

INTERNATIONAL COMMITTEE
OF THE RED CROSS

**Protection of Civilian Populations
Against the Dangers of
Indiscriminate Warfare**

GENEVA, MAY 25, 1967

Circular No. 468

*To the Central Committees of National Red Cross,
Red Crescent, Red Lion and Sun Societies*

LADIES AND GENTLEMEN,

We have the honour of enclosing the text of a memorandum dated May 19, 1967, addressed by the International Committee of the Red Cross to the Governments of States parties to the Geneva Conventions of 1949 and to the IVth Convention of The Hague of 1907, concerning the laws and customs of war on land. This memorandum bears on the protection of civilian populations against the dangers of indiscriminate warfare and, in particular, on the implementation of Resolution XXVIII of the XXth International Conference of the Red Cross.

In conformity with this resolution, which notably requests our institution to pursue the development of humanitarian law in this

sphere and to take into consideration all possible means with a view to obtaining a rapid solution, the International Committee has made very thorough examination of the question and has notably undertaken a series of consultations in several continents. On termination of this study, the International Committee has judged it necessary to address the above-mentioned memorandum to all Governments requesting them to sanction, by an adequate instrument of international law, the principles set forth in Resolution XXVIII, and to invite them, whilst waiting for this instrument to be drawn up, to reaffirm the value which they attach to these principles by making any appropriate official manifestation, such as a resolution of the United Nations General Assembly.

Furthermore, the International Committee draws the attention of Governments to the existing position of the rules of international law relative to the conduct of hostilities and whose observation is of direct interest to civilian populations.

In the penultimate paragraph of Resolution XXVIII, it is stated, in particular, that the XXth International Conference of the Red Cross " requests National Societies to intervene with their Governments in order to obtain their collaboration for an early solution of this question ".

Convinced that the step it is taking corresponds with the profound concern of the Red Cross world, the International Committee now wishes to express its gratitude to National Societies for the efforts they may consider possible to undertake to this effect.

With the assurance, Ladies and Gentlemen, of my high consideration.

FOR THE INTERNATIONAL COMMITTEE
OF THE RED CROSS

Samuel A. GONARD
President

MEMORANDUM

*To the Governments Parties to the 1949 Geneva Conventions
for the Protection of War Victims and to the IVth Hague Convention
of 1907 concerning the Laws and Customs of War on Land*

GENEVA, May 19, 1967

I.

As a result of its humanitarian action in connection with armed conflicts, the International Committee of the Red Cross has become ever increasingly aware of the imperative necessity for nations to renounce force as a means of settling disputes, to agree to reduce armaments and to establish peaceful and confident relations amongst themselves. The Red Cross contributes, within its own sphere of action, by every means available to it, towards these ends.

Until such time as these objectives have been achieved—and so long as the scourge of armed conflicts, even of a limited nature, continues to subsist or to arise—it is, however, of paramount importance that the humanitarian rules destined to safeguard the essential values of civilisation and to facilitate thereby the re-establishment of peace should be strictly observed in such extreme situations. These rules are laid down, in particular, in the Geneva and Hague Conventions as well as in customary law. The International Committee desires to issue a solemn reminder of this necessity, which has incidentally been recalled by various International Conferences of the Red Cross, at which the Governments were represented.

II.

As a result of technical developments in weapons and warfare, given also the nature of the armed conflicts which have arisen in our times, civilian populations are increasingly exposed to the dangers and consequences of hostilities. The International Committee, which has long been deeply concerned by this grave threat, is certain that it reflects public opinion by calling once again the earnest attention of all Governments to the principles which the XXth International Conference of the Red Cross, at Vienna in 1965, proclaimed in its Resolution No. XXVIII, thereby confirming the prevailing law.

