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THE PAUL REUTER PRIZE

The Paul Reuter Fund was created in 1983 thanks to a donation made to the ICRC by the late Paul Reuter, Honorary Professor of the University of Paris and member of the Institute of International Law. Its purpose is twofold: its income is used to encourage a work or an undertaking in the field of international humanitarian law and its dissemination, and to finance the Paul Reuter Prize.

The prize, in the amount of 2,000 Swiss francs, is awarded for a major work in the field of international humanitarian law. The prize has previously been awarded three times: it was first awarded in 1985 to *Mr. Mohamed El Kouhène*, Doctor of Laws, for his doctoral thesis entitled "Les garanties fondamentales de la personne en droit humanitaire et droits de l'homme" (Fundamental guarantees of the individual under humanitarian law and in human rights). The second award was made in 1988 to *Ms. Heather A. Wilson*, Doctor of Laws, for her thesis entitled "International Law and the Use of Force by National Liberation Movements". In an exceptional decision, there were two recipients when it was awarded for the third time in 1991: *Mr. Edward K. Kwakwa*, Doctor of Laws, received the prize for his thesis entitled "Trends in the International Law of Armed Conflict: Claims relating to Personal and Material Fields of Application", and *Mr. Alejandro Valencia Villa*, a lawyer, received the prize for his book entitled "La humanización de la guerra: la aplicación del derecho internacional humanitario al conflicto armado en Colombia".

The prize will be awarded for the fourth time in **1994**. In accordance with the Regulations of the Paul Reuter Prize, to be considered for the award applicants must fulfil the following conditions:

1. The works admitted must be aimed at improving knowledge or understanding of international humanitarian law.
2. It must either be still unpublished or have been published recently, in 1989 or 1990.
3. Authors who meet the above requirements may send their applications to **Mr. Paolo Bernasconi, Chairman of the Commission of the Paul Reuter Fund, International Committee of the Red Cross**, 19, Avenue de la Paix, CH-1202 Geneva, as soon as possible and by **15 November 1993** at the latest.
4. Applications may be submitted in English, French or Spanish, and must include:
 - a brief curriculum vitae;
 - a list of the applicant's publications;
 - three unabridged copies of the works admitted to the Commission.

*INTERNATIONAL COMMITTEE OF THE RED CROSS
GRADUATE INSTITUTE OF INTERNATIONAL STUDIES*

**Training seminar on
international humanitarian law
for university teachers**

Geneva, 12-17 July 1993

The International Committee of the Red Cross and the Graduate Institute of International Studies, Geneva — assisted by a generous grant from the Hauser Foundation — will hold a training seminar on international humanitarian law (IHL) for full-time university teachers who give courses on public international law or human rights law and who are ready to make a commitment to start teaching IHL in their universities.

The seminar will be held at the Graduate Institute on 12-17 July 1993. The organizers will cover APEX-type airfare to Geneva and living expenses in Geneva for the participants (arrival: 11 July, departure: 18 July).

This seminar, which is designed to promote the teaching of IHL in universities, will cover IHL and relevant aspects of human rights law applicable in international and internal armed conflicts (including the law on the conduct of hostilities, treatment of the wounded and sick, prisoners of war, occupation, internal conflicts, relief and intervention, implementation, responsibility and war crimes, and teaching methods).

The instructors will be academics, ICRC specialists and practitioners. The language of instruction will be English.

Applications, including full C.V.s, and statements explaining the candidates' interest in and plans for teaching IHL, must reach Isabelle Gerardi, Graduate Institute of International Studies, 132, rue de Lausanne, 1211 Geneva 21 (fax 41-22-7384306), Switzerland, by 10 April 1993. Places are limited. Applicants will be notified by the end of April whether they have been accepted.

*IMPLEMENTATION OF INTERNATIONAL
HUMANITARIAN LAW*

Activities of qualified personnel
in peacetime

by María Teresa Dutli

I. Introduction

Ever since international humanitarian law (IHL) was first codified the States, as contracting parties, have undertaken to adopt every measure necessary to implement their obligations under the relevant treaties. The duty to ensure implementation derives from the customary rule whereby the parties to a treaty must carry out its provisions in good faith. In addition, the Geneva Conventions of 1949 and their Additional Protocols of 1977 set forth special means of implementation which strengthen and specify this customary rule and apply from the moment a treaty enters into force. One such provision is Art. 6 of Protocol I, entitled “Qualified persons”.

Art. 6 can be traced to a 1964 draft resolution of the *Commission médico-juridique de Monaco* which recommended setting up groups of qualified persons, within each State, to monitor the implementation of IHL as provided for in the 1949 Geneva Conventions. A draft article conceived along the same lines, and taking into account various opinions gathered by the ICRC on the aforesaid proposal, was submitted to the first and second sessions (1974 and 1975) of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts (CDDH). Although a number of amendments were proposed to the initial draft, the idea that States should train qualified personnel to facilitate the implementation of the Conventions and the Protocol met with virtually unanimous approval. The final text was written up by the drafting

committee of the CDDH and included in Protocol I as Art. 6,¹ which reads as follows:

Qualified persons

1. *The High Contracting Parties shall, also in peacetime, endeavour, with the assistance of the National Red Cross (Red Crescent, Red Lion and Sun²) Societies, to train qualified personnel to facilitate the application of the Conventions and of this Protocol, and in particular the activities of the Protecting Powers.*
2. *The recruitment and training of such personnel are within domestic jurisdiction.*
3. *The International Committee of the Red Cross shall hold at the disposal of the High Contracting Parties the lists of persons so trained which the High Contracting Parties may have established and may have transmitted to it for that purpose.*
4. *The conditions governing the employment of such personnel outside the national territory shall, in each case, be the subject of special agreements between the Parties concerned.*

Although the concept underlying this provision received broad approval during the Diplomatic Conference, in practice the provision has remained a dead letter. Yet its implementation could play a very important role in the implementation of IHL.

II. Recruitment and training of qualified personnel as a peacetime measure

The recruitment and training of qualified personnel is one of the measures of implementation which the States must adopt as soon as Protocol I enters into force. This is because competent personnel must be recruited and trained in advance, in peacetime, in order to be operational in time of armed conflict.

¹ See *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Sandoz, Y., Swinarski, C., Zimmermann, B., eds., ICRC, Martinus Nijhoff Publishers, Geneva, 1987, p. 92, para. 239.

² Since July 1980 there has no longer been a Red Lion and Sun Society nor any party to the Conventions which uses that sign.

The training of qualified personnel (and by implication the transmission of lists thereof) is included in the "Indicative List" of measures of implementation to be adopted in peacetime annexed to the report on "Respect for international humanitarian law: National measures to implement the Geneva Conventions and their Additional Protocols in peacetime" (Doc. C.I/2.4/2) which was submitted by the ICRC to the 25th International Conference of the Red Cross (Geneva, 1986). The indicative list was also joined to the written representations which the ICRC made as a follow-up to Resolution V of the 25th International Conference of the Red Cross on the same subject, in particular its circular letter of 28 April 1988 to all the States party to the Geneva Conventions and their respective National Societies. This letter requested information on the measures taken or planned at the national level to ensure, at the appropriate time, the effective implementation of the treaties.³ In response to its written representations the ICRC received very little information on the recruitment and training of qualified personnel.⁴ Some States may nevertheless have taken initial steps in this direction without having informed the ICRC.

III. Definition of qualified personnel

Art. 6 of Protocol I is silent as to the nature of the qualified personnel it mentions. The above-mentioned draft resolution of the *Commission médico-juridique de Monaco* referred to "a corps of volunteers, doctors, lawyers, paramedical personnel who could be made available to belligerent countries, Protecting Powers, and the ICRC whenever necessary".⁵ This list was indicative, not restrictive. However, a multidisciplinary group is certainly required, in particular since ensuring full respect for the provisions of the Conventions and Protocols involves various fields of specialization.

³ The circular letter of 28 April 1988 was published in the *IRRC*, No. 263, March-April 1988, pp. 122-140. See also *National measures to implement international humanitarian law. Resolution V of the 25th International Conference of the Red Cross (Geneva, 1986). Written representations by the International Committee of the Red Cross*, ICRC, Geneva, 1991.

⁴ See "Replies received from States to the ICRC's written representations concerning national measures to implement international humanitarian law" annexed to the report on *Implementation of international humanitarian law — National measures* (Doc. C.I/4.1/1) compiled by the ICRC for the 26th International Conference of the Red Cross and Red Crescent (which was to have taken place in Budapest in 1991).

⁵ See *Commentary, op.cit.*, pp. 93-94, para. 242.

IV. Duties of qualified personnel

According to Art. 6 of Protocol I, the role of qualified personnel is to facilitate the application of IHL in time of armed conflict, and in particular the activities of the Protecting Powers.

Since qualified personnel are to be recruited and trained already in peacetime, they could also play a role outside situations of armed conflict. For example they could, in addition to taking part in dissemination activities, assist government authorities to prepare for the adoption of national measures to implement IHL.⁶

In this article we shall focus on proposals concerning activities which qualified personnel could carry out in peacetime, deliberately leaving aside the subjects of recruitment, training and activities in time of armed conflict.

The following proposals, which are neither restrictive nor exhaustive, should be examined in the light of the various specializations which correspond to each field of activity. The aim is to provide a list of activities which could be undertaken to facilitate the participation of qualified personnel in the implementation of IHL in peacetime.

A. Dissemination

Qualified personnel could certainly contribute effectively to the dissemination activities undertaken by the authorities, in particular by reaching a wide variety of specialized target groups.

It would indeed seem quite impossible to carry out the programmes of instruction mentioned in Protocol I⁷ unless qualified personnel and adequate material are made available.

The fact that the courses on the law of war for officers organized by the International Institute of Humanitarian Law (IIHL) in San Remo are taught by officers provides an excellent example of recognition for the need to enlist the services of trained experts in each field. Such experts can identify the problems of concern to the target group in question and pass on their knowledge in the most effective way. The ICRC's dissemination activities among the armed forces are also carried out by officers acting as instructors.

⁶ *Commentary, op. cit.*, p. 94, para. 243.

⁷ Protocol I, Art. 82 on "Legal advisers in armed forces" and Art. 83 on "Dissemination".

B. Measures to implement the Conventions and Protocols

As already mentioned, the States party to the Conventions and Protocol I must adopt in peacetime the legislative and practical measures necessary to ensure effective implementation of the treaties in time of armed conflict. These advance measures, called “measures for execution” in Art. 80 of Protocol I, cannot be improvised at short notice, especially as they touch on a wide variety of fields, namely, the military and technical fields (for example, on the question of weaponry), the legal field (particularly in criminal law), the health and medical fields, administration and the organization of relief for victims. The solution of problems that arise in any of these fields obviously requires the participation of highly qualified personnel.⁸

The study and preparation of necessary measures to be adopted could be entrusted by the States parties, who bear the main responsibility in this respect, to interministerial committees comprising representatives of the various ministries concerned with the implementation of IHL.⁹ This possibility was also suggested by the ICRC in its written representations on national measures of implementation¹⁰ and in its contacts with government authorities. With a view to adopting national measures of implementation, the authorities could also rely on the help of consultative groups, possibly even private ones, consisting of qualified personnel in the sense of aforementioned Art. 6.¹¹

Qualified personnel could participate in the efforts of the government authorities in many ways. For example, they could:

1. establish an order of priority among areas of national legislation which need to be supplemented or modified following the adoption of IHL at the national level (for example in relation to punitive measures, misuse of the emblem, national information bureaux, hospital ships or medical aircraft);
2. remain abreast, in each area of specialization, of the national measures adopted by other States and pass on this information to the authorities concerned;
3. make specific proposals based on practical experience and knowledge of IHL as to the type of measure which should be adopted in each case;

⁸ See *Commentary, op.cit.*, p. 94, para. 243.

⁹ See *Commentary, op. cit.*, p. 931, para. 3296.

¹⁰ See note 3 above.

¹¹ See *Commentary, op.cit.*, p. 94, para. 243.

4. draw the attention of government authorities to the importance of each State party keeping the others informed of the national measures it has adopted to implement IHL;
5. assist government authorities with the translation of the Conventions and Protocols into their national languages and of national laws and rules into a universally understood language so that relevant information can be passed on to the other States party and the ICRC;
6. ensure respect for the emblem and draw the authorities' attention to cases of misuse so that the necessary corrective measures can be taken;
7. take part in the setting up of a civil defence service or, when needed, help coordinate existing public and private services which assist the population in various ways, such as fire, relief and rescue services, hospitals and the police;
8. help train members of the civil defence services in the areas of medical care and sanitation, among others, and instruct the population regarding possible dangers and protective measures to be taken against them;
9. assist the authorities with various tasks aimed at increasing the safety of civilians, in particular by providing advice with regard to the construction of shelters, the materials used, the supply of food and water, sanitation facilities and measures to fight fires and floods;
10. compile for the authorities a directory of groups which could provide volunteers (nursing schools, schools for social welfare workers, ambulance services, youth movements) in order to facilitate contacts and schemes which would enable volunteers to receive instruction, in particular in the basic rules of IHL;
11. provide supplementary training for medical and paramedical personnel, in particular by teaching them methods of evacuating victims of bombing attacks, war surgery, prosthetic and orthotic techniques and amputee rehabilitation;
12. promote the stockpiling of emergency food and non-food supplies;
13. remind the authorities of the importance of placing objects likely to become military targets at a safe distance from densely populated areas;

14. take any other measures conducive to ensuring effective implementation of the Conventions and Protocols in time of armed conflict.

In more general terms, besides taking part in dissemination activities and promoting the adoption of national measures to implement IHL, qualified personnel could also have the peacetime role of keeping a close watch on new developments in the field of IHL which are being discussed in international fora, informing the authorities of these developments and taking specific initiatives to promote IHL at the national and international levels.

V. Conclusion

Our aim in this article has been to suggest various activities which qualified personnel could carry out in peacetime to assist the States in fulfilling their obligation to ensure that IHL will be duly implemented. It should not be forgotten, however, that the primary responsibility for taking the appropriate advance measures falls to the national authorities and that the role of qualified personnel is limited to providing support for State efforts in this direction. Nevertheless, the activities and initiatives of qualified personnel in peacetime play a major role in ensuring the effective implementation of IHL in time of armed conflict.

María Teresa Dutli

María Teresa Dutli was born in 1955. In 1979 she took her bar finals at the Faculty of Law of the National University of Buenos Aires. From 1979 to 1982 she practised as a lawyer in chambers in Buenos Aires. In 1989 she obtained a doctorate in political science at the Graduate Institute of International Studies, Geneva University. Since 1988 Ms. Dutli has been a member of the ICRC's Legal Division. She is also the author of an article entitled "Captured child combatants" published in the *IRRC*, No. 278, September-October 1990.

The 1923 Hague Rules of Air Warfare

*A CONTRIBUTION TO THE DEVELOPMENT OF INTERNATIONAL LAW PROTECTING CIVILIANS FROM AIR ATTACK**

by Heinz Marcus Hanke

Historical events since 1939 and the only partially completed codification of the law of air warfare have made it one of the most controversial areas of the law of war. Though Protocol I additional to the Geneva Conventions does contain provisions governing air warfare, it has not yet assumed its due significance owing to the hesitancy shown in ratifying it. All the more importance must therefore be attributed to the historical development of such rules.¹

Compared with ground and naval forces, the aircraft is a relatively new weapon; it was first taken into account by the Hague Peace Conference of 1899, which adopted a declaration prohibiting any aerial

* The original text of this article was published in the May-June 1991 German-language issue of the *International Review of the Red Cross* (No. 3, pp. 139-172).

