult tasks falling within the competency of the ICRC under the humanitarian law Conventions, noteworthy are the right to visit all places where prisoners of war or civilian internees are kept,[143] and the organization of a Central Tracing Agency for the collection of information on prisoners of war. This Agency, if need be, may also be called upon to perform similar tasks for civilian internees.[144] National information bureaux should serve as a base for such activities.[145] Humanitarian tasks can also be carried out by the National Red Cross or Red Crescent Societies,[146] and by other duly recognized and authorized charitable agencies.[147]

The increasingly widespread recognition of the ICRC role under the Conventions leads to the conclusion that that important body has, to a certain extent, progressively acquired the quality of a *sui generis* subject in international law.

---

[139] 1949 Conventions: First, Second and Third, Art. 8; Fourth, Art. 9; Protocol I, Art. 5, esp. paras. 1-2. For certain specific attributions, see for example: Third 1949 Convention, Art. 126 (1-3); Fourth 1949 Convention, Art. 143 (1-4).

[140] 1949 Conventions: First, Second and Third, Art. 10; Fourth, Art. 11; Protocol I, Art. 5 (4).

[141] 1949 Conventions: First, Second and Third, Art. 9; Fourth, Art. 10.

[142] Protocol I, Art. 81 (1); also Art. 5 (3-4).

[143] Third 1949 Convention, Art. 126 (4); Fourth 1949 Convention, Art. 142 (3) and 143 (5).

[144] Third 1949 Convention, Art. 123; Fourth 1949 Convention, Art. 140.

[145] Third 1949 Convention, Art. 122 ff.; Fourth 1949 Convention, Arts. 136 ff.

[146] Most clearly: Protocol I, Art. 81 (2-3).

[147] For example: Third 1949 Convention, Art. 125; Fourth 1949 Convention, Art. 142; Protocol I, Art. 81 (4).

XII. Sanctions

One of the most difficult problems which humanitarian law has to solve, for want of a supranational authority, is how to inflict sanctions —and what sanctions—on a State or individual violating the law.

1. States

In traditional theory, the State was the sole subject of international law; efforts were therefore concentrated on finding means of imposing sanctions on it. Such sanctions would seem to be of two kinds: *quasi*-civil and *quasi*-penal.

The first requires the State to pay compensation for the damage it has caused, a form of liability mentioned in the 1907 Law of The Hague,[148] and taken over word for word by the Law of Geneva in the 1977 Protocol: "*A Party to the conflict which violates the provisions of the Conventions or of this Protocol shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces*".[149]

There is some doubt as to the advisability of that word-for-word repetition. The provision has one rather obvious loophole: no mention is made of the State's responsibility for the acts of the members of its civil service, so that it cannot be held liable on that count unless under customary law.

Quasi-penal sanctions take the form of reprisals. Reprisals have been a part of the law of nations since its inception, but have always been found lacking in that, although in principle they are directed against the State, they in fact too often cause many innocent people to suffer. Humanitarian law was therefore fully justified in excluding them in most cases.[150]

2. Individuals

The condemnation of reprisals has made it the more increasingly necessary to punish the *individuals* who violate humanitarian law rules.

---

[148] Fourth 1907 Convention, Art. 3 (the Second 1899 Convention did not contain such a provision).

[149] Protocol I, Art. 91.

[150] See above, Ch. X, para. 2.

In international law, individuals have been but rarely punished, the only precedent of consequence being the so-called law and trial of Nuremberg.[151]

Humanitarian law has long been concerned to put a stop to infractions of its rules. Since 1906, the Conventions have contained provisions urging the parties to take or, if need be, propose to their legislatures, the measures necessary to prevent acts contrary to the rules of the Conventions. Of particular concern has always been the problem of unauthorized use of the protective sign.[152]

Much more precise provisions were drawn up on penal sanctions in the four 1949 Conventions, each of which has four articles on sanctions.[153] The parties undertake therein to take legislative measures "*to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches ... defined in the following Article.*" They also undertake to search for the guilty parties and to bring such parties before their own courts or to extradite them—recalling the adage "*Aut dedere, aut punire*". They are further under the obligation to take all measures necessary for the suppression of all acts contrary to the Conventions "other than grave breaches". The list of grave breaches varies slightly from one Convention to the other. Some are mentioned in all four: wilful killing, torture or inhuman treatment, wilfully causing great suffering, serious injury to body or health. The First, Second and Fourth Conventions include destruction and appropriation of property in this list; the Third and the Fourth add compelling a protected person to serve in the armed forces of "a hostile Power" and depriving him of the right to a "fair and regular" trial. The Fourth Convention also mentions unlawful deportation or transfer, unlawful confinement and the taking of hostages. Very detailed provisions were drawn up in the first two Conventions concerning the use of the distinctive sign.[154] The last of the articles common to all these conventions stipulates that in cases of disagreement the parties shall carry out an enquiry according to the procedure they have agreed on or indicated by a person chosen jointly by them.