Indeed, in its Resolution—the full text of which is attached hereto—the Conference solemnly declared that:

all Governments and other authorities responsible for action in armed conflicts should conform at least to the following principles :

- that the right of the parties to a conflict to adopt means of injuring the enemy is not unlimited ;*
- that it is prohibited to launch attacks against the civilian populations as such ;*
- that distinction must be made at all times between persons taking part in the hostilities and members of the civilian population to the effect that the latter be spared as much as possible ;*
- that the general principles of the Law of War apply to nuclear and similar weapons.*

In order for these principles to be fully operative, the International Committee urgently requests Governments to sanction them and, if need be, to develop them in an adequate instrument of international law. The International Committee is prepared to assist in drawing up such an instrument.

In addition, without awaiting the entry into force of this instrument and the possible achievement of an agreement between the Powers concerned for the formal prohibition of weapons of

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mass destruction, the International Committee invites the Governments to reaffirm, as of now, through any appropriate official manifestation, such as a resolution of the United Nations General Assembly, the value they attach to the principles cited above. Moreover these principles could henceforth be referred to in the instructions given to the armed forces.

III.

Another aspect of this problem is also of deep concern for the International Committee and calls for the sympathetic attention of Governments.

The observance of rules destined, in case of armed conflicts, to safeguard essential human values being in the interest of civilisation, it is of vital importance that they be clear and that their application give rise to no controversy. This requirement is, however, by no means entirely satisfied. A large part of the law relating to the conduct of hostilities was codified as long ago as 1907; in addition, the complexity of certain conflicts sometimes places in jeopardy the application of the Geneva Conventions.

No one can remain indifferent to this situation which is detrimental to civilian populations as well as to the other victims of war. The International Committee would greatly value information on what measures Governments contemplate to remedy this situation and in order to facilitate their study of the problem it has the honour to submit herewith an appropriate note.

FOR THE INTERNATIONAL COMMITTEE
OF THE RED CROSS

Samuel A. GONARD
President

Annex No. 1

**PROTECTION OF CIVILIAN POPULATIONS AGAINST THE
DANGERS OF INDISCRIMINATE WARFARE¹**

The XXth International Conference of the Red Cross,

in its endeavours for the protection of the civilian population, reaffirms Resolution No. XVIII of the XVIIIth International Conference of the Red Cross (Toronto, 1952), which, in consideration of Resolution No. XXIV of the XVIIth International Conference of the Red Cross (Stockholm, 1948) requested Governments to agree, within the framework of general disarmament, to a plan for the international control of atomic energy which would ensure the prohibition of atomic weapons and the use of atomic energy solely for peaceful purposes,

thanks the International Committee of the Red Cross for the initiative taken and the comprehensive work done by it in defining and further developing international humanitarian law in this sphere,

states that indiscriminate warfare constitutes a danger to the civilian population and the future of civilisation,

solemnly declares that all Governments and other authorities responsible for action in armed conflicts should conform at least to the following principles:

- that the right of the parties to a conflict to adopt means of injuring the enemy is not unlimited;
- that it is prohibited to launch attacks against the civilian populations as such;
- that distinction must be made at all times between persons taking part in the hostilities and members of the civilian population to the effect that the latter be spared as much as possible;
- that the general principles of the Law of War apply to nuclear and similar weapons;

expressly invites all Governments who have not yet done so to accede to the Geneva Protocol of 1925 which prohibits the use of asphyxiating, poisonous, or other gases, all analogous liquids, materials or devices, and bacteriological methods of warfare,

¹ XXth International Conference of the Red Cross, Resolution XXVIII.

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urges the ICRC to pursue the development of International Humanitarian Law in accordance with Resolution No. XIII of the XIXth International Conference of the Red Cross, with particular reference to the need for protecting the civilian population against the sufferings caused by indiscriminate warfare,

requests the ICRC to take into consideration all possible means and to take all appropriate steps, including the creation of a committee of experts, with a view to obtaining a rapid and practical solution of this problem,

requests National Societies to intervene with their Governments in order to obtain their collaboration for an early solution of this question and urges all Governments to support the efforts of the International Red Cross in this respect,

requests all National Societies to do all in their power to persuade their Governments to reach fruitful agreements in the field of general disarmament.