¹ Though many articles and theses have been written about the history of the law of air warfare with particular attention to the protection of the civilian population, few of them can be said to constitute a comprehensive study of the subject. In fact, an ever diminishing amount has been published about this problem, especially in recent years. M.V. Roysse's *Aerial Bombardment and the International Regulation of Warfare*, Vinal, New York, 1928, remains a 'classic' in this area. Another important work is E. Spetzler's *Luftkrieg und Menschlichkeit*, Musterschmidt, Göttingen, 1956. *Air Power and War Rights*, the oft-praised book by J.M. Spaight, third edition, Longmans, Green & Co., London, 1947, tends to assume the role of apologist. This, combined with a large number of erroneous quotations, limits its usefulness. The literature used in researching the present article is listed in the appended selective bibliography. Only occasionally, therefore, do the footnotes refer to them and then only by means of a brief quotation.

bombardment for a period of five years.² At the Second Conference in 1907, this prohibition had meanwhile become the object of lengthy debate and could not be effectively renewed.³ Instead, a few words were inserted into Article 25 of the Hague Regulations respecting the Laws and Customs of War on Land so that the same provision governing artillery bombardment and other attacks by land forces would also apply to aerial bombardment.

The First World War showed that aircraft could be used not only for reconnaissance but also much more effectively as weapons in their own right to attack areas, especially the enemy's residential and industrial areas far behind the front, that had hitherto been inaccessible to land or naval forces. It was precisely this independence from ground forces that made it obvious by the end of the conflict in 1918 that any attempt to apply the law of war thus far codified to air warfare was doomed to failure. Article 25 of the above-mentioned Hague Regulations on land warfare had previously been regarded as adequate, but it was now apparent, if only because of its wording and internal logic, that it could be implemented only in cases where a place under ground attack resisted occupation; the idea was that in such a case, it should be permissible for a town to be bombarded in order to break the resistance. This, however, was practicable only at the front, in the immediate range of ground forces. But aircraft could operate independently behind the lines, though they were not able to take and hold territory. Article 25 thus lost its significance.⁴ This did not mean, however, that air warfare behind the front — or "strategic bombing" as it was soon to be called — had no restrictions. A solution to the problem was found by analogy, as naval forces were in a similar position: as a rule they were equally unable to send forces to occupy an enemy locality on the coast. As it was not possible to neutralize important objectives in this way, Article 2 of the Hague Convention No. IX of 1907 on naval bombardments in time of war allowed naval forces to fire on certain objects even when the locality concerned was not defended. Such objects were "military works, military or naval establishments, depots of arms or war material, workshops or plants which could be utilized for the needs of the

² D. Schindler/J. Toman (editors), *The Laws of Armed Conflicts*, Martinus Nijhoff Publishers, Dordrecht, Henry Dunant Institute, Geneva, 1973, pp. 133 ff.

³ By the end of the First World War this declaration had lost its validity through disuse.

⁴ J. Bell (editor), *Völkerrecht im Weltkrieg*, vol. 4, Berlin, Deutsche Verlagsgesellschaft für Politik und Geschichte, 1927, p. 92; J.W. Garner, *International Law and the World War*, vol. 1, Longmans, Green & Co., London, 1920, pp. 469 ff.

hostile fleet or army, and the ships of war in the harbour". Legal doctrine thereupon developed the concept of "military objectives".

This concept took a long time to find its way into military parlance concerning strategic bombing. Generally speaking, it was possible to observe a steady shift, for bombardment to be permissible under international law, from the requirement that a locality be defended to that of the presence of a military objective.⁵ By the time the First World War ended, therefore, the law of air warfare had virtually lost its sole codified basis: the prohibition on dropping explosives from aircraft had become invalid and Article 25's field of application had turned out to be extremely narrow. It had been replaced by the very imprecise principle of the "military objective".⁶

The Washington Conference of 1921/1922

The victorious powers soon realized that this situation was untenable in the long run. Therefore, when the President of the United States invited the governments of Great Britain, France, Italy and Japan to a disarmament conference in Washington in August 1921, the law of air warfare and its further development were on the agenda.

And indeed, draft treaties were put forward by both the British and the Americans.⁷ But the many new weapons that had appeared during the recent war made negotiations at the Conference more difficult than expected. Because of the course taken by the war, priority was given to consideration of submarine warfare and the use of both poison gas and mines, and agreement was therefore limited to a treaty, signed by the five participating States on 6 February 1922, prohibiting attacks by submarines against merchant shipping and the use of poisonous gases and analogous liquids.⁸

⁵ Garner, *op.cit.* (fn 4), p. 470, and, in particular, Hanke, H.M., *Luftkrieg und Zivilbevölkerung der kriegsvölkerrechtliche Schutz der Zivilbevölkerung gegen Luftbombardements von den Anfängen bis zum Ausbruch des Zweiten Weltkrieges* (Annexes), P. Lang, Frankfurt/M.-Bern-New York-Paris, 1991, pp. 46 ff.; on the other hand, see thorough study by K.H. Kunzmann (pp. 172 ff.) who opposes the idea that there was a steady shift to the requirement of a military objective.

⁶ Concerning the significance of this principle in the development of customary international law in the First World War, see Hanke (bibl.) pp. 42 ff.

⁷ Concerning these drafts, see Hanke (bibl.) pp. 60 ff. and, in particular, his quotation of them in Annex B.

⁸ *La guerre aérienne, révision des lois de la guerre*, The Hague, 1922-1923, pp. 150 ff.

The Hague Commission of Jurists

When it became clear that the Conference was not going to deal with rules for air warfare, it adopted a resolution, on 4 February 1922, to set up an international commission of jurists to address the matter.

The Commission consisted of delegations from all five States and was mandated to discuss whether the existing law of war adequately covered new developments in weapons technology and, if not, what changes should be made.

The Commission met from 11 December 1922 to 12 February 1923 in The Hague. In addition to the five States present at the Washington Conference, it meanwhile also included a delegation from the Netherlands. Each delegation consisted of one or two legal experts backed up by a large number of military experts, diplomats and other government officials.⁹ At its first meeting, the American Judge John Basset Moore was elected the Commission's chairman and its terms of reference were set. Moore pointed out that the States attending the Washington Conference had agreed that the Commission should, in spite of the general wording of its mandate, concentrate on the law of air warfare and the military use of radiotelegraphy. It was made clear from the very beginning that the Commission had not been set up to adopt an international treaty but only to clarify the questions raised; the Commission's findings could then be used by the States as the basis for a treaty. There were no illusions as to the difficulty involved in this task, especially as experts in international law had since the end of the war come increasingly to believe that it was useless to try to establish legal rules for the conduct of war, and perhaps even dangerous, as making war more humane might also make it more likely. The Commission's members opposed this view and maintained that the need to ensure further development of international law — even if this could be done only one small step at a time — should take precedence over pure idealism and the prevailing scepticism.

As proposals had already been submitted to the Commission on the use of aircraft and wireless telegraphy in war, it was decided that sub-commissions, working on the basis of those proposals, should be set up to deal with the questions at issue. Subsequent developments in the

⁹ For the exact list of Commission members, see *ibid.*, pp. 5 ff. and J.B. Moore (bibliography) pp. 182 ff. All subsequent quotations may be found in those two fundamental works.

law of war rendered the resulting rules on radiotelegraphy¹⁰ largely meaningless.

One of the proposals on the law of air warfare came from the United States and the other from Britain; they were both slightly amended versions of the draft provisions that had been put forward at the Washington Conference but not discussed there. As their content was much the same, the Commission decided to debate the American proposal and to take up the British proposal only where it differed from the American one.

All controversies were referred to the appropriate sub-commission, which was set up on 21 December.

The sub-commission was asked to draw up a single draft text and to present it to the Commission on 22 January. A draft provision proposed by the Italian delegation for the protection from aerial attack of important cultural monuments was added to the existing text. When neither sub-commission had completed its work by the deadline, the meeting was postponed. The radiotelegraphy sub-commission submitted its draft on 2 February, the air-warfare sub-commission on 5 February. Debate on the latter lasted until 17 February. Although the Commission accepted most of the draft provisions without a great deal of discussion, there were two contentious issues: the use of aircraft to halt and search neutral ships (which the Commission was never able satisfactorily to settle and which therefore never appeared in the rules of air warfare) and rules for aerial bombardment. In the second instance, only Moore's personal intervention as chairman enabled wording to be found that was acceptable to all.

The text of the Hague Rules of Air Warfare that the Commission adopted and signed on 19 February 1923 contained 62 articles divided into the following sections: Classification and Marks [for the identification of aircraft] (Arts. 1-10), General Principles (Arts. 11-12), Belligerents (Arts. 13-17), Hostilities (Arts. 18-21), Bombardment (Arts. 22-26), Espionage (Arts. 27-29), Military Authority over Enemy and Neutral Aircraft and Persons on Board (Arts. 30-38), Belligerent Duties towards Neutral States and Neutral Duties towards Belligerent States (Arts. 39-48), Visit and Search, Capture and

¹⁰ The Hague Rules on the use of radiotelegraphy in wartime are printed in *Guerre aérienne* (fn 8) pp. 232 ff., 17 *American Journal of International Law (AJIL)* 1923 (Suppl.), pp. 242 ff.; 32 *AJIL* 1938 (Suppl.), pp. 2 ff. (General report of the Commission).

Condemnation [of aircraft] (Arts. 49-60) and Definitions (Arts. 61-62).¹¹ The articles of most interest to us here are as follows:

CHAPTER IV BOMBARDMENT

Art. 22 [Bombardment for the purpose of terror]

Aerial bombardment for the purpose of terrorizing the civilian population, of destroying or damaging private property not of military character, or of injuring non-combatants is prohibited.

Art. 23 [Requisitions and contributions]

Aerial bombardment for the purpose of enforcing compliance with requisitions in kind or payment of contributions in money is prohibited.

Art. 24 [Military objectives]

(1) Aerial bombardment is legitimate only when directed at a military objective, that is to say, an object of which the destruction or injury would constitute a distinct military advantage to the belligerent.

(2) Such bombardment is legitimate only when directed exclusively at the following objectives: military forces; military works; military establishments or depots; factories constituting important and well-known centres engaged in the manufacture of arms, ammunition or distinctively military supplies; lines of communication or transportation used for military purposes.

(3) The bombardment of cities, towns, villages, dwellings or buildings not in the immediate neighbourhood of the operations of land forces is prohibited. In cases where the objectives specified in paragraph (2) are so situated, that they cannot be bombarded without the indiscriminate bombardment of the civilian population, the aircraft must abstain from bombardment.

¹¹ The English text of the Hague Rules of Air Warfare may be found in the following publications: 17 *AJIL* 1923 (Suppl.), pp. 246 ff.; M. Deltenre (ed.), *Recueil général des lois et coutumes de la guerre terrestre, maritime, sous-marine et aérienne*, Wellers-Pay, Brussels, 1943; pp. 823 ff. (also contains the French, Dutch and German versions); Schindler/Toman, *op.cit.*, pp. 139 ff.; L. Friedman (ed.), *The laws of war. A documentary history*, vol 1, Random House, New York, 1972, pp. 473 ff. The German version may also be found in J. Hinz/E. Rauch (editors), *Kriegsvölkerrecht*, 3. Aufl., Heymann, Köln-Berlin-Bonn-München, 1984, No. 1534;

The text annotated with the Commission's commentary may be found in 32 *AJIL* 1938 (Suppl), pp. 12 ff.; text with commentary by the Commission: *Guerre aérienne*, p. 242 ff. (in French); *Rivista di Diritto Internazionale* 1923, p. 55 ff. (in French).

(4) In the immediate neighbourhood of the operations of land forces, the bombardment of cities, towns, villages, dwellings or buildings is legitimate provided that there exists a reasonable presumption that the military concentration is sufficiently important to justify such bombardment, having regard to the danger thus caused to the civilian population.

(5) A belligerent state is liable to pay compensation for injuries to person or to property caused by the violation by any of its officers or forces of the provisions of this article.

Art. 25 [Protected objects]

In bombardment by aircraft, all necessary steps must be taken by the commander to spare as far as possible buildings dedicated to public worship, art, science, or charitable purposes, historic monuments, hospital ships, hospitals and other places where the sick and wounded are collected, provided such buildings, objects and places are not at the time used for military purposes. Such buildings, objects and places must by day be indicated by marks visible to aircraft. The use of marks to indicate other buildings, objects or places than those specified above is to be deemed an act of perfidy. The marks used as aforesaid shall be in the case of buildings protected under the Geneva Convention the red cross on a white ground, and in the case of other protected buildings a large rectangular panel divided diagonally into two pointed triangular portions, one black and the other white.

A belligerent who desires to secure by night the protection for the hospitals and other privileged buildings above mentioned must take the necessary measures to render the special signs referred to sufficiently visible.

Art. 26 [Historical monuments]

The following special rules are adopted for the purpose of enabling states to obtain more efficient protection for important historic monuments situated within their territory, provided that they are willing to refrain from the use of such monuments and a surrounding zone for military purposes, and to accept a special régime for their inspection.

(1) A state shall be entitled, if it sees fit, to establish a zone of protection round such monuments situated in its territory. Such zones shall in time of war enjoy immunity from bombardment.

(2) The monuments round which a zone is to be established shall be notified to other Powers in peace time through the diplomatic channel; the notification shall also indicate the limits of the zones. The notification may not be withdrawn in time of war.

(3) The zone of protection may include, in addition to the area actually occupied by the monument or group of monuments, an outer zone, not

exceeding 500 metres in width, measured from the circumference of the said area.

(4) Marks clearly visible from aircraft either by day or by night will be employed for the purpose of ensuring the identification by belligerent airmen of the limits of the zones.

(5) The marks on the monuments themselves will be those defined in Article 25. The marks employed for indicating the surrounding zones will be fixed by each state adopting the provisions of this article, and will be notified to other Powers at the same time as the monuments and zones are notified.

(6) Any abusive use of the marks indicating the zones referred to in paragraph 5 will be regarded as an act of perfidy.

(7) A state adopting the provisions of this article must abstain from using the monument and the surrounding zone for military purposes, or for the benefit in any way whatever of its military organization, or from committing within such monument or zone any act with a military purpose in view.

(8) An inspection committee consisting of three neutral representatives accredited to the state adopting the provisions of this article, or their delegates, shall be appointed for the purpose of ensuring that no violation is committed of the provisions of paragraph 7. One of the members of the committee of inspection shall be the representative (or his delegate) of the state to which has been entrusted the interests of the opposing belligerent."

The Commission was fully aware that these rules would not be perennial. In fact it pointed out in its report to the States that, once the rules had been adopted by the governments, it would certainly be necessary sooner or later to revise and adapt them to changing conditions. It was probably thinking of Art. 24, para. 2, the list of military objectives that was later to become so controversial. In the end, however, nothing happened at all. Not one State, not even those represented on the Commission itself, signed any such agreement; not even a conference to discuss the Hague Rules of Air Warfare was arranged. Little is known about the reasons for this but there has been much speculation, mostly centred on the provisions governing aerial bombardment which were usually misinterpreted as being too strict. It was claimed that their adoption would have restricted the use of aircraft far too much for the governments' liking¹² and the Allies had come to see aircraft as a very promising weapon. While certain people

¹² See J.W. Garner's "International regulation of air warfare" in *Air Law Review*, 1932; E. Castrén, "La protection juridique de la population civile dans la guerre moderne" in *Revue générale de droit international public* (RGDIP), 59, 1, 1955, p. 12.

sincerely regretted this failure to adopt an international treaty, and others responded that it was simply too early for a set of rules as progressive as the Hague Rules,¹³ the critics of the law of war took it as renewed confirmation for their opinion of *ius in bello*; namely that the Rules of Air Warfare were merely another example of the delusion that it was possible for people sitting around a conference table to dream up rules that would make war more humane.¹⁴ And the fact that the States would have none of it showed once again how far removed such rules were from reality.