---

[151] See the complete records of the trial: *Trial of the major war criminals before the Nuremberg Military Tribunals*, Nuremberg, 1947-1949.

[152] 1906 Conventions, Arts. 27-28; Tenth 1907 Convention, Art. 21; First 1929 Convention, Arts. 28-30.

[153] 1949 Conventions: First, Arts. 49-52; Second, Arts. 50-53; Third, Arts. 129-132; Fourth, Arts. 146-149.

[154] 1949 Conventions: First, Arts. 53-54; Second, Arts. 44-45.

These important articles were considerably developed in a special section of Protocol I.[155] The list of "grave" breaches was supplemented by the addition of a good number of those directed, especially during an attack, against persons or objects guaranteed respect and protection under the Protocol.[156] It is furthermore specified that failure to act must also be punished and special duties are imposed upon military commanders. The importance of mutual assistance in criminal proceedings is emphasized by underlining the possibility of extradition, especially to the country in whose territory the breach occurred.

Although leaving it in principle to the national courts to institute criminal proceedings, the DCHL was nonetheless able, not without a certain amount of difficulty, to constitute an international body of enquiry: the International Fact-Finding Commission.[157] However, many of the States represented at the DCHL opposed mandatory recourse to the Commission. An agreement was finally reached to the effect that recourse to this body, consisting of 15 members "of high moral standing and acknowledged impartiality", was not obligatory and that it would be convened when not less than twenty parties to the Protocol had agreed to accept its competence, which is as yet far from being the case.

XIII. Non-international armed conflicts

Since the four Geneva Conventions apply "in all circumstances", they also stipulate [158] minimum rules which shall be observed in armed conflict not of an international character occurring in the territory of a party. The parties to such a conflict may also, by means of special agreements, bring into force all or part of the other provisions of the Conventions.

Under these minimum rules, all persons taking no active part in the hostilities and members of the armed forces who have laid down their arms or been placed *hors de combat* shall be protected and the wounded and sick shall be collected and cared for. It is forbidden to treat such persons inhumanely, in particular by any form of violence to life and body, by outrages upon personal dignity, by taking hostages, by passing

[155] Protocol I, Arts. 85-91.

[156] Ibid., in particular Art. 85, but also Art. 11 (4).

[157] Ibid., Art. 9 (consisting of more than 100 lines).

[158] 1949 Conventions, Art. 3, common to the four.

sentences and carrying out executions without regular process. In order to forestall formal reservations, the Conventions specify that application of these rules shall not affect the legal status of the parties. Their application, therefore, does not signify recognition of the international personality of a party which otherwise would not be entitled to it.

We mentioned above [159] why Protocol II was considerably reduced, both in volume and in scope. Of the 39 articles in the initial ICRC draft, only 18 remained, plus one which was transferred from its original position in the draft to the final provisions.[160] Protocol II is therefore only half of what it was originally meant to be.

In the preamble, reference is made to Article 3 common to the 1949 Conventions and to the "international instruments relating to human rights". This reference is justified in that Protocol II, in its present form, is in fact a link between humanitarian law in the traditional sense of the term and human rights.[161]

Part I of Protocol II, entitled "Scope of this Protocol", describes first the Protocol's "material field of application", which we have already discussed [162] and then its "personal field of application".[163] The article in question, using the same terms as Protocol I, stipulates that there shall be no adverse distinction, then goes on to cover "all persons affected by an armed conflict as defined in Article 1". The final provision in this Part [164] categorically precludes the Protocol from having any effect on the sovereignty of a State in whose territory a conflict is being waged and no less categorically opposes all external intervention, either "directly or indirectly", in the conflict. While these reservations are understandable at the stage which international law has now reached, it is difficult not to fear that they may be invoked to justify many an abuse, in spite of everything said in the articles that follow.