Annex No. 2

SUMMARY REVIEW OF INTERNATIONAL LAW RULES CONCERNING THE PROTECTION OF CIVILIAN POPULATIONS AGAINST THE DANGERS OF INDISCRIMINATE WARFARE

The basic rule is laid down in article 22 of the Regulations concerning the Laws and Customs of War on Land, annexed to the Fourth Hague Convention of October 18, 1907, namely: "*the right of belligerents to adopt means of injuring the enemy is not unlimited*". From this principle, still valid and confirmed by the XXth International Conference of the Red Cross, the following rules are derived.

1. Limitation for benefit of persons

Whilst combatants are the main force of resistance and the obvious target of military operations, non-combatants shall not be subject to and shall not participate in hostilities. It is therefore a generally accepted rule that *belligerents shall refrain from deliberately attacking non-combatants*. This immunity to which the civilian population by and large is entitled—provided it does not participate directly in hostilities—

has not been clearly defined by international law, but in spite of many examples of blatant disregard for it, it is still one of the main pillars of the law of war.

In 1965 the International Conference of the Red Cross in Vienna formulated (in its Resolution XXVIII) the following requirement as one of the principles affecting civilians during war and to which governments should conform, viz: "... distinction must be made at all times between persons taking part in the hostilities and members of the civilian population to the effect that the latter be spared as much as possible."

A major rule deriving from the general norm quoted above is that *bombardments directed against the civilian population as such, especially for the purpose of terrorising it, are prohibited*. This rule is widely accepted in the teachings of qualified writers, in attempts at codification and in judicial decisions; in spite of many violations, it has never been contested. The XXth International Conference of the Red Cross, moreover, did not omit to re-state it.

International law does not define civilian population. Of course, any sections of the population taking part in hostilities could hardly be classified as civilian. The view is general that civilians staying within or in close proximity to military objectives do so at their own risk. But when such people leave objectives which may be attacked and return to their homes they may no longer be subject to attack.

Another rule deriving from the general norm is that *belligerents shall take every precaution to reduce to a minimum the damage inflicted on non-combatants during attacks against military objectives*.

This latter rule is perhaps less widely admitted than those previously mentioned. However, in an official resolution of September 30, 1938, the League of Nations considered it fundamental and it has been given effect in the instructions which many countries have issued to their air forces.

The precautions to which allusion is made would include, for the attacking side, the careful choice and identification of military objectives, precision in attack, abstention from target-area bombing (unless the area is almost exclusively military), respect for and abstention from attack on civil defence organizations: the adversary being attacked would take the precaution of evacuating the population from the vicinity of military objectives.

As can be seen, the obligation incumbent on the attacking forces to take precautions depends in part on the "passive" precautions taken by the opposite side, or, in other words, the practical steps taken by each belligerent to protect its population from consequences of attacks. What is the extent of such an obligation? In some attempts at drafting regulations it has been suggested that bombing attacks should not be carried out if there is strong probability of indiscriminate

effect causing the population to suffer. The International Committee of the Red Cross, for its part, proposed, in its appeal of March 12, 1940, that belligerents should recognize the general principle that *an act of destruction shall not involve harm to the civilian population disproportionate to the importance of the military objective under attack*. On a number of occasions, and recently by qualified writers, by experts and by some army manual of the laws and customs of war, this rule has been re-stated.

2. Target limitation

In this connection, the accepted rule is that *attacks may only be directed against military objectives, i.e. those of which the total or partial destruction would be a distinct military advantage*.

There has always been an accepted distinction between the fighting area and the zones behind the lines. This distinction is purely technical in origin, the theatre of operations depending on the ground gained by the advancing troops and the range of weapons. Until the advent of air raids, areas behind the firing lines were in fact immune from hostilities.