Nor was there any shortage of attempts to blame individual States for this missed opportunity: France, some said, had refused to sign the Hague Rules on Air Warfare because it considered the existing rules for land and naval warfare as sufficient to cover air warfare as well.¹⁵ Others claimed that the Anglo-Americans were already so geared to air warfare that they could not accept restrictions on it.¹⁶ However that may be, there can be little doubt that many factors conspired to ensure that the Air Warfare Rules never got beyond the draft stage. Prominent among those factors was probably an unwillingness by the various States to compromise, as well as excessive faith in the possibility of safeguarding peace through international arbitration and the League of Nations.¹⁷

Interpreting the Hague Rules of Air Warfare

The Hague Rules of Air Warfare in many ways represented a new departure, especially as regards aerial bombardment. For the first time,

¹³ F.A. von der Heydte's "Haager Luftkriegsregeln von 1923" in H.G. Schlochauer (editor), *Wörterbuch des Völkerrechts*, vol. 2, de Gruyter, Berlin, 1960-1961, p. 442; R.J. Wilhelm, "Les Conventions de Genève et la guerre aérienne" in *Revue internationale de la Croix-Rouge*, No. 397, January 1952, p. 12.

¹⁴ J. Charpentier, *L'humanisation de la guerre aérienne*, Les Editions internationales, Paris, 1938, pp. 81 ff.; H. Lauterpacht, "The problem of the revision of the law of war" in *British Yearbook of International Law (BYIL)*, 1952, pp. 367 ff.

¹⁵ Spaight, *Air Power and War Rights*, *op.cit.*, pp. 244 ff.

¹⁶ E. Riesch, "Das Luftkriegsrecht seit dem Weltkrieg" in *Militärwiss. Rundschau*, 1940, p. 180; according to A. Erdelbrock, *Das Luftbombardement: Eine Darstellung der für das Luftbombardement geltenden Völkerrechtssätze im Anschluss an das Urteil des Deutsch-Griechischen gemischten Schiedsgerichts vom 1. Dezember 1927*, thesis, Bonner Universitäts-Buchdruckerei, Tübingen & Bonn, 1929, p. 58, the failure to adopt the Hague Rules is attributable to maliciousness pure and simple.

¹⁷ The following authors are sharply critical of the tendency to concentrate on *ius contra bellum* as one of the reasons for not adopting the Hague Rules: Charpentier, *op.cit.*, p. 124; Spaight, *Air Power and War Rights*, *op.cit.*, p. 244; see in particular Kunz, "The chaotic status of the laws of war, and the urgent necessity of their revision" in *AJIL* 1951, pp. 38 ff.

the significance of air warfare in the First World War was recognized and its effect on international law was reflected in the form of specific rules.

The most important innovation of the Rules of Air Warfare was doubtless the discarding of the requirement that a locality must be defended if bombardment of it was to be legitimate. All the members of the Commission were aware that Article 25 of the Hague Regulations on land warfare had lost all utility in air warfare, especially behind the front. In accordance with the legal doctrine that stemmed from Article 2 of the 1907 Hague Convention No. IX, Article 24 of the Air Warfare Rules linked the legitimacy of air attack to the presence of military objectives. To define what constituted such objectives turned out to be a considerable problem for the Commission. There were basically two ways of giving a conceptual definition. The first involved an abstract paraphrase which, like many vague legal concepts, required a specific interpretation to apply it to a specific case. The second was the possibility of making an exhaustive (exclusive) or non-exhaustive list of legitimate targets. Article 24 of the Hague Rules of Air Warfare combined both possibilities: paragraph 1 offered an abstract definition of a military objective while paragraph 2 gave an exhaustive list thereof. This solution, which has remained controversial to this day, was the culmination of a long and difficult process.

Article 33 of the draft text submitted by the United States at the Washington Conference was still designed to prohibit the bombing of undefended localities.¹⁸ This provision was modified before the Commission of Jurists met into a general prohibition of air attacks on populated areas as such situated behind the lines. On the other hand, certain objects could be bombarded wherever they were located. Article 34 contained an exhaustive list of these but no abstract definition.¹⁹ The British draft contained no list but stated in Article 35 simply that an attack could be directed only at a military objective. It offered no definition of this.

The differing views on this matter led to discord within the sub-commission. The Commission's basic attitude was that it was useless

¹⁸ PRO (Public Records Office, London) AIR 5/568, 12 C; Art. 34 of the draft, however, contained a brief list of objects that could be bombarded under any circumstances. On the other hand, Art. 36 of the text submitted by the British in Washington contained a detailed demonstrative list, something that was again lacking in The Hague (PRO AIR 5/568, 45 A, p. 17). See Hanke, *op. cit.*, Annex B.

¹⁹ For this and subsequent passages see *Guerre aérienne, op. cit., passim*.

to issue casuistic prohibitions without at the same time offering simple explanations of what was prohibited. All delegations further agreed that air attacks should be allowed only against objectives whose destruction would provide at least some advantage for the attacker. The Netherlands and Japan — States which at that time had no air forces to speak of — advocated the adoption of the tightest possible restrictions. In particular, they called for an absolute prohibition on the aerial bombardment of cities and towns behind the front, regardless of what they contained.

The American and British representatives responded to these demands by once again revising their proposals. The American proposal retained the form of an exhaustive list while the British now gave an abstract definition of a military objective by stipulating that its destruction or neutralization must constitute a distinct advantage. To this was appended an exhaustive list which did not differ in any significant way from the American list. The British delegation emphasized the importance it attached to this abstract definition, which it considered indispensable for rules governing air attacks. However, when none of the proposals met with general acceptance, France attempted to bring about a compromise solution and suggested a definition composed of both abstract description and a non-exhaustive list of examples. This too was in vain and the problem finally had to be referred back to the plenary Commission.

Back in the Commission, the Italian representatives submitted a draft text containing a very brief exhaustive list of instances in which attack would be legitimate. Largely because of its very restrictive formulation, in this and in other respects, this proposal also failed to meet with general acceptance. By 12 February, shortly before the Commission was to finish its deliberations, no agreement on aerial bombardment had yet been reached and the chairman, Moore, tabled a new text, a final attempt which consisted of an abstract definition followed by an exhaustive list of legitimate objectives for air attack. Disagreement once again arose, whereupon Moore made an urgent appeal to reason, calling on the members of the Commission to put aside their squabbling over details and to remember the supreme principle of the law of war: the distinction between combatants and non-combatants. Protection of the latter, he pointed out, must be at least as important as protection of inanimate objects. In the end, after several superficial amendments, Moore's draft was unanimously adopted as Article 24, paras. 1 and 2.

The circumstances in which this provision was drawn up make its interpretation a simple matter, especially as regards para. 1: an air

attack may be directed exclusively against a military objective, i.e. the attacker's intention must be to destroy the military object alone. The question of intention is in fact decisive in interpreting any such rule. Moreover, the possibility of subsumption was limited to the concept of "military objective". Not every object could therefore be considered a military objective — only those whose destruction would constitute a military advantage. This advantage must be clearly apparent, i.e. it must not simply consist of a few minor advantages. Moreover, the destruction of the object in question must represent a *conditio sine qua non* for military success (advantage), although actual ultimate success is not required. But there must at least be a real possibility of success. Lastly, the object attacked must belong to one of the categories listed in paragraph 2. Unfortunately, these categories lend themselves to widely divergent interpretations and, as the future of the Air Warfare Rules was to show, repeatedly came in for severe general criticism.

Experience in the First World War had already shown that aircraft could operate far beyond the area in which opposing ground troops met face to face. This ability explains why Article 25 of the 1907 Hague Regulations on land warfare failed with regard to so-called strategic bombing. The work of the Hague Commission of Jurists was based on the assumption that conditions at the front itself would be different from those in the erstwhile "peaceful" areas in the rear. Consistent with this conception, therefore, was the fact that the resulting provisions applied different standards to different areas. Article 33 of the American proposal had already drawn a distinction between the combat zone and the rear (attacks against towns in the former were not prohibited). As pointed out above, the Netherlands and Japanese delegations wanted aerial bombardment in the rear to be generally prohibited. The Italian delegation also was in favour of two sets of rules for air attacks, one for attacks at the front and another for those in the rear. The reasoning behind this view was that any building at the front that was at all suitable would be used for military purposes, and that it was when an attempt was being made to take a town or village that house-to-house fighting usually took place. Since the civilian inhabitants in almost all cases had then already been evacuated or had fled (and even where this was not the case they must surely have been aware that it would be extremely dangerous to remain), it followed that military necessity had to be recognized at least to the extent that less strict limits were placed on attacks near the front than on those carried out far behind the lines where the civilian population would be taken by surprise. For this reason the Hague Rules of Air Warfare, in paragraphs 3 and 4 of Article 24, lay down

different rules depending on the geographical position of the objective in relation to the front.

The problem lies in knowing where the combat zone ends and the rear begins. Article 24 speaks of “the immediate neighbourhood of the operations of land forces”. Does this mean the area in which fighting is actually taking place? What about the staging areas near the front? This question still arouses controversy today. Neither the official records of the Commission of Jurists nor other material from its deliberations show whether a more precise definition was discussed. The initial American proposal spoke of the area of combat and later proposals contained the phrase “the immediate neighbourhood of the operations of land forces” which was ultimately adopted. Where actual fighting is concerned, it could be asked whether artillery should be included in “operations of land forces”. If so, the area of combat would extend to the range of the artillery, which at the time was already 20 to 30 kilometres. But that would seem to stretch the principle too far. It would seem more reasonable to apply the criterion provided by Article 25 of the 1907 Hague Regulations on land warfare and equate the combat zone with the defended area, i.e. that in which the advance of ground forces meets substantial and direct resistance, including the use of hand-held firearms and heavy automatic weapons as well as artillery in its usual role of direct fire support.

The prohibition of “indiscriminate” attack (Air Warfare Rules, second sentence of Article 24, para. 3) proved even more problematical. The text offers no precise definition of “indiscriminate”. Though this word soon found its way into the vocabulary of the law of war, it was formally defined only later in the 1977 Protocol I additional to the Geneva Conventions (Article 51, paras. 4 and 5). For lack of a firm definition, the word “indiscriminate” has frequently been misinterpreted. For the same reason, it has often been criticized as unrealistic, especially in connection with the words at the end of the sentence in which it appears: “... the aircraft must abstain from bombardment”. This has usually been interpreted as meaning that an attack is prohibited if there is even only the possibility of the civilian population being harmed. As we shall see, the following material leads to an entirely different conclusion.

The term “indiscriminate bombing” had already been used on occasion during the First World War. In a British Air Ministry memorandum of 26 August 1919, the Chief of Air Staff referred to an expert legal opinion expressed by the Committee of Imperial Defence. The said Committee felt that the indiscriminate bombing of a civilian population without attempting to attack military objectives should be

regarded as illegal.²⁰ The significance attached to intent was already emerging. During the deliberations of the sub-commission in The Hague over three years later, the British delegation submitted a draft which, besides giving an abstract definition of a military objective, also stipulated that an attack on a legitimate objective must never be allowed to degenerate into the general bombing of cities or towns; it must always be directed exclusively against the military objective itself (paras. 1 and 4).²¹ Here again, the emphasis is on intent. The Italian draft of 8 February 1923 (para. 1), and even more clearly the American draft of 12 February 1923, also made clear that bombing cannot be legal unless only the legitimate target is intended to be hit.²² In paragraph 1 it states that the attack must not include the bombing without distinction of the civilian population, but must be directed solely against military objectives.²³

The words “bombing without distinction” were replaced in the final draft by “indiscriminate bombing”, though this did not change the meaning.

From all this it follows that the key to a definition must lie in the attacker’s intentions. The intention of harming — for whatever purpose — the civilian population cannot be meant here, since “bombardment for the purpose of terrorizing the civilian population” is already expressly prohibited by Article 22 of the Air Warfare Rules. To subsume it under “indiscriminate bombardment” (Art. 24) would thus be tautological. And, as the initial British proposal made very clear, unintentional harm to civilian lives and property during an otherwise legal attack could not be included under the heading “indiscriminate” either.

The Commission also had the realism to see that an overly severe restriction would have no chance of being accepted by the military powers. There therefore remains only one kind of intention that could be covered by the prohibition of indiscriminate bombing: *dolus eventualis*, or conditional intent, i.e. an attack on a military objective in a populated area would be illegal above all if the attacker thought it very likely that the population would be harmed but did not care. Thus, a distinction was drawn between indiscriminate bombing and conscious negligence, which was not to be regarded as illegal. An attack’s

²⁰ PRO AIR 5/192, 1 A, p. 2.

²¹ *Guerre aérienne, op.cit.*, pp. 195 ff.

²² *Ibid.*, p. 101: “1° le bombardement aérien n’est licite que lorsqu’il est dirigé exclusivement contre les objectifs suivants: ...”.

²³ *Ibid.*, p. 121.

legality therefore has to be assessed on the basis of the attacker's intention: in a case of conscious negligence, the attacker realizes that harm might be done to the civilian population but hopes that his preparations are sufficient for the effect of the attack to be confined to the legitimate objective. Article 24, para. 3 was designed to prohibit "general" bombing or, as it is known today, carpet bombing, in which the attack, though directed at a number of military objectives, is carried out in such a way that civilians living between those objectives are bound to be hit as well, this being a matter of no concern to the attacker. What distinguishes such attacks as these from direct attacks on the civilian population as prohibited by Article 22 is the fact that in the case of indiscriminate bombing the attacker is not actually *trying* to harm the civilian population, as opposed to terror bombing or attacks on an entire urban area as such.

The rule against indiscriminate attack was absolute. Conscious negligence, on the other hand, was governed by the so-called proportionality principle, the principle that a balance must be struck between military requirements and the protection of the civilian population. In other words an attack could not be carried out when the attacker, though hoping that no harm would be done to the civilian population, realized that if any such harm did occur, it would be out of all proportion to the significance of the military objective. This rule was intended to oblige the attacker or the commanding officer to weigh carefully beforehand the possible effects of bombardment near a populated area. Unfortunately, the proportionality principle was not expressly mentioned in paragraph 3. This is the only explanation for the widely held view later on that the absolute prohibition also applied to conscious negligence. This view was partly based on the Commission's final report which stated that Art. 24 had been strongly influenced by the Italian proposal of 8 February 1923. That text had indeed contained an absolute prohibition of all attacks behind the lines if any danger at all existed of harm to the civilian population.²⁴ But the Italian text did not employ the term "indiscriminate" which, after all, would have been inconsistent with an absolute prohibition. However, the Commission inserted the term and diverged in other ways too from the wording of the Italian draft. If Art. 24, para. 3 of

²⁴ *Ibid.*, p. 101: "2° ... Au cas où des objectifs qui peuvent être soumis au bombardement ... se trouvent à proximité de villes, de villages ou d'habitations civiles quelconques, le bombardement n'en pourra être effectué qu'à la condition qu'aucun dommage ne soit subi par la population civile.

Au cas où cette condition ne pourrait être respectée de façon absolue, l'aéronef devra s'abstenir du bombardement".

the Air Warfare Rules had been drawn up with the same intention as the Italian proposal, the Commission would have demonstrated this by taking over its unmistakable formulation. This assumption is reinforced by the fact that every other proposal had included the proportionality principle, regardless of whether attacks took place in the combat zone or behind the lines.

The acceptance of a division of the theatre of war into two parts meant that — probably unintentionally — proportionality was mentioned only in the provision dealing with attack in the combat zone. Paragraph 4, unlike paragraph 3, allowed indiscriminate attack and thus *dolus eventualis* where ground forces were engaged. This rule was based on the assumption that in such situations any object can be used for military purposes and therefore constitutes a legitimate target. However, the same objects can simultaneously be used by civilians. A house, for example, can be lived in by civilians while artillery spotters sit on the roof. To avoid an insoluble conflict between protection of civilians and military interests, the former was limited in favour of the latter. Intentional attacks on civilians and their property, on the other hand, remained prohibited. In essence, Art. 24, para. 4 of the Air Warfare Rules was nothing more than an application to “tactical” air war of Art. 25 of the Hague Regulations governing land warfare.