The rest of the Protocol—besides the final provisions, which are essentially the same as those in Protocol I—is divided into three *Parts.*

The very heading of Part II announces the principles of the "humane treatment" to which are entitled "all persons who do not take a direct part or who have ceased to take part in the hostilities".[165]

---

[159] See above, Chap. IV *in fine.*

[160] Article 19 on dissemination, very brief.

[161] See above, Chap. I.

[162] Protocol II, Art. 1.

[163] Ibid., Art. 2.

[164] Ibid., Art. 3.

[165] Ibid., Art. 4.

The list of "fundamental guarantees" that follows repeats what was already said in Article 3 common to the 1949 Conventions, adding: collective punishments, acts of terrorism, slavery and the slave trade in all their forms (author's note: and this in the Twentieth Century !) and pillage. A paragraph on the aid and care due specifically to children included in this article seems not to have been put in its proper place. Article 5 (the following article) contains a detailed list of all the guarantees granted to persons "whose liberty has been restricted",[166] while Article 6 gives special guarantees concerning penal prosecutions [167], stating that no sentence shall be passed and no penalty shall be executed except pursuant to conviction by an independent and impartial court.

The part concerning the "wounded, sick and shipwrecked" [168] is probably the least controversial. It contains, in abbreviated form, the sames rules as Protocol I concerning the victims of international armed conflicts: the same duty to seek, collect and care for the persons mentioned in the heading, although without repeating the definitions given in Protocol I. These persons, the medical and religious personnel caring for them, and the units and means of medical transportation must be "protected and respected" and are authorized to display the distinctive emblem employed during international armed conflicts.

The authors of Protocol II were rather sparing with their words in the final version of the Part concerning the "civilian population". Both this population as a whole and "civilian persons" must be protected "against the dangers arising from military operations" and, in particular, "shall not be the object of attack, unless and for such time as they take a direct part in hostilities".[169] Only one clause specifically prohibits "forced movement".[170] There is no general clause protecting civilian objects or the environment. There are three specific clauses [171] protecting, respectively, "objects indispensable to the survival of the civilian population" [172], "works and installations containing dangerous forces", and "cultural objects and places of worship". Relief societies,[173] "such

[166] Ibid., Art. 5.

[167] Ibid., Art. 6.

[168] Ibid., Arts. 7-12.

[169] Ibid., Art. 13.

[170] Ibid., Art. 17.

[171] Ibid., Arts. 14-16.

[172] This text was not included in the original abridged version; it was introduced after a moving speech by the representative of the Holy See.

[173] Protocol II, Art. 18.

as Red Cross organizations", were given the possibility to act; they could thus "offer their services for the performance of their traditional functions in relation to the victims of the armed conflict". Any such action is subject to the consent of the High Contracting Party concerned.

This, briefly, is the content of Protocol II, somewhat modest in its final version; its legal future is difficult to foresee.

XIV. Final remarks

We thus have a picture of humanitarian law as it stands today. Is it flawless? Does it need further development? Man seeks perfection in all that he does; humanitarian law is no exception. He gains experience from each new armed conflict, and who can say if one day we will not be able to stop all conflicts once and for all. So far, even the invention of the most horrible weapons ever to exist has not prevented conflicts.

We must not lose hope that sooner or later we will achieve this ideal: the elimination of war. No effort must be spared in the meantime to make war—whether openly referred to as such or called by some other name—less horrible by easing the plight of those that fall victim to it.

Of course, the best of rules at times go unobserved. This, however, is certainly not the fault of those who have drawn them up. In no legal system are violations considered as proof that the regulations violated were unnecessary. On the contrary, man's imperfection renders them necessary. In order to know that a rule has been violated, that rule must first exist. At the present stage of development of the law of armed conflicts, of which humanitarian law, whose scope is constantly being broadened, can be considered as the most important part, it is no longer the rules that are lacking, but the willingness to observe them.

The very existence of these rules is of double value. First, there will always be those people who, aware that they exist, will make the effort to observe them. Second, if they do not observe them, there are at least solid grounds on which to condemn them. Such condemnation is too often, for the moment, only moral but it is to be hoped that as inter-

national penal sanctions become more enforceable than they are now, it will become possible to try those who have violated a rule of international law before a competent and effective international court.

Stanislaw E. Nahlik
Emeritus Professor
of the Jagellone University,
Cracow

N. B. Lack of space in the present issue of the *Review* prevents us from including a list of abbreviations and the selected bibliography that the reader will find however in an offprint of the *Review* containing the article by Professor S. E. Nahlik.