This out-dated concept was the basis for the law of conventional warfare, i.e., in the main, articles 25 to 27 of the Regulations annexed to the IVth Hague Convention of 1907. In those articles the word "bombardment" must be construed to mean "shelling"; since that time the aeroplane has made air bombardments possible well behind the lines.

Nowadays, a belligerent's whole territory may be considered a theatre of hostilities. The 1907 rules are still applicable to the fighting area at the front. So far as areas well behind the lines are concerned, they are in part out of date.

Although during the Second World War indiscriminate bombardments wrought widespread havoc, no government has attempted to have the practice recognized as lawful. The contrary has in fact been the case. States have shown a marked tendency to justify their air bombardments as reprisals against an enemy who first had recourse to this method, or, as in the case of the use of the atomic bomb, as an exceptional measure dictated by overriding considerations, such as the saving of human lives by putting an end to the war quickly.

Our first rule of target limitation is not contained in treaty law, but its validity is founded on many official statements, made particularly during the Second World War and the wars of Korea and Vietnam. It has been evolved progressively by analogy with a provision contained in the IXth Hague Convention of 1907; this authorizes naval shelling of certain important military objectives, even if these are situated in undefended towns. The 1949 Geneva Conventions and the 1954 Hague Convention contain several references to the concept of military objective.

Several documents, such as the draft issued by the Commission of government jurists who met in The Hague (December 1922 - February 1923) and the Draft Rules drawn up in 1956 by the International Committee of the Red Cross, have suggested definitions or lists of military objectives. It is generally admitted *that an objective is military only if its complete or partial destruction confers a clear military advantage.* It is held, also, *that any attacking force, before bombing an objective, shall identify it and ascertain that it is military.*

There are buildings which cannot under any circumstances be considered as military objectives ; they are given the benefit of special immunity under the Geneva Conventions (I, art. 19, IV, art. 18), the Hague Regulations of 1907 (art. 27), and the 1954 Hague Convention relating to the protection of cultural property (art. 4), namely *belligerents will in particular spare charitable, religious, scientific, cultural and artistic establishments as well as historic monuments.* In addition, under the Fourth Geneva Convention, *belligerents may, by special agreement, set up safety or neutralized zones to shelter the civilian population, particularly the weaker members thereof,* in order to provide them, under such agreement, with special protection against the effects of hostilities.

These Conventions stipulate that it is the duty of the authorities to indicate the presence of such buildings and zones by special signs.

Mention must also be made of article 25 of the Regulations annexed to the IVth Hague Convention of 1907, considered for years as one of the fundamentals of the law of war namely : *" The attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended is prohibited "*. The subsequent development of air warfare has vitiated this provision so far as areas behind the fighting lines are concerned ; it is a provision which has been supplanted by the military objective concept. It is nevertheless still valid for ground fighting. When localities offer no resistance, an enemy who is able to take them without a fight shall, in the interest of the population, abstain from attack and useless destruction.

It has become customary to declare towns " open " if it is not intended to defend them against an enemy who reaches them.

3. Limitations on weapons and their use

In this respect the basic rule is article 23 (e) of the Regulations annexed to the IVth Hague Convention of 1907, namely : *" It is forbidden to employ arms, projectiles or material calculated to cause unnecessary suffering."*

Its characteristic is that its aim is not only to spare non-combatants, but also to avoid any suffering to combatants in excess of what is essential to place an adversary hors de combat. This implies that weapons and

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methods as described below should not be used. Due to the nature of modern war, this field of law no longer concerns only combatants, but also civilian population.

a) *Weapons inflicting needless suffering*

The Conventions of The Hague and of St. Petersburg prohibit the use of "*Poison or poisoned weapons*" (Hague Regulations, art. 23, a), "*any projectile of a weight below 400 grammes which is either explosive or charged with fulminating or inflammable substances*" (St. Petersburg Declaration, 1868) and so-called "*dum-dum*" bullets "*which expand or flatten in the human body*" (Hague Declaration, 1899).