The provision in Art. 25 of the Air Warfare Rules protecting cultural objects and hospitals followed much the same line: it took over the rules applicable to land and naval warfare (Art. 27 of the Hague Regulations governing land warfare; Art. 5 of the Hague Convention No. IX) and adapted them to the conditions of air warfare.

More interesting are the comprehensive provisions of Art. 26, which was included in the draft at the instigation of the Italian delegation. The large number of historical and artistic monuments in Italy made that country particularly concerned to ensure effective protection for such objects. The Italians wanted to enable States to provide special protection for their historical monuments through appropriate agreements reached in peacetime. The idea of setting up protective zones around monuments was completely new. Such zones were to be spared from attack on condition that no object within them was used for military purposes and that no act was committed within them with a military purpose in view. A radius of 500 metres around the protected object was chosen because it was not possible in air warfare to limit with precision the effect of the weapons used; it was therefore necessary to establish an easily identifiable area, with the monument in the middle, to ensure effective protection. The Commission decided to require that notification of the protected monuments and the

surrounding zones be made in time of peace so that the adversary would not be able to circumvent his obligation to spare them by refusing to accept such notification in wartime. Another innovation was the provision to set up an inspection committee (para. 8). This body, which was to consist of three representatives of neutral States who must be accredited to the State claiming the protection of Art. 26, would have the task of verifying that nothing was done within the protective zone that could serve a military purpose. The sub-commission felt that this meant prohibiting the use of any productive capacity or railway installations within the zone that were capable of supporting the war effort.

The Commission was, of course, aware that a number of places had such a wealth of cultural treasures (Venice and Florence were mentioned as examples) that the various protective zones would overlap and so create a virtually continuous area over the entire town or city. But since the implementation of Art. 26 was optional, it was decided to leave it to the State on whose territory such towns and cities were located to decide whether or not to forego any military use of them whatsoever in order to protect their monuments. The symbol laid down in Art. 25 and Art. 26 to mark protected monuments was the same as that specified by Art. 5 of Hague Convention No. IX, i.e. a rectangle divided diagonally into two triangles, one black and one white.

The influence of the Hague Rules of Air Warfare on the study of international law

Though they never achieved the status of an actual treaty, the Air Warfare Rules nevertheless soon became a key tool in the study of international law between the wars. No research into the law of air warfare was complete without them. The fact that they had been drawn up by an official Commission of legal and military experts, which had done so at the request and under the seal of approval of major world powers, ensured that they received attention far and wide. Opinion about them ranged from complete rejection as useless and unrealistic to their recognition as generally accepted law. Some authors saw them as an indication of already established customary law; others used them as a standard by which to judge specific cases; still others praised them as the most successful attempt so far at a comprehensive codification and as a useful basis for future treaties. Yet almost all

these authors have one thing in common: they omitted to give the reasons for reaching their respective conclusions.

When not debating the value of the Air Warfare Rules as a whole, scholars concentrated on the provisions concerning aerial bombardment, not least because occasion to do so was given with ever-increasing frequency from 1932 onward. The opinions that formed about the individual articles were so uniform that it is possible to speak of a "prevailing view". Thus the prohibition of direct attacks on the civilian population in the form of terror bombing, as worded in Art. 22, was soon generally accepted and is upheld to this day.²⁵

Article 23 goes much further than the analogous rules for naval warfare. Under Arts. 3 and 4 of 1907 Hague Convention No. IX, the bombardment even of undefended localities was permitted if they declined to comply with requisitions of the supplies necessary for the use of the naval forces. The prohibition of aerial bombardment to enforce such compliance has its origin in the American proposal; the intention was probably to prevent the requisition of goods from being used as a pretext for illegal attack. On the whole, however, little understanding was shown for this provision. There were, it is true, no specific objections, but the practical significance of such a rule was doubtful and, in fact, such cases never arose in either of the World Wars.

An interesting pattern emerged in the discussion over Art. 24. As was to be expected, it focused on the definition of "military objective". While the abstract paraphrase was accepted as usable by all but a few,²⁶ criticism was mostly directed against the exhaustive list in paragraph. 2. Some found unacceptable the whole idea of a definition that consisted of a list of permissible targets. Others criticized the fact that the list was exhaustive and thus exclusive, saying that only an enumeration of examples could provide a useful definition.²⁷ The large

²⁵ Even the otherwise so pessimistic Lauterpacht, "*The problem of the revision of the law of war*", *op.cit.*, p. 369, reaffirmed that terror bombing was prohibited. On the distinction between civilians and combatants (problem of the "quasi combatant"), see Hanke, *op.cit.*, pp. 107 ff.

²⁶ W. Guldemann, *Luftkriegsrecht* (thesis submitted in Basel in 1940), p. 67, considers the abstract definition in Art. 24 of the Hague Rules to be too narrow. E. Rosenblad, "Area bombing and international law" in *Revue de droit pénal militaire et de droit de la guerre*, 1976, p. 90, accepts the definition only when combined with a demonstrative list. Absolute rejection will be found in A. Randelzhofer, "Flächenbombardement und Völkerrecht" in *Um Recht und Freiheit*, Kipp H./Mayer F. (editors), Dunker & Humblot, Berlin, 1977, p. 483.

²⁷ For example Meyer, *op.cit.*, p. 83; Rosenblad, *op.cit.*, p. 90; M. Sibert, expert opinion in *La protection des populations civiles contre les bombardements*,

majority, however, considered the list to be unusable. Firstly, it was pointed out, the list did not include many objects that had certainly been considered legitimate objectives during the First World War. These included, in particular, power stations, waterworks, mines, blast furnaces and other installations for the extraction and processing of raw materials. Moreover, it was felt that the description of the other targets was very unclear: what was to be understood by “important and well-known centres” and how could it be known whether lines of communication or transportation were being used for military purposes?²⁸ In short, the rejection of the list was as general as the acceptance of the abstract definition of a military objective.

Things were even more complicated with paragraph 3. The wording of the provision prohibiting indiscriminate bombardment led, as already noted, to frequent misunderstandings. Many authors were obviously puzzled by the concepts used. Because the prohibition was erroneously interpreted as constituting an absolute ban if the civilian population ran even the slightest risk of harm, it was widely rejected as impracticable and much too strict. Since at the time carpet bombing was still in its infancy, no direct link could be made between the prohibition and its field of application. Another thirty years were to pass before the true meaning of paragraph 3 was taken up again in the light of events during the Second World War. This nevertheless had no effect on the widespread acceptance of the idea that there should be two theatres of war — the combat zone around the actual front, and the area in the rear — to which different rules should apply. The logic behind this differentiation was understandable, especially as the prevailing tendency, in spite of the tremendous progress in military flying, was still to think in two dimensions — the ground forces dictated events, for only they could occupy enemy territory, whereas the air forces either had to support them or operate independently, i.e. with a “strategic” mission. In each of these two cases circumstances were fundamentally different. However, it was also recognized that the civilian population remaining in the area of the front should at least benefit from the protection of the proportionality principle.

A. Hammarskjöld/G. Macdonogh/M.W. Royse *et al.* (editors), Geneva, 1930, pp. 155 ff.; Spetzler, *op.cit.*, p. 179.

²⁸ A generally favourable view of the list in Art. 24, para. 2, of the Hague Rules is taken by Gosnell, *op.cit.*, p. 240; Spetzler, *op.cit.*, pp. 175 ff.; Wilhelm, *op.cit.*, p. 14.

Not only individual scholars but also well-known organizations swung into line with the Hague Air Warfare Rules and largely incorporated them into their own proposals.

The International Law Association had already drawn up a brief draft set of rules at its 1922 Conference in Buenos Aires.²⁹ Two years later in Stockholm, this draft was drastically altered to bring it into line with the Air Warfare Rules.³⁰ In the Association's new draft convention, the list of military objectives and the prohibition of indiscriminate bombardment, of terror bombing and of enforcing money contributions and requisitions in kind were taken almost word for word from the Air Warfare Rules. The ILA's 1938 Amsterdam draft also contained similar provisions,³¹ but had otherwise departed from the Rules under the influence of the British policy of appeasement. For example, its definition of a military objective consisted of only a brief, exhaustive list that would probably have had no hope of being applied in practice. However, in its prohibition of both terror bombing and indiscriminate attack, it too was largely in agreement with the Air Warfare Rules.

While the idea of setting up safety zones with immunity from attack around protected objects first appeared in Art. 36 of the Air Warfare Rules, it was thanks to the International Congress of Military Medicine and Pharmacy that the idea of setting up such zones specifically to protect the civilian population first took clear shape. In the course of a Congress convened in 1934 in Monaco by Prince Louis II of Monaco, a draft convention was formulated. Its first section provided for the creation by each belligerent of special "sanitary cities and localities" that would be protected from attack and provide medical care.³² Notification of these towns could be made already in peacetime (Art. 3); they could not be used for any military purpose (Art. 2) and had to be open for inspection by an independent commission of control (Art. 5 f.). No military units were allowed to come within a zone of 500 metres surrounding such localities (Art. 8, subpara. 1). The fourth section of the draft convention contained provisions on aerial bombardment. However, apart from a brief exhaustive

²⁹ See Hanke, *op.cit.*, pp. 58 f.

³⁰ ILA Report on the 33rd Conference 1924, pp. 114 ff.

³¹ Schindler/Toman, *op.cit.*, pp. 155 ff.

³² The text may be found in Deltenre, *op.cit.*, pp. 850 ff.; A. de Lapradelle/J. Voncken/F. Dehousse, *La reconstruction du droit de la guerre*, Bruylant, Brussels, 1936, pp. 61 ff.; further to this subject see R. Clémens, *Le projet de Monaco: Le droit et la guerre, Villes sanitaires et villes de sécurité. Assistance sanitaire internationale*, Recueil Sirey, Paris, 1937; it is also reproduced in part in Hanke, *op.cit.*, Annex B.

list of military objectives, they were confined to stipulating that when attacking such objectives in large cities, the means of attack must be chosen and employed in such a manner as not to extend their effects beyond a radius of 500 metres from the objective (Art. 4). This 500-metre-rule was doubtless based on the same considerations as lay behind paragraph 3 of Art. 26 of the Air Warfare Rules.

At the 1935 Congress in Brussels, it was decided to entrust the International Red Cross with further action on the subject of safety zones. The ICRC was, however, unable to bring about a treaty providing for them, nor was a detailed draft drawn up. Later, during the Second World War, the ICRC did try to have special zones established for vulnerable sections of the civilian population, but in vain. It was not until 1949 and the adoption of the Fourth Geneva Convention that the possibility of such protection was laid down (Arts. 14 and 15) in an international treaty.

Unfortunately, the Hague Rules of Air Warfare had no direct influence on the Disarmament Conference held in Geneva under League of Nations auspices from 1932 to 1934.³³ Only the British Air Ministry asked its government to urge general ratification of them.³⁴ The British hoped that by adopting a treaty that took account of military imperatives, they would prevent the adoption of unrealistically idealistic agreements of the type being peddled at the conference. The texts put forward there proposed everything from simply prohibiting aerial bombardment to internationalizing civil aviation and even called for the total abolition of air warfare. British military officials therefore warned against the adoption of restrictions that, they felt, would be disregarded in wartime.³⁵

The influence of the Hague Rules of Air Warfare on military thinking

There is a general tendency to believe that the military has suspiciously rejected any attempt to restrict its use of the weapons at its

³³ Further to the disarmament conference see A. Henderson, *Preliminary Report on the Work of the Conference*, Geneva 1936.

³⁴ Note of 7 July 1932 (PRO AIR 8/155): "The Air Ministry consequently advocate the adoption of the Hague Rules". Extracts from relevant documents appear in Hanke, *op.cit.*, Annex B.

³⁵ Memorandum from the Committee of Imperial Defence, entitled "The restriction of air warfare", of 1 March 1938, p. 4: "For this reason, there would be grave dangers for this country in any international agreement to impose restrictions on air action which could, in the event, be easily violated" (PRO AIR 8/155).

disposal. It is therefore all the more surprising to discover that the Air Warfare Rules had a substantially greater influence than was previously assumed, both on the orders issued and the way those orders were represented politically to the outside world. In Great Britain in particular the Rules were repeatedly discussed at great length. Although some of their provisions were the object of ongoing criticism (for example the Air Ministry never managed to warm to the division of the theatre of war into two parts, nor to the wording of the list in Art. 24, para. 2), the RAF chiefs of staff were prepared at least to accept the Hague Rules of Air Warfare as the basis for a new code of conduct.³⁶ A note sent to the Chief of Air Staff on 18 June 1936 warned against disparaging the Rules. After all, it was pointed out, the Air Ministry had repeatedly recommended ratification by the British Government and this had even been approved by the Cabinet. In the end, it had only been French opposition to them that had caused the government to drop the idea of ratification.

During the 1935/36 war in Abyssinia, the British Government declared that it would apply the relevant provisions (Art. 39 ff.) of the Air Warfare Rules³⁷ where the neutrality of colonial airspace was concerned although, and precisely because, these provisions were stricter than the previous rules of international law. The Committee of Imperial Defence issued a secret memorandum on 1 March 1938 in which it stated that the Hague Rules provided sufficient basis for a revision of the law of air warfare; specifically, it was possible to accept as they stood the prohibition of terror bombing (Art. 22), the contents of Art. 23, the abstract definition of a military objective in Art. 24, para. 1 and the provisions for the protection of cultural monuments in Arts. 25 and 26; only the list in Art. 24, para. 2 would have to be made more precise. In addition, the memorandum went on, it would be necessary to rectify the misleading wording of paragraph 3. Not only should the indiscriminate bombing of civilians be prohibited, but the attacker should be required to use every means at his disposal to ensure that the attack was limited to the military objec-

³⁶ For example, the note of 14 October 1932 (PRO AIR 8/141): "... but that in any case His Majesty's Government should state that they were prepared to accept as a basis for further elaboration the rules for air bombardment contained in the Hague Draft of 1922-1923".

³⁷ Otto von Nostitz-Wallwitz, "Das Kriegerrecht im Italienisch-Abessinischen Krieg", *ZaöRV* 1936, p. 720; Arthur T. Harris, later famous as head of the RAF's Bomber Command, raged against this decision by the British Government as early as 18 June 1936: "The so-called Hague rules are not internationally binding in so far as they were never internationally accepted, they were in fact violently opposed" (PRO AIR 8/155).

tive. Paragraph 4 was also accepted, because it had sufficient loopholes to prevent it from becoming all too restrictive in the event of war. These rules were to be supplemented above all with provision for the setting up of safety zones for the protection of the civilian population.³⁸

Even after war had broken out, the Hague Rules of Air Warfare retained their influence in the Air Ministry. On 22 August 1939, *Instructions Governing Naval and Air Bombardment were issued to the RAF*.³⁹ British Staff planning called for rigorous restraint in aerial attack, at least in the early stages of the war when Bomber Command did not yet possess the strike capacity necessary for a strategic offensive against Germany.⁴⁰ The instructions were accordingly very strict. This was in addition to the politically motivated restrictions laid down by Prime Minister Chamberlain and banning any attack in which there might be a danger of bombs falling on German territory.

After giving a detailed list of purely military objectives, the instructions on aerial bombardment corresponded virtually word for word to a statement by Chamberlain to the House of Commons on 21 June 1938, in which he had said that the intentional bombardment of civilian populations was illegal; objectives must be legitimate military objectives and identifiable as such; in addition, all precautions must be taken in an attack to ensure that civilian populations were not bombarded through negligence. He reaffirmed the principle that terror bombing was illegal since it did not even have any military justification.⁴¹ These instructions were in fact stricter than the Hague Rules, which were nevertheless to be applied if the said instructions were relaxed.⁴² The abstract definition of a military objective in Art. 24, para. 1 was incorporated as applicable law into military planning.⁴³ Most of the prohibitions were stricter than the Hague Rules of Air

³⁸ PRO AIR 8/155: part of text included in Hanke, *op.cit.*, Annex B.

