

LUFTKRIEG UND ZIVILBEVÖLKERUNG

*Doctrine and practice relating to the protection
of civilians against aerial bombardment
up to the outbreak of the Second World War*

In this thesis on the history of law, presented in 1989 at the University of Salzburg, Mr. Hanke* describes the development of military and legal practice and principles relating to aerial bombardment (especially strategic bombing) from the beginnings of aviation up to the outbreak of World War II. The author's interpretation of practice, as an integral part of customary law, is justifiably wide-ranging: he includes not only acts by belligerents, but also public declarations by States in peacetime, attempts at codification and instructions to the armed forces. The thesis is especially interesting when it explains how practice is dependent on national policy concerning aerial warfare; but it does not underrate the importance of legal doctrine for the development of rules of international law on the subject.

After describing the first attempts to prohibit aerial bombardment completely, the author shows that during the First World War the criterion, unusable for "strategic" bombing, of a "defended" locality was replaced in practice by the idea of the military objective: henceforth only attacks aimed at military targets were legitimate, a principle meanwhile embodied in Article 48 of 1977 Additional Protocol I.

Mr. Hanke confirms that two other rules were also in force on the eve of the Second World War: the definition of a military objective by the military advantage conferred by its destruction or neutralization, and the prohibition of attacks on the civilian population as such. Conversely, the author maintains that the ban on indiscriminate attacks was valid in 1939 only for attacks carried out behind the lines, whereas in combat areas only the principles of proportionality limited such attacks. At the start of the Second World War, the belligerents even reaffirmed these rules, although in somewhat vague fashion and reserving the right to reciprocate.

* Heinz Marcus Hanke, *Luftkrieg und Zivilbevölkerung* (Aerial warfare and the civilian population), Verlag Peter Lang, Frankfurt-on-Main, 1991, 310 pp + XIV (in German).

The second part of this study, which the author has said will be devoted to analysing practice during the Second World War, will be awaited with great interest. However, this first volume, supported as it is by numerous references, diagrams and documents, is extremely useful, since it indicates how customary law has led to certain rules that are now codified in Protocol I. Even so, some people still refer to them as “new”!