It might well be asked whether such new weapons as napalm and high velocity rockets should not be included in this category. They have not so far been expressly prohibited but they do cause enormous suffering and the general prohibition which forms the sub-heading to this section seems applicable to them.

Mention must also be made of a clause in the St. Petersburg Declaration to the effect that parties thereto reserve the right to come to an understanding whenever a precise proposition shall be drawn up concerning any technological developments in weapons, with a view to maintaining the principles they have established and reconciling the necessities of war to the laws of humanity. It is unfortunate that States have not followed up this suggestion which today is as valid as ever.

b) "*Blind*" weapons

These weapons not only cause great suffering but do not allow of precision against specific targets or have such widespread effect in time and place as to be uncontrollable. They include, for instance, chemical and bacteriological weapons, floating mines and delayed action bombs, whose insidious effects are such that they preclude relief action.

The Geneva Protocol of June 17, 1925, *prohibiting the use in war of asphyxiating, poisonous and other gases and of bacteriological methods of warfare* has replaced older prohibitions (the 1899 Hague Convention, the Treaty of Versailles) and shall be considered as the expression of customary law. In an almost unanimous resolution on December 5, 1966—which affirms that the strict observance of the rules of international law on the conduct of warfare is in the interest of maintaining the accepted norms of civilisation—the United Nations General Assembly called for strict observance by all States of the principles and objectives of this Protocol, and condemned all actions contrary to those objectives. This very brief Protocol is in the nature of a Declaration subject to ratification by the Powers and binding them in the event of conflict with any co-signatories. This formula seems to have been well chosen and remarkably successful; only one violation has been recorded. It

should be pointed out, however, that almost eighty States are not participants.

Unanimous agreement on the interpretation of this prohibition has not been achieved by qualified writers. The Protocol mentions not only asphyxiating gases but also "other" gases. Does this mean all gases or only those which are a hazard to life and health?

The major problem however has been set by nuclear weapons.

In a resolution adopted on November 24, 1961, the United Nations General Assembly stated that the use of nuclear and thermo-nuclear weapons, which exceed even the field of war and cause uncontrollable suffering and destruction to humanity and civilization, "is contrary to international law and to the laws of humanity". It must be added, however, that this resolution was not adopted unanimously, did not cover the case of reprisals and, what is more, it envisaged at some future date the signing of a Convention on the prohibition of nuclear weapons, and it also requested the United Nations Secretary-General to hold consultations with governments on the possibility of convening a special Conference for that purpose.

Until such a Convention has been drawn up and widely ratified—it is still not yet known when this special Conference will meet—the fact must be faced that qualified writers differ on this question. It is not our aim here to decide this important controversy. We would state merely that the use of atomic energy in war has not been expressly forbidden, for the conventional law on the conduct of warfare dates back to a time when atomic energy was unknown. However this does not justify its use: in the implementation of the law of war, as any other law, general principles must apply to cases not previously foreseen. It is in fact these very principles which the present survey reviews, i.e.: no attack on the civilian population per se, distinction between combatants and non-combatants, avoidance of unnecessary suffering, only military objectives to be targets for attack, and even in this latter case, the taking of every precaution to spare the population.

This view was proclaimed by the XXth International Conference of the Red Cross which met in Vienna in 1965. The Resolution No. XXVIII then adopted postulated certain essential principles of protection for civilian populations and added that "*the general principles of the Law of War apply to nuclear and similar weapons*". This does not imply that the Conference intended to make any decision on the legitimacy of using such weapons; it merely made it clear that in any event nuclear weapons, like any others, were subject to these general principles until such time as governments came to an understanding on measures for disarmament and control with a view to a complete prohibition of the use of atomic energy in warfare.