³⁹ PRO AIR 8/283; see Hanke, *op.cit.*, Annex B.

⁴⁰ *Ibid.*, covering letter from the Air Ministry: "The Council desire to emphasise that these instructions do not necessarily represent the policy that would be pursued by His Majesty's Government throughout a war".

⁴¹ At Britain's instigation, this statement was adopted virtually word for word by the League of Nations in the form of a resolution on 30 September 1938. Text: Schindler/Toman, *op.cit.*, pp. 153 ff.

⁴² Art. 12 of the "Instructions" and their covering letter, *op.cit.*

⁴³ Plans for attack on German war industry in relation to ... international law as represented by the basic principles of war and the Draft Hague Rules of Air Warfare, p. 5 (PRO AIR 8/283): "... they are in fact covered by the principles set out in Article 24/(1), ... This statement is the more weighty, since it has the warrant of international law, ...", text in Hanke, *op.cit.*, Annex B.

Warfare: in addition not only were intentional attacks on the civilian population banned,⁴⁴ but also their bombardment through negligence.⁴⁵ Here, for the first time, an indirect reference was made to carpet bombing which, though meant to destroy military targets, by its very nature would also affect the civilian population.⁴⁶ Specific reference was made to the proportionality principle and its applicability.⁴⁷ As the war went on, these rules were gradually relaxed to the point where they had become totally obsolete.

The situation was much the same in the German air force. On 30 September 1939, the Commander-in-Chief of the Luftwaffe sent *Instructions Governing Aerial Warfare*,⁴⁸ which had first been issued on 20 July of the same year, to legal advisers and military courts in order to lay down fundamental rules for the conduct of the air force towards the enemy and neutral States. The instructions consisted of 31 points. Their provisions governing tactics closely followed the Hague Rules. Point 20 stated that aerial attack was allowed only against “militarily important objectives”; it intentionally avoided listing such objects but defined them as being “important to the adversary’s war effort”. Point 22 strictly prohibited attacks that were “intended to terrorize the civilian population, harm non-combatants or destroy or damage objects of no military importance”. The attached commentary stated that, despite the illegality of terror bombing, the war situation might make it necessary. In this case, the order for such attacks could come only from the Commander-in-Chief of the Luftwaffe. Otherwise, the civilian population must not be affected through carelessness, even during an attack on a legitimate objective (Point 24).⁴⁹ In view of these alignments with the principles first established in the Hague Rules of Air Warfare, it comes as no surprise that there were even closer similarities: Point 23 was a literal translation of Art. 23 of the Air Warfare Rules, and Point 26 was a detailed reflection of their

⁴⁴ Instructions Governing Naval and Air Bombardment, Art. 9(a).

⁴⁵ *Ibid.*, Art. 9(c).

⁴⁶ *Ibid.*: “Thus it is clearly illegal to bombard a populated area in the hope of hitting a legitimate target which is known to be in the area, but which cannot be precisely located and identified”.

⁴⁷ *Ibid.*, Art. 10.

⁴⁸ BA/MA (Bundesarchiv/Militärarchiv, Freiburg/Br.), RW 5/v. 336; see Hanke, *op.cit.*, Annex B.

⁴⁹ Germany having withdrawn from the League of Nations in 1933, it is startling to note that Point 24 contained a virtually word-for-word translation of Art. 1, para. 3 of the League of Nations resolution of 30 September 1938 (see fn. 41): “Any attack on legitimate military objectives must be carried out in such a way that civilian populations in the neighbourhood are not bombed through negligence”.

Art. 24, para. 4. The protection of special objects as set out in Point 25 was a mixture of Art. 25 of the Hague Rules of Air Warfare and Art. 27 of the Hague Regulations on land warfare. But all these restrictive instructions must not be allowed to divert attention from the fact that they were observed only in the opening stages of the war.

Nor were the Italian or Japanese air forces unaffected by the Hague Rules of Air Warfare. Italy claimed to have incorporated them in its instructions on aerial warfare in 1938, and after the Sino-Japanese conflict had flared up again the previous year, Japan declared on 26 August 1938 that its air force had thus far observed the Hague Rules and that it would continue to consider them binding.⁵⁰

Only in the United States does it seem that the Hague Rules had had no impact on military planners. It is true that the US Government had said that it was prepared to ratify the Rules,⁵¹ (and, indeed, in 1926 the Rules and the official report of the legal commission were included in the Air Service Information Circular entitled *International Aerial Regulations* and issued by the Chief of Air Service),⁵² but that was as far as the Hague Rules of Air Warfare were incorporated into US military policy. An Air Corps Tactical School training manual on the international law of air warfare did attach some degree of significance to the Rules, but pointed out that their restrictions on air attack were more or less meaningless in practice because their implementation was in any case dependent on political decisions.⁵³

Generally speaking, however, the Hague Rules of Aerial Warfare played a decisive part in the emergence of binding customary international law in the pre-war period. Their semi-official status and their clear and practical approach, in comparison to other texts, to regulating aerial bombardment ensured that they were extensively used both as a basis for the study of international law and in actual political practice.⁵⁴

⁵⁰ J. Ray, "Les bombardements aériens: Quelques aspects de la position prise par le Japon", in *Revue générale de droit aérien*, 1938, p. 418.

⁵¹ Note of 8 October 1932, PRO AIR 8/141; however, Spetzler (*op.cit.*, p. 221) goes too far when he claims that "the Great Powers, including the United States, made it clear" that they would tacitly recognize the Hague Rules.

⁵² HRC (U.S. Air Force Historical Research Center, Montgomery, Alabama), 168.65404-4.

⁵³ HRC 248.101-16, p. 31: "When control of the air has been gained, then military objectives other than the hostile air force will receive increasing attention, including perhaps political capitals and centers of population".

⁵⁴ The author's thesis is devoted to showing that aerial bombardment is covered by customary international law. Other projects by the author to be completed in the near future deal with the extent to which this customary law was observed in practice in aerial warfare during the Second World War.

The influence of the Hague Rules of Air Warfare since the Second World War

When the Second World War ended, the apathy that had slowed codification of the law of war during the twenties and thirties set in once again.⁵⁵ In the mistaken belief that it was enough simply to outlaw the use of force, the fact was lost sight of that, after two world wars, the law of war was badly in need of reform. Valuable though the four Geneva Conventions of 1949 were in this respect, the law-makers neglected to incorporate into them new rules governing the conduct of hostilities and the Conventions thus only protect the victims after the event, i.e. after hostilities have taken place. However, military conflicts after 1945 induced scholars and politicians once again to concern themselves with the law of war.

The Air Warfare Rules were admittedly mentioned, quoted and analysed by scholars after the Second World War, with much the same results as between the wars, but for most of the authors they merely represented an interesting episode in the history of international law. Key concepts in the law of air warfare, such as the abstract definition of a military objective and the prohibition of terror bombing and indiscriminate attack, were already firmly established in international legal terminology and completely dissociated from the Hague Rules of Air Warfare which had given rise to them. Thus, when the Fourth Geneva Convention of 1949 provided for hospital and safety zones and neutralized areas (Arts. 14 and 15), hardly anyone was reminded of Art. 26 of the Air Warfare Rules. The latter's Article 26, together with the 1935 Washington Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments (Roerich-Pakt), moreover also formed the basis for the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, which provided for the first time for the setting up of an inspection committee, as originally suggested in 1923, to verify its implementation.

The rules governing air attack against land targets were also further developed. A major milestone along the way were the 1956 "Draft Rules for the Limitation of the Dangers incurred by the Civilian Popu-

⁵⁵ In 1949 the International Law Commission refused to discuss a revision of the law of war on the grounds that "war having been outlawed, the regulation of its conduct had ceased to be relevant". See Kunz, "The chaotic status"..., *op.cit.*, pp. 42 ff.

lation in Time of War”.⁵⁶ This text, drawn up by the ICRC and adopted by the 19th International Conference of the Red Cross (New Delhi, 1957), suffered the same fate as the Hague Rules of Air Warfare: although presented to the governments, it was ignored by them. That the New Delhi draft represented the logical extension of the Air Warfare Rules is obvious even though the latter were hardly mentioned in the official ICRC commentary. For example, the New Delhi draft prohibited terror bombing of the civilian population (Art. 6, para. 1) and contained an abstract definition of a military objective (Art. 7, para. 3). The latter, according to the commentary, was simply a more strictly worded version of Art. 24, para. 1, of the Hague Rules of Air Warfare. The list contained in Art. 24, para. 2, of the Rules was also discussed. Some of the ICRC experts accepted this list as an adequate basis for negotiation; others felt that it was inadequate and too general. They finally agreed to expand the list and make it more specific. In so doing, they avoided the mistake of drawing up a limitative list. Instead, they framed an annex listing objects that represented generally recognized, indisputably significant military targets. This annex was intended only as a guideline for the governments, to be used during negotiations on adoption of the rules in the New Delhi draft.

Experience during the Second World War made it necessary to give greater attention to the methods of attack that had been employed. Taking account of this need, Art. 10 expressly applied the prohibition of indiscriminate bombing to the practice of carpet bombing. Finally, the ICRC draft also contained the idea that the combat zone (“vicinity of military or naval operations”) should be distinct from the area to which the more severe restrictions applied, i.e. the rear (Art. 9, para. 2). The remaining provisions for the most part served the purpose of providing clear and easily comprehensible rules for the conduct of air warfare. Since blanket clauses were well known as being a weak point in the law of war and were sometimes stretched out of all recognition in practice, the experts endeavoured to provide the most precise definitions possible of concepts such as “attack” and “civilian population” and to set out in detail the duties of the attacker. Really new ground was broken by provisions on modern weapons with uncontrollable effects. These provisions were based on experience of incendiary and atomic bombs during the war. But the essence of the

⁵⁶ In Schindler/Toman, *op.cit.*, pp. 179 ff.

New Delhi draft had its origins almost exclusively in the Hague Rules of Air Warfare.

Since the governments proved to be little impressed by the ICRC text, a new attempt was made and this time successfully produced treaty law when Protocol I additional to the Geneva Conventions was adopted in 1977. The Protocol's provisions for the protection of civilians from the effects of hostilities (Arts. 48-60) are based on the 1956 New Delhi draft and also, therefore, on the main provisions of the Hague Rules of Air Warfare, a fact that escaped those who wrote the Commentary on the Additional Protocols.⁵⁷ The reader of Protocol I soon encounters 'old friends': the prohibition of terror bombing (Art. 51, para. 2), the prohibition of indiscriminate attack, precisely defined here for the first time (Art. 51, paras. 4 and 5) and an abstract definition of military objective (Art. 52, para. 2). Though these provisions have been reworded, considerably expanded, made more specific and modified by the addition of definitions and provisions for their implementation, the key elements of the 1923 text are unmistakable. However, the distinction drawn between the combat zone and the rear, which was still present in the 1956 ICRC draft, survives only as an example provided for interpretation purposes in the commentary⁵⁸ and the list of military objectives has disappeared entirely, though not without giving rise to debate in 1976 at the Diplomatic Conference.⁵⁹

One might think that not much remains of those provisions of the Hague Rules concerning aerial bombardment. But this is not true. On the contrary, in 1923 the prohibition of indiscriminate attack consisted of a mere short paragraph. Today there are two full paragraphs, each with several sub-paragraphs. It is much the same with the prohibition of attacks on the civilian population and civilian objects. The terse wording of the 1923 Hague Rules of Air Warfare — set down, as they were, at a time when air warfare was still viewed by some as a kind

⁵⁷ *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Y. Sandoz/C. Swinarski/B. Zimmermann (editors), ICRC, Martinus Nijhoff Publishers, Geneva, 1987, contains only a brief paragraph on the Hague Rules (pp. 603 ff.) while in the commentary by M. Bothe/K.J. Partsch/W.A. Solf, *New rules for victims of armed conflicts*, Martinus Nijhoff Publishers, The Hague-Boston-London, 1982, they are ignored completely.

⁵⁸ There was some debate during the negotiations as to whether, in determining whether a specific object should be considered as military or civilian in nature, different criteria should be applied depending on its proximity to the front. See *ibid.*, p. 326, but compare that with p. 307 of the same work. See also *Commentary on the Additional Protocols, op.cit.*, pp. 620 ff.

⁵⁹ *Ibid.*, pp. 632 ff.; Bothe/Partsch/Solf, *op.cit.*, pp. 321 ff.

of sport — constitute the indispensable core around which layer upon layer of new law has formed to keep pace with steadily growing technological capabilities.

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APPENDIX: SELECTIVE BIBLIOGRAPHY

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International Committee of the Red Cross

ICRC APPOINTS TWO NEW MEMBERS

At its latest meeting on 20 and 21 January 1993, the Assembly of the International Committee of the Red Cross appointed two new members, Mr. Jean-François Aubert and Mr. Josef Feldmann. Their appointment brings the membership of the Committee, which is composed exclusively of Swiss citizens, to 21.

Jean-François Aubert, LL.D., is a professor of constitutional law at the Universities of Neuchâtel and Geneva. He was born in 1931 and is originally from Savagnier in the canton of Neuchâtel. He studied in Neuchâtel, Tübingen, Paris and Ann Arbor. He was a member of the Swiss National Council from 1971 to 1979, and of the Council of States from 1979 to 1987.

Josef Feldmann, Ph.D., was born in 1927 and is originally from Amriswil in the canton of Thurgau. He studied at the Universities of Zurich, Geneva and Louvain, and from 1958 to 1963 headed the Swiss school in Florence. He was active in the Swiss army, commanding a field division and a field army corps before becoming a full corps commander. He is a tenured professor at the University of St. Gallen, where he has taught a number of subjects, including security policy.

At the same meeting the Committee conferred honorary membership on Mr. **Rudolf Jäckli**, member of the ICRC's Executive Board since 1979.

MISSIONS BY THE PRESIDENT

● New York (20 November 1992)

On 20 November 1992 ICRC President Cornelio Sommaruga made a statement to the United Nations General Assembly during the debate

on strengthening the coordination of humanitarian emergency assistance (text published in this issue of the *Review*, pp. 49-56).

This was the first time that an ICRC President had addressed a plenary session of the General Assembly. His statement was all the more significant as it concerned an issue of great topical importance, that of cooperation between the ICRC and the United Nations in the field of humanitarian assistance.

President Sommaruga was received by the United Nations Secretary-General, Mr. Boutros Boutros-Ghali, with whom he reviewed the problems encountered by humanitarian assistance programmes in countries where both organizations are currently working, and Mr. Stoyan Ganev, the Bulgarian Foreign Minister and President of the 47th United Nations General Assembly, with whom he spoke about compliance with humanitarian law and the danger of confusing humanitarian activities with political action.

Mr. Sommaruga also met Baroness Chalker, British Minister for Overseas Development, and Mr. Marrack Goulding, United Nations Under Secretary-General for Peace-keeping Operations, with whom he discussed the situation in the former Yugoslavia and in Somalia. With Mr. Goulding the President also talked about "protected zones", anti-personnel mines, and dissemination of international humanitarian law among peace-keeping forces.

While in New York Mr. Sommaruga also had a meeting with Mr. Tadeusz Mazowiecki, United Nations Special Rapporteur on the Human Rights Situation in the territory of the former Yugoslavia, who raised the questions of evacuating detention camps, finding host countries for refugees, and setting up "protected zones".

● **Rome (30 November-2 December 1992 and 11-13 January 1993)**

During his two recent trips to Rome the ICRC President met several State dignitaries and leaders of the Italian Red Cross. He also visited the Vatican.

On the first visit Mr. Sommaruga was accompanied by Professor Marco Mumenthaler, member of the Committee, and Mr. Harald Schmid de Grunneck, head of the Financing Division of the Communications and External Resources Department. He first had talks with Mr. Emilio Colombo, Italian Foreign Minister, and some of his close aides, including Mr. Enrico de Maio, in charge of multilateral cooperation matters at the Ministry, about the current operations in Somalia,

Mozambique and the former Yugoslavia, and compliance with humanitarian law. Other topics discussed at the Ministry were the statutes of the Italian Red Cross, the future of the San Remo International Institute of Humanitarian Law, and the financing of the ICRC. With regard to this last point, the Italian authorities announced contributions for several ICRC operations.

The above issues were later discussed with Professor Luigi Gianico, Commissioner Extraordinary of the Italian Red Cross, and his two deputies, Ambassador Remo Paolini and Inspector General Paolo Carlini. The ICRC delegation also visited several centres run by the National Society and attended a demonstration given by army health auxiliaries.

At the Vatican Mr. Sommaruga met the new Secretary of State, Cardinal Angelo Sodano, and Monsignor Jean-Louis Tauran, secretary for State relations, with whom he talked about ICRC activities and financing. He also had an exchange of views with Cardinal Roger Etchegaray, President of the Pontifical Commission.

On his second visit to Rome Mr. Sommaruga was accompanied by Ms. Francesca Pometta, member of the Committee, and by his assistant, Mr. Dominique Buff. He was received by the Italian President, Mr. Oscar Luigi Scalfaro, and had talks with the Minister of Health, Mr. Francesco De Lorenzo, and the Secretary-General at the Foreign Ministry, Mr. Bruno Bottai.

The discussions covered progress on the revision of the Italian Red Cross statutes, strengthening Italy's financial support for the ICRC, operations in Bosnia-Herzegovina and in Somalia, and the Italian government's project for cooperation with the ICRC in Somalia. Regarding this last issue, a working meeting was organized at the Ministry of Foreign Affairs, attended by Ministry officials, representatives of the Italian Red Cross, and the ICRC delegation. The participants examined the arrangements for the Italian government's takeover of the Quetta hospital in Pakistan as well as discussing the possibility of turning over to the Italian Red Cross a specific project, part of the ICRC's programme in Somalia, to be financed by the Italian government.

During his two visits the ICRC President gave a number of press and television interviews. On 12 January he gave a lecture at Italian Red Cross headquarters on the ICRC and human rights.

- **The Hague (12 December 1992)**

On 12 December President Sommaruga attended the official celebration of the 125th anniversary of the Netherlands Red Cross, held at the “Ridderzaal” in the Hague, in the presence of H.M. Queen Beatrix of the Netherlands, Princess Juliana and Princess Margriet, several ministers, representatives of civilian and military authorities, and members of the diplomatic corps.

Mr. Sommaruga delivered a speech on the joint responsibility of all States to ensure compliance with international humanitarian law.

The address on behalf of the International Federation of Red Cross and Red Crescent Societies was given by Mr. Karl Kennel, President of the Swiss Red Cross and the Federation’s Vice-President.

Strengthening of the Coordination of Humanitarian Emergency Assistance of the United Nations Organization

*Statement by Mr. Cornelio Sommaruga,
President of the International Committee of the Red Cross
at the United Nations General Assembly*

(New York, 20 November 1992)

The end of the cold war raised hopes for a more peaceful world. While in the new climate of international relations tension has indeed eased in several areas of conflict, violence has flared up in other parts of the world and is today claiming *not thousands but millions of victims* on every continent.

In an effort to provide a more effective response to growing humanitarian needs, the United Nations has recently set up certain coordination mechanisms. These measures, while obviously worthwhile, must necessarily be *translated into operational reality* and accompanied by *active support from diplomatic circles in the world's capitals*. Indeed, as far as the victims are concerned, action in the field remains the vital element.

Apart from the formal assignment of tasks, *the approaches adopted must also be harmonized*. Everywhere we look, the spectre of famine hangs over countless civilians. Indiscriminate shelling, forced population displacements, torture, massacres — all these are violations of international humanitarian law.

The increasing politicization of humanitarian work does not favour respect for the law. While it is encouraging to see that humanitarian issues are higher on the agenda of the international community today, the trend towards politicization is worrying and must be checked. This calls for a *more precise division of tasks and responsibilities* between the humanitarian organizations that are working to alleviate suffering and the political bodies whose duty it is to tackle the causes of conflict.

In addition, *a general mobilization to promote respect for international humanitarian law* must be initiated as a matter of urgency. Otherwise, the erosion of the law will weaken the very foundations of humanity.

* * *

Coordination and a concerted approach

Both the International Committee of the Red Cross (ICRC) and the International Federation of Red Cross and Red Crescent Societies take an active part in the meetings of the Inter-agency Standing Committee and its working groups. In this context, the ICRC's independence is judiciously reflected by its *status as an observer*.

This constructive form of cooperation certainly deserves to be pursued and developed: it makes it possible to avoid duplication of effort or failure to respond, thanks to a distribution of tasks in accordance with the respective mandates of the different organizations concerned.

The ICRC, anxious to maintain its independence and especially the speed with which it can take action, within minutes of a conflict breaking out, wishes to emphasize the necessity of continuing to launch its own financial appeals. Giving the donors a synoptic view by including our figures in the United Nations' consolidated appeals must not eclipse the ICRC's own financial needs, which remain very substantial. These consolidated appeals, moreover, should clearly reflect the division of tasks between the United Nations, the International Red Cross and Red Crescent Movement and the non-governmental organizations, and make a distinction between their respective budgets.

The problem remains that only too often, following constructive discussions leading to the distribution of urgent tasks, the ICRC, together with certain non-governmental organizations whose courage I should like to commend, finds itself alone for long periods out in the field.

Yet the sheer magnitude of needs calls increasingly for a concerted effort. Meeting them is beyond the capacity of the ICRC alone, which must concentrate on protection activities.

The operational aspect of United Nations humanitarian agencies must be strengthened.

Resolution 46/182 provides for early-warning mechanisms, in which the ICRC plays a part on a case-by-case basis and in accordance with its principles. However, more important than early warning, which was in fact given in Somalia, for example, especially by the ICRC, what is sadly lacking at the moment is *a rapid response*.

What worries me personally is the fact that these atrocities inflicted on entire populations, these immense deficiencies in the humanitarian standards that protect each and every one of us, this worldwide upsurge of violence that we see on our television screens all elicit such a feeble and slow response.

Of course needs exist everywhere, not only in emergency situations. But bringing help in time and on the spot is far more economical and effective than bringing it too late or coping with hundreds of thousands of refugees and displaced people.

In this connection, efforts being made in the sphere of disaster preparedness, especially by National Red Cross and Red Crescent Societies under the auspices of their Federation, are worthy of encouragement.

In view of the tragic experiences of recent conflicts, the ICRC is currently giving prominence to the preventive approach, by spreading knowledge of international humanitarian law through a combination of training programmes and media coverage. It is hoped by these means to promote the humanitarian message more effectively and on a wider scale, in an attempt to prevent violations of international humanitarian law by all those who bear arms. This approach, too, will call for widespread cooperation and the support of Governments, organizations, opinion-makers and the media.

As I mentioned, if we are to enhance the effectiveness and quality of our response to crisis situations, it is important not only to ensure the coordination of humanitarian activities, but also *to agree on a common approach*.

The work currently being carried out by the International Federation of Red Cross and Red Crescent Societies with a view to establishing a *code of conduct* for non-governmental organizations is a welcome step in that direction. Only by presenting a united front can the humanitarian organizations hope to prevent a repetition of the excesses committed by the warlords who are perpetuating many conflicts today.

The consolidation of peace should also be high on our list of priorities. The ICRC considers it essential to ensure a *smooth transition between emergency situations and the subsequent stages of rehabilitation, reconstruction and development*. In order to reduce or altogether avoid the long-term dependence of victims on aid, we must prepare local bodies to take over the tasks of outside agencies, and relief operations carried out by institutions working in emergencies, such as the ICRC, must be of limited duration.

The work of the International Red Cross and Red Crescent Movement is guided by seven Fundamental Principles, which were adopted by governments too at the International Conference of the Red Cross held in Vienna in 1965. The Movement notes with great satisfaction that three of these principles, namely, *humanity, impartiality and neutrality*, were mentioned in General Assembly resolution 46/182 and thus recognized as the cornerstones of all humanitarian endeavour.

The principle of impartiality, which requires that assistance be provided in accordance with the degree of suffering and priority given to the most urgent cases of distress, is crucial. It is observance of this principle that enables humanitarian organizations, in accordance with the acknowledged right of victims to receive assistance, to respond to emergency situations while providing all necessary guarantees of non-interference.

The principles of humanity and neutrality are equally important in ensuring that humanitarian activities remain apolitical.

Political action and humanitarian endeavour

It would be impossible, and perhaps even undesirable, to dissociate humanitarian endeavour completely from political action.

Humanitarian work concentrates on the acute symptoms produced by crises, but the crises themselves cannot be resolved without political measures to tackle their underlying causes. Moreover, just as humanitarian work needs political support, political negotiations stand to benefit from the relief afforded by maintaining a measure of humanity in the midst of conflict.

We are nevertheless convinced that *humanitarian endeavour and political action must go their separate ways* if the neutrality and impartiality of humanitarian work is not to be jeopardized.

In any situation in which humanitarian concerns become the overriding issue, it is rather dangerous to regard humanitarian action as just another political tool or, conversely, as an excuse for States to shirk their political responsibilities.

Indeed, to tie humanitarian activities too closely to political concerns is to run the risk of seeing humanitarian work rejected on political grounds.

In this regard, I wonder *how wise it is to resort to military means to support humanitarian activities* and, in certain circumstances, to protect the people who conduct them. The effectiveness of our operations is, admittedly, directly affected by the conditions of extreme insecurity in which we have to work. In the former Yugoslavia, and even more so in Somalia, it has unfortunately proved necessary to use armed escorts to protect humanitarian convoys. This, however, must remain a temporary and exceptional measure, and we must take care not to start thinking of it as an acceptable long-term solution. If we resign ourselves to these means, are we not in fact giving up all hope of persuading the belligerents to respect not only humanitarian work but above all defenceless civilians and prisoners? We must also demand and restore respect for protective emblems, especially those of the Red Cross and Red Crescent which are so often disregarded. This is vital to ensure that humanitarian action loses neither the impartiality it must maintain to work efficiently in behalf of all the victims, without discrimination, nor its necessary and concomitant independence vis-à-vis all the belligerents.

For all these reasons we believe that it is *dangerous to link humanitarian activities aimed at meeting the needs of victims of a conflict with political measures designed to bring about the settlement of the dispute between the parties.*

Moreover, in the light of the establishment by the Security Council, in its resolution 780, of a Commission of Experts to enquire into grave breaches of international humanitarian law, a *clear distinction must be drawn between justice and humanitarian assistance.* Although the ICRC and other humanitarian organizations are ready to take considerable risks — some might even say too many — in order to bring the victims assistance and protection, their role is not to act as judge and even less as prosecutor. However, we should be more than happy if the States were to fulfil that role, as they undertook to do in the final provisions common to the four Geneva Conventions of 1949 and, more recently, in Article 90 of the Additional Protocol I of 1977, and we urge them to meet their obligation in that respect on a universal basis. This would discourage further violations and, in

parallel with other measures, facilitate the restoration of dialogue and lasting peace.

Call for a humanitarian mobilization

Let me stress once again, humanitarian action deals only with the acute symptoms of a crisis: even if humanitarian agencies are given all they need to work effectively in the field and even if all doors are opened to them, States cannot rely on emergency humanitarian work alone to provide a solution. *A global approach intended to tackle the underlying causes of the crisis is a must*, and this falls within the competence of governments.

Humanitarian action undeniably facilitates — but in the long term can never replace — the negotiation process and the dialogue necessary at the political, military and economic levels.

The persistent violations of international humanitarian law we are witnessing foreshadow a threat which the international community must address as a matter of urgency. If today we allow the population of entire countries to be starved, forcibly transferred, threatened, terrorized or massacred, arguing that the situation they are in is too far removed from our concerns, too complex or too dangerous to handle, then one of these days, and perhaps sooner than we think, we and our own families may have to face similar risks, similar outrages and similar indifference. What is at stake today is *respect for the principle on which the very survival of mankind depends*.

In all these circumstances, compliance with the existing rules of humanitarian law would have helped to save hundreds of thousands of lives and to prevent countless civilians in need of protection and assistance from being forced into exile.

We can no longer tolerate that in so many conflicts whose effects spill over national borders the fate of the victims should depend on the whim of the parties concerned. We must be more forceful in letting the belligerents know that they will have to answer for their acts to the international community. Article 1 common to the four Geneva Conventions is perfectly clear on this point: the High Contracting Parties undertake to respect and ensure respect for humanitarian law at all times. That is an obvious legal obligation, which is not only binding on the individual States involved in a conflict, but is part of a much wider framework, since every State has undertaken to ensure respect for the law. Thus, when a State at war violates the commitments it made on adhering to the Conventions, all

other States become answerable too if they do nothing to put a stop to such violations.

How can we reverse this negative trend?

I believe that if we are to secure greater respect for humanitarian endeavour, we must remind the community of States of their joint responsibility in that regard, as set out in Article 1 common to the Geneva Conventions. States must be prepared to put pressure on other governments to ensure that the Conventions are complied with even outside their own borders.

An *ad hoc* meeting of States party to the Geneva Conventions, for example, would enable the ICRC to go beyond the representations it makes to the belligerents and its repeated public expressions of concern. It would provide the ICRC with an opportunity to urge governments — with which the ultimate responsibility lies — to make the rules of international humanitarian law standards of moral behaviour binding on individuals and States alike, as universally recognized and accepted as those laid down in the Universal Declaration of Human Rights. We have proposed to the Swiss Federal Council, the depositary of the Geneva Conventions, that it convene a multilateral assembly of this kind so that in an exceptional and solemn forum humanitarian law may be restored to its rightful place in the concerns and duties of the international community.

* * *

Our individual and collective security can no longer be guaranteed by a *balance of power*, but only by one inspired by *solidarity*. This balance of solidarity naturally has a humanitarian aspect, whether it be respect for humanitarian law or support for humanitarian organizations. But it must also extend to measures of reconstruction, the development of mechanisms to ensure economic and environmental conditions favourable to all, and the peaceful settlement of conflicts, in compliance with international law and the values common to all mankind. If we are to succeed in this task we must be ready, each and every one of us, to fulfil our respective mandates, not only by conferring with one another in these comfortable surroundings, but also by acting decisively to help victims in the field, whether in the midst of the continental winter or in desert drought and heat.

To conclude, I should like to take this opportunity to thank, on behalf of the ICRC, all the Governments, organizations of the United Nations system, National Red Cross and Red Crescent Societies, with

their Federation, and non-governmental organizations which work alongside the ICRC to bring humanitarian assistance and protection to victims of conflict.

The ICRC would also like to *pay tribute here to all those men and women* who work in the field — both in their own countries and abroad — to bring assistance and protection to the victims, often at considerable risk to themselves, and to remember all those among them who have given their lives in the service of the humanitarian cause.

ANTI-PERSONNEL MINES: A DISGRACE FOR HUMANITY

Those who look after people injured by anti-personnel mines and who, day after day, witness the suffering caused by these pernicious weapons, those who produce artificial limbs to help maimed children as they try to cope with their disability all ask themselves what can be done to put an end to this terrible scourge.

Out of a total of 14,221 war-wounded treated in ICRC hospitals in Asia between January 1991 and June 1992, 23% were injured by anti-personnel mines. Out of 3,262 mine-blast victims, 21% were women and children, plus a number of men who never took part in the fighting.

Last year, 7,876 amputees — 26% of them women and children — were fitted with artificial limbs in the ICRC's rehabilitation centres.

These statistics are grim evidence that the extensive efforts made over the years to regulate the indiscriminate use of anti-personnel mines, and to ensure that people not taking part in the fighting are protected from them, have been to no avail.

Moreover, in many instances mines are no longer used to protect military objectives or to block access routes, but are laid with the perverse intent of terrorizing the civilian population.

Rather than discourage us, this should motivate us even more in our efforts to make those with authority over users and manufacturers face up to their responsibility. And the way to do this is to show them just how devastating these weapons are.

The ICRC has decided to organize a symposium next spring on victims of anti-personnel mines. The issue will be discussed from a variety of angles — political, military, legal and medical; the meeting will also focus on the problems of mine-clearing and rehabilitation. The primary objective will be to work out complementary means of action and to propose a strategy to protect the civilian population from the indiscriminate use of anti-personnel mines.

Dr. Rémi Russbach

*This article by the ICRC's Chief Medical Officer appeared in the November 1992 issue of the **ICRC Bulletin**. The ICRC symposium on the victims of anti-personnel mines will take place in Montreux (Switzerland) from 21 to 23 April 1993. The participants will deal with various aspects of the problem of anti-personnel mines, including legal (the present provisions under international law and their application), technical and tactical (technical characteristics of mines, mine detection and clearance), medical and humanitarian (mine-blast injuries, rehabilitation of victims) and military aspects.*

*The **Review** will report on the work of the symposium in one of its forthcoming issues and will devote a special issue to this subject, the importance of which will undoubtedly be clear to all readers.*

Regional seminar for the French-speaking countries of Africa on national measures to implement international humanitarian law

(Yaoundé, Cameroon, 23-27 November 1992)

A regional seminar for the French-speaking countries of Africa on national measures to implement international humanitarian law (IHL) was held in Yaoundé from 23 to 27 November 1992.

The seminar, which was held under the auspices of the Cameroonian Government, was organized by the ICRC and the Henry Dunant Institute (HDI) in conjunction with the International Relations Institute of Cameroon (IRIC).

This meeting was the sixth in a series of seminars held by the HDI in Yaoundé between 1977 and 1986 and then interrupted for several years. It was now decided to resume the series of seminars, with emphasis placed on national measures to implement international humanitarian law. The meeting is also part of a series of regional seminars organized by the ICRC on this subject. Two seminars preceded it: the first was held in Sofia, Bulgaria (20-22 September 1990) and the second in San José, Costa Rica (18-21 June 1991).

The Cameroonian authorities were represented at the opening session by Mr. Jacques-Roger Booh-Booh, Minister for Foreign Affairs, Mr. Joseph Owona, Secretary-General at the Presidency, Mr. Peter Agbor-Tabi, Chancellor of the University, and Mr. Abdoulaye Babalé, Minister for Higher Education. The ICRC delegation was headed by Mr. Bruno Zimmermann, Deputy Head of the Legal Division, Mr. Edmond Corthésy, Deputy Delegate-General for Africa, Ms. María Teresa Dutli, member of the Legal Division, Mr. Ulrich Bédert and Mr. Jean-François Olivier, regional delegates, and Mr. Denis Noël, legal delegate for Africa. The Henry Dunant Institute and the IRIC were represented respectively by Mr. Jiri Toman, Deputy Director, and Mr. Dieudonné Oyono, Director of Studies.

The purpose of the seminar was to enable experts in humanitarian law from French-speaking countries in Africa to enter into a dialogue on national measures to implement IHL and to extend this exchange of

views to include new specialists. Particular attention was given to making all the participants aware of the importance of adopting such measures in peacetime in the various countries concerned.

Forty-three participants — senior officials of the Ministries of Justice, Defence and Foreign Affairs and representatives from academic circles — from sixteen countries of French-speaking Africa took part in the seminar. They were selected on the basis of the future role they would play with a view to having these national measures adopted in their respective countries.

The seminar was spread out over five days and divided into three parts: introduction to the main subjects of IHL; the international implementation of IHL; and its national implementation.

Most of the introductory lectures on the various subjects were given by academics from several African countries, by two experts who are members of the International Fact-Finding Commission, Ms. Ghalib Djilali (Algeria) and Mr. André Andries (Belgium) and by delegates from the ICRC, the HDI and the IRIC.

The discussions on the chosen themes alerted the participants to the need to enact or adapt national legislation in the various countries, to take diverse other measures to ensure respect for international humanitarian law and to initiate dialogue about past experiences and current projects.

There were in-depth discussions on the repression of grave breaches of international humanitarian law, national mechanisms to apply it, and the International Fact-Finding Commission. A consensus emerged on the need to take all these measures to promote respect for international humanitarian law.

At the end of the seminar, the participants adopted a report and recommendations in which they undertook to ensure that the relevant legal details and rules of application concerning IHL were forwarded to the ICRC, to promote ratification of Protocols I and II and recognition of the competence of the International Fact-Finding Commission and to step up their efforts in dissemination. To this end, participants were invited to stress, in their mission reports, the obligations incumbent on States and to publicize the subject of the seminar and the concerns expressed there.

This third regional seminar on national measures to implement IHL was broadly successful and its objectives were attained. This was mainly due to the high standard of the speakers and the participants, who are well placed to follow up the issue within their own countries. In addition, the discussions clearly demonstrated the indisputable need

for action at the national level to have these measures adopted, and the participants' determination to see that such action was taken.

It was therefore recommended that further seminars be organized in French-speaking and English-speaking Africa to create an awareness of the importance of adopting legal and practical measures in advance, in peacetime, to ensure that IHL is put into effect.

J.M.

The Arab Republic of Egypt ratifies the Protocols

On 9 October 1992 the Arab Republic of Egypt ratified the Protocols additional to the Geneva Conventions of 12 August 1949 relating to the protection of victims of international (Protocol I) and non-international (Protocol II) armed conflicts, adopted in Geneva on 8 June 1977.

The instrument of ratification was accompanied by a declaration and a notification, the texts of which (original: Arabic) are given below:

DECLARATION

The Arab Republic of Egypt, in ratifying Protocols I and II of 1977 additional to the Geneva Conventions of 1949, wishes to express its conviction that the provisions of Additional Protocols I and II represent the minimum level of legal and actual protection that must be afforded to persons and civilian and cultural objects in armed conflict.

On the basis of its strong conviction of the principles of the great Islamic Sharia, the Arab Republic of Egypt wishes at the same time to emphasize that it is the duty of all nations alike to refrain from the involvement of innocent civilians in armed conflict; furthermore they should make all efforts, to the maximum extent possible, to that end as this is indispensable for the survival of humanity and the cultural heritage and civilization of all countries and nations.

The Arab Republic of Egypt, while declaring its commitment to respecting all the provisions of Additional Protocols I and II, wishes to emphasize, on the basis of reciprocity, that it upholds the right to react against any violation by any party of the obligations imposed by Additional Protocols I and II with all means admissible under international law in order to prevent any further violation. In this context it wishes to assert that military commanders planning or executing attacks make their decisions on the basis of their assessment of all kinds of information available to them at the time of the military operations.

NOTIFICATION

The Arab Republic of Egypt, while welcoming the adoption by the Diplomatic Conference in June 1977 of Protocols I and II additional to the Geneva Conventions of 1949 in six languages, including the Arabic language, notes that all original texts are certified and equally authentic with no prevalence of one single language over the other.

However, on comparison of the original Arabic text of Additional Protocols I and II with the other original texts, it became evident that in some respects the Arabic text does not fully correspond to the other original texts to the extent that it is at variance in terms of both expression and substance with some of the provisions of Additional Protocols I and II adopted by States in the field of international law and human relations.

Hence the Arab Republic of Egypt, on the occasion of the deposit of its instrument of ratification of Protocols I and II additional to the Geneva Conventions of 1949 with the depositary, the Swiss Federal Council, wishes to declare that in that respect it shall adopt the meaning which best concurs with the original texts of Additional Protocols I and II.

In accordance with their provisions, the Protocols will come into force for the Arab Republic of Egypt on 9 April 1993.

The Arab Republic of Egypt is the **118th** State to become party to Protocol I and the **108th** State party to Protocol II.

**STATES PARTY TO THE GENEVA
CONVENTIONS OF 12 AUGUST 1949
AND TO THEIR ADDITIONAL PROTOCOLS
OF 8 JUNE 1977**

as at 31 December 1992

Below the *Review* gives the lists, drawn up in chronological order as at 31 December 1992, of the States which have become party to the Geneva Conventions of 12 August 1949 during the past ten years (1983-1992) and of all the States party to Protocols I and II additional to the Geneva Conventions of 12 August 1949, adopted on 8 June 1977.

- **Table I, States party to the Geneva Conventions of 12 August 1949**, is divided into five columns. The first column gives a serial number for easy reference, the second gives the State's name (short designation), the third shows the official date of registration and the fourth indicates the form of official act (R = ratification; A = accession; S = declaration of succession) received by the depositary, the Swiss Federal Council, and the date on which it came into effect. The last column, headed "Remarks", indicates whether the official act was accompanied by any reservations or declarations, using the State's own designation thereof. The list of States party to the Conventions begins with No. 151, thus taking into account the 150 States which had become party to the Conventions in previous years (listed in the *ICRC Annual Report* for 1991, pp. 130-134).
- **Table II** listing the *States party to the Protocols of 8 June 1977* is presented in much the same way, except that the numbering of States party to the Protocols is divided into two columns; the first gives the number of States party to Protocol I and the second that of States party to Protocol II.

Under "Remarks" in the sixth column the abbreviation "Int. Comm." indicates whether the State concerned has accepted the competence of the International Fact-Finding Commission by making the declaration provided for in Art. 90, para. 2, of Protocol I.

- **Table III** gives a *chronological list of States which have made the declaration provided for under Article 90 and thereby accepted the competence of the International Fact-Finding Commission* (with date of declaration).
- **Table IV** gives a *summary* of the data contained in the first three tables.

TABLE I
**States party to the Geneva Conventions
of 12 August 1949**

(as from 1983)

	OFFICIAL DATE OF REGISTRATION	TYPE OF ACT RECEIVED	REMARKS
1983			
151 Zimbabwe	7 March	A	
152 Mozambique	14 March	A	
1984			
153 Cape Verde	11 May	A	
154 Belize	29 June	A	
155 Guinea	11 July	A	
156 Western Samoa	23 August	S—as from 1.1.62	
157 Angola	20 September	A	Reservation
158 Seychelles	8 November	A	
1985			
159 Comoros	21 November	A	
1986			
160 Saint Kitts and Nevis	14 February	S—as from 19.9.83	
161 Equatorial Guinea	24 July	A	
162 Antigua and Barbuda	6 October	S—as from 1.11.81	
1989			
163 Kiribati	5 January	S—as from 12.7.79	

	OFFICIAL DATE OF REGISTRATION	TYPE OF ACT RECEIVED	REMARKS
1991			
164	Bhutan	10 January	A
165	Maldives	18 June	A
166	Namibia*	22 August	S—as from 21.3.90
167	Brunei	14 October	A
168	Latvia	24 December	A
1992			
169	Slovenia	26 March	S—as from 25.6.91
170	Turkmenistan	10 April	S—as from 26.12.91
171	Kazakhstan	5 May	S—as from 21.12.91
172	Croatia	25 August	S—as from 8.10.91
173	Myanmar	25 August	A
174	Kyrgyzstan	18 September	S—as from 21.12.91
175	Bosnia- Herzegovina	31 December	S—as from 6.3.92

On 31 December 1992, 175 States were party to the Geneva Conventions of 12 August 1949.

* Namibia: Instruments of accession to the Geneva Conventions and their Additional Protocols were deposited by the United Nations Council for Namibia on 18 October 1983. The depositary State advised the ICRC that the said accession to the Conventions has now become void. In an instrument deposited on 22 August 1991, Namibia declared its succession to the Geneva Conventions, which were previously applicable pursuant to South Africa's accession on 31 March 1952.

TABLE II
States party to the Protocols of 8 June 1977

PROTOCOL			OFFICIAL DATE OF REGISTRATION	TYPE OF ACT RECEIVED	REMARKS
I	II				
1978					
1	1	Ghana	28 February	R	
2	2	Libya	7 June	A	
<i>Date of entry into force of the Protocols: 7 December 1978</i>					
3	3	El Salvador	23 November	R	
1979					
4	4	Ecuador	10 April	R	
5	5	Jordan	1 May	R	
6	6	Botswana	23 May	A	
7		Cyprus	1 June	R	Protocol I only
8	7	Niger	8 June	R	
9	8	Yugoslavia	11 June	R	Declaration
10	9	Tunisia	9 August	R	
11	10	Sweden	31 August	R	Reservation; Int. Comm.
1980					
12	11	Mauritania	14 March	A	
13	12	Gabon	8 April	A	
14	13	Bahamas	10 April	A	
15	14	Finland	7 August	R	Declaration; Int. Comm.
16	15	Bangladesh	8 September	A	
17	16	Laos	18 November	R	
1981					
18		Viet Nam	19 October	R	Protocol I only
19	17	Norway	14 December	R	Int. Comm.
1982					
20	18	Rep. of Korea	15 January	R	Declaration
21	19	Switzerland	17 February	R	Reservations; Int. Comm.
22	20	Mauritius	22 March	A	
23		Zaire	3 June	A	Protocol I only
24	21	Denmark	17 June	R	Reservation; Int. Comm.
25	22	Austria	13 August	R	Reservations; Int. Comm.

26	23	Saint Lucia	7 October	A	
27		Cuba	25 November	A	Protocol I only
1983					
28	24	Tanzania	15 February	A	
29	25	United Arab Emirates	9 March	A	Declaration Int. Comm.
30		Mexico	10 March	A	Protocol I only
31		Mozambique	14 March	A	
32	26	Saint Vincent and the Grenadines	8 April	A	
33	27	China	14 September	A	Reservation
34	28	Congo	10 November	A	
35		Syria	14 November	A	Protocol I only; Declaration Int. Comm.
36	29	Bolivia	8 December	A	
37	30	Costa Rica	15 December	A	
1984					
	31	France*	24 February	A	Protocol II only
38	32	Cameroon	16 March	A	
39	33	Oman	29 March	A	Declaration
40	34	Togo	21 June	R	Int. Comm.
41	35	Belize	29 June	A	
42	36	Guinea	11 July	A	
43	37	Central African Rep.	17 July	A	
44	38	Western Samoa	23 August	A	
45		Angola	20 September	A	Protocol I only; Declaration Int. Comm.
46	39	Seychelles	8 November	A	
47	40	Rwanda	19 November	A	
1985					
48	41	Kuwait	17 January	A	
49	42	Vanuatu	28 February	A	
50	43	Senegal	7 May	R	
51	44	Comoros	21 November	A	
52	45	Holy See	21 November	R	Declaration
53	46	Uruguay	13 December	A	Int. Comm.
54	47	Suriname	16 December	A	
1986					
55	48	Saint Kitts and Nevis	14 February	A	

* When acceding to Protocol II, France sent a communication concerning Protocol I.

56	49	Italy	27 February	R	Declarations; Int. Comm.
57	50	Belgium	20 May	R	Declarations; Int. Comm.
58	51	Benin	28 May	A	
59	52	Equatorial Guinea	24 July	A	
60	53	Jamaica	29 July	A	
61	54	Antigua and Barbuda	6 October	A	
62	55	Sierra Leone	21 October	A	
63	56	Guinea-Bissau	21 October	A	
64	57	Bahrain	30 October	A	
65	58	Argentina	26 November	A	Declarations
	59	Philippines	11 December	A	Protocol II only
1987					
66	60	Iceland	10 April	R	Reservation; Int. Comm.
67	61	Netherlands	26 June	R	Declarations; Int. Comm.
68		Saudi Arabia	21 August	A	Reservation
69	62	Guatemala	19 October	R	
70	63	Burkina Faso	20 October	R	
1988					
71	64	Guyana	18 January	A	
72	65	New Zealand	8 February	R	Declarations; Int. Comm.
73		Dem. People's Rep. of Korea	9 March	A	Protocol I only
74		Qatar	5 April	A	Protocol I only; Declaration; Int. Comm.
75	66	Liberia	30 June	A	
76	67	Solomon Islands	19 September	A	
77	68	Nigeria	10 October	A	
1989					
78	69	Gambia	12 January	A	
79	70	Mali	8 February	A	
80		Greece	31 March	R	Protocol I only
81	71	Hungary	12 April	R	Int. Comm.
82	72	Malta	17 April	A	Reservations; Int. Comm.
83	73	Spain	21 April	R	Declarations; Int. Comm.
84	74	Peru	14 July	R	
85	75	Liechtenstein	10 August	R	Reservations; Int. Comm.

86	76	Algeria	16 August	A	Declarations; Int. Comm.
87	77	Luxembourg	29 August	R	
88	78	Côte d'Ivoire	20 September	R	
89	79	Bulgaria	26 September	R	
90	80	Russia	29 September	R	Declaration; Int. Comm.
91	81	Belarus	23 October	R	Int. Comm.
1990					
92	82	Ukraine	25 January	R	Declaration; Int. Comm.
93	83	Czech and Slovak (F.R.)	14 February	R	
94	84	Barbados	19 February	A	
95	85	Yemen	17 April	R	
96	86	Romania	21 June	R	
97	87	Canada	27 September	R	Reservations; Declarations; Int. Comm.
98	88	Paraguay	30 November	A	
1991					
99	89	Germany	14 February	R	Declarations; Int. Comm.
100	90	Uganda	13 March	A	
101	91	Djibouti	8 April	A	
102	92	Chile	24 April	R	Int. Comm.
103	93	Australia	21 June	R	Declarations Int. Comm.
104	94	Maldives	3 September	A	
105	95	Malawi	7 October	A	
106	96	Brunei	14 October	A	
107	97	Poland	23 October	R	Int. Comm.
108	98	Latvia	24 December	A	
1992					
109	99	Slovenia	26 March	S—as from 26.6.91	Int. Comm.
110	100	Turkmenistan	10 April	S—as from 26.12.91	
111	101	Brazil	5 May	A	
112	102	Kazakhstan	5 May	S—as from 21.12.91	
113	103	Madagascar	8 May	R	
114	104	Croatia	11 May	S—as from 8.10.91	Int. Comm.
115	105	Portugal	27 May	R	
116	106	Kyrgyzstan	18 September	S—as from 21.12.91	
117	107	Egypt	9 October	R	Declaration

118	108	Zimbabwe	19 October	A	
119	109	Bosnia- Herzegovina	31 December	S—as from 6.3.92	Int. Comm.

On 31 December 1992, 119 States were party to Protocol I and 109 to Protocol II.

Thirty-three States had accepted the competence of the International Fact-Finding Commission.

TABLE III
List of States having made the declaration
provided for under Article 90 of Protocol I

(INTERNATIONAL FACT-FINDING COMMISSION)

1. SWEDEN	(on 31 Aug. 1979, at the time of ratification)
2. FINLAND	(on 7 Aug. 1980, at the time of ratification)
3. NORWAY	(on 14 Dec. 1981, at the time of ratification)
4. SWITZERLAND	(on 17 Feb. 1982, at the time of ratification)
5. DENMARK	(on 17 June 1982, at the time of ratification)
6. AUSTRIA	(on 13 Aug. 1982, at the time of ratification)
7. ITALY	(on 27 Feb. 1986, at the time of ratification)
8. BELGIUM	(on 27 Mar. 1987)
9. ICELAND	(on 10 Apr. 1987, at the time of ratification)
10. NETHERLANDS	(on 26 June 1987, at the time of ratification)
11. NEW ZEALAND	(on 8 Feb. 1988, at the time of ratification)
12. MALTA	(on 17 Apr. 1989, at the time of accession)
13. SPAIN	(on 21 Apr. 1989, at the time of ratification)
14. LIECHTENSTEIN	(on 10 Aug. 1989, at the time of ratification)
15. ALGERIA	(on 16 Aug. 1989, at the time of accession)
16. RUSSIAN FEDERATION	(on 29 Sept. 1989, at the time of ratification)
17. BELARUS	(on 23 Oct. 1989, at the time of ratification)
18. UKRAINE	(on 25 Jan. 1990, at the time of ratification)
19. URUGUAY	(on 17 July 1990)
20. CANADA	(on 20 Nov. 1990, at the time of ratification)
21. GERMANY	(on 14 Feb. 1991, at the time of ratification)
22. CHILE	(on 24 Apr. 1991, at the time of ratification)
23. HUNGARY	(on 23 Oct. 1991)
24. QATAR	(on 24 Sept. 1991)
25. TOGO	(on 21 Nov. 1991)
26. UNITED ARAB EMIRATES	(on 6 Mar. 1992)
27. SLOVENIA	(on 26 Mar. 1992, with declaration of succession)
28. CROATIA	(on 11 May 1992, with declaration of succession)
29. SEYCHELLES	(on 22 May 1992)
30. BOLIVIA	(on 10 Aug. 1992)
31. AUSTRALIA	(on 23 Sept. 1992)
32. POLAND	(on 2 Oct. 1992)
33. BOSNIA-HERZEGOVINA	(on 31 Dec. 1992, with declaration of succession)

TABLE IV
Totals

I. NUMBER OF STATES MEMBERS OF THE UNITED NATIONS	178 ¹
II. 1949 GENEVA CONVENTIONS	
States party	175
— Ratifications	61
— Accessions	66
— Declarations of succession ²	48
III. 1977 ADDITIONAL PROTOCOLS	
A. PROTOCOL I:	
1. States party	119
— Ratifications	49
— Accessions	64
— Declarations of succession ²	6
2. Declarations under Article 90 (see Table III, page 72) .	33
B. PROTOCOL II.	
States party	109
— Ratifications	46
— Accessions	57
— Declarations of succession ²	6

¹ Newly admitted to membership on 2 March 1992 and on 22 May 1992: Armenia, Azerbaijan, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Uzbekistan, San Marino, Slovenia, Croatia, Bosnia-Herzegovina.

² By *ratification*, a State expresses its consent to be bound by a treaty which it has previously signed. By *accession*, a State which is not signatory to a treaty may accede to it (the legal effect of accession is the same as that of signature followed by ratification). By a *declaration of succession*, a newly independent State may declare that it will continue to be bound by a treaty which was applicable to it prior to its independence.

NOTES

— *States members of the United Nations, or parties to the Statute of the International Court of Justice, which are not party to the 1949 Geneva Conventions*

Estonia, Lithuania (the declarations of continuity deposited by *Lithuania* on 10 October 1991 and *Estonia* on 19 November 1991 concerning the two Geneva Conventions of 1929 were registered by the depositary State on 20 December 1991 (*Lithuania*) and on 26 November 1991 (*Estonia*).

The above declarations took effect retroactively from 6 September 1991, the date on which the Soviet Union recognized the independence of the Baltic States), *Marshall Is., Micronesia, Nauru*.

2. **USSR:** Six other States members of the USSR at the moment of its dissolution (Armenia, Azerbaijan, Georgia, Moldova, Tajikistan, Uzbekistan) have not yet clearly stated where they stand in terms of the Geneva Conventions and Protocols I and II. Until such time as they clarify their situation, the ICRC considers these States to be bound by the 1949 Geneva Conventions and the 1977 Protocols, including the declaration pursuant to Article 90 of Protocol I, as States which have succeeded thereto. However, no indication appears under their name in Tables II and III and they are not included in the totals of Table IV.

3. **Palestine:** On 21 June 1989, the Swiss Federal Department of Foreign Affairs received a letter from the Permanent Observer of Palestine to the United Nations Office at Geneva informing the Swiss Federal Council “that the Executive Committee of the Palestine Liberation Organization, entrusted with the functions of the Government of the State of Palestine by decision of the Palestine National Council, decided, on 4 May 1989, to adhere to the Four Geneva Conventions of 12 August 1949 and the two Protocols additional thereto”. On 13 September 1989, the Swiss Federal Council informed the States that it was not in a position to decide whether the letter constituted an instrument of accession, “due to the uncertainty within the international community as to the existence or non-existence of a State of Palestine”.

Books and reviews

1991 PAUL REUTER PRIZE

THE INTERNATIONAL LAW OF ARMED CONFLICT: PERSONAL AND MATERIAL FIELDS OF APPLICATION

The wealth of literature on international humanitarian law (IHL) has recently been further enriched by this work of Edward K. Kwakwa,* one of the two winners of the 1991 Paul Reuter Prize.

Undoubtedly, this book will become a “classic”, a major reference work for all who wish to understand, discuss and teach IHL, for it is refreshingly original in its handling of a subject that is not particularly original in itself. Right from the start, the author shows a great respect for the reader and is careful not to leave anything to chance: to avoid any misunderstanding he clarifies the legal terms and expressions used and is at pains to define the purpose and focus of the study. Each chapter dealing with the various aspects of humanitarian law begins with a brief introduction and concludes with a summary and partial conclusions; these are not only very useful for the hasty reader but also help by providing a continuity of thought linking one chapter to the next. It is immediately evident that in dealing with the various aspects of IHL the author has adopted a highly structured approach, with a logical progression from each subject to the next.

But there is more: although Kwakwa consults a wide range of critical sources, quoting the best known authors, he is never constrained by them but makes his voice heard, particularly in the most controversial areas.

The legal scholar's close-knit analysis never lapses into pure academicism because the author carefully illustrates his remarks with examples and cases judiciously chosen from amongst the most recent conflicts.

* * *

After giving a detailed historical account of the various IHL instruments since the Middle Ages, with reference to certain armed conflicts, and showing the advance of law with its successive achievements, marked for instance by

* Edward K. Kwakwa, *The International Law of Armed Conflict: Personal and Material Fields of Application*, winner of the 1991 Paul Reuter Prize awarded by the International Committee of the Red Cross, Kluwer Academic Publishers, Dordrecht, Boston, London, 1992, 208 pages.

the 1863 Lieber Code and the 1949 and 1977 Diplomatic Conferences, the author moves on to the *customary international law of armed conflicts*. He underscores the importance of custom in international legal practice and at the same time the difficulty in identifying its existence, especially in cases of armed conflict. Nonetheless certain general principles, such as those of military necessity, humanity, proportionality and distinction, are crystallized through the practice of State and non-State entities; the author analyses these principles while stressing the dichotomy between what belligerents say and how they actually behave on the battlefield. Decisions are taken by commanding officers and not by jurists. Hence the stress placed by the author on the usefulness of national military manuals, which he considers as an important source of customary law, and especially the need for scholarly studies to ascertain the formation of custom in the humanitarian law field.

When examining the *material field of application* of the law of armed conflicts, Mr. Kwakwa closely analyses Article 2 common to the four Geneva Conventions in the light of recent events. In particular, he distinguishes between conflicts without a declaration of war (Panama, Falklands/Malvinas) and conflicts involving total or partial occupation of the territory of a High Contracting Party. Then going on deal with wars of national liberation, the author demonstrates why Article 1.4 of Protocol I has given rise to so much controversy. To his mind, this provision should not apply exclusively to national liberation movements but should also include all groups and communities fighting for their right to self-determination. Here the author gives the term "peoples" a broad interpretation enabling the protection of *ius in bello* to be expanded to the greatest possible number of conflict victims.

By way of example, Mr. Kwakwa examines the question of the applicability of the law of war to the conflicts in Namibia and South Africa.

He concludes from this examination that, although Article 2 common to the Geneva Conventions may be cited as a customary principle, the same does not yet apply to Article 1.4 of Protocol I. However, the practice of States shows a clear trend towards treating captured members of liberation movements as prisoners of war as long as they are wearing distinctive uniforms and refraining from attacks on the civilian populace.

In logical sequence the author next considers the provisions relating to the *personal field of application* and the contentious issues to which they have given rise, stemming essentially from the traditional distinction between regular and irregular combatants. Concentrating on guerrilla warfare and combatant and prisoner-of-war status (notably Articles 43 and 44 of Protocol I), the author examines the differing interpretations given to these texts: he comes to the conclusion that they constitute the best possible compromise between the fundamental necessity to protect the civilian population, on the one hand, and the need for humanitarian protection of combatants, on the other.

Tackling the question of mercenaries, Mr. Kwakwa believes that Article 47 of Protocol I provides the best definition of them to date. After

setting this question in its historical context and illustrating his analysis by numerous examples in Africa, he then proceeds to make a very interesting examination of national legislation on the subject in a few countries — the United States, the United Kingdom, Angola — and of the relevant provisions in the 1972 Convention of the Organization of African Unity and that adopted by the United Nations in 1989. In conclusion, noting that the treatment of mercenaries varies from one country to another, the author hopes that in the future States will grant combatant and prisoner-of-war status to mercenaries who behave in accordance with IHL.

The chapter on *reprisals* is one of the most significant illustrations of the author's method: definition of reprisals in public international law, differences between reprisals in time of war and reprisals in peacetime (counter-measures), the law prior to and since the First World War, and specific developments of the law by the 1949 Conventions and especially the Additional Protocols. The author focuses mainly on reprisals against civilians, civilian objects, cultural objects and places of worship, etc. Although in his assessment he considers that the 1949 Geneva Conventions' prohibition on reprisals has become part of customary law, this is not the case for the Protocols. By way of proof he adduces the fact that no State party to these Protocols has incorporated the new provisions into its military manual.

Furthermore he believes that the frequent recourse to reprisals is due to an absence of effective institutional structures to implement IHL and cites as examples of such inefficacy the system of Protecting Powers, the International Fact-Finding Commission with its limited mandate and even diplomatic pressure brought to bear during an armed conflict. The author regrets that the international community is not yet ready to abandon reprisals, but does feel that certain prohibitions on reprisals against the civilian population and objects which are indispensable to their survival are likely to pass into the corpus of customary international law.

Another major chapter deals with the *implementation and enforcement* of IHL. The author begins by describing the mechanisms for implementation of IHL at the international level (the International Fact-Finding Commission, Protecting Powers, ICRC) and then at the national level (dissemination, military manuals, legal advisers, etc.) before going on to analyse questions of implementation involving national liberation movements.

In his general conclusion, the author points out that States, by signing the Conventions and Protocols, have undertaken to respect and ensure respect for them in all circumstances. The challenge in the years to come will be attempting to reconcile humanitarian interests with military necessities, and humanitarian values with the political will of States. Dissemination remains a priority and the author considers that it would be appropriate for the international community to draft a set of norms prescribing the minimum actions required of States in fulfilment of their obligation to disseminate IHL.

* * *

While being both a manual on humanitarian law and a personal critical assessment, Mr. Kwakwa's book is also very well written: the clarity of style makes it as easy to read as a novel. At a time when the teaching of IHL has higher priority than ever, we can but hope that this work will be translated into other languages.

LA HUMANIZACIÓN DE LA GUERRA

International humanitarian law and the armed conflict in Colombia

Alejandro Valencia Villa, joint winner of the 1991 Paul Reuter Prize, has published "La humanización de la guerra",¹ a work in which he examines from the historical, legal and political standpoint the development of international law and the law of armed conflict in his native Colombia. The book is intended to demonstrate from both a legal and historical perspective that implementing the basic principles and rules of humanitarian law allows better protection for civilians in a situation of ongoing guerilla activity. This book is in fact a passionate and convincing appeal for ratification by Colombia of the Protocols additional to the Geneva Conventions.

There is a certain similarity of approach between Valencia Villa and his fellow prize-winner Edward K. Kwakwa. Like Kwakwa, Valencia Villa is at pains to spell out the concepts of international law, and specifically international humanitarian law, that are sometimes confused in his country. Also like Kwakwa, he makes a point of sketching the history of humanitarian thought from ancient times up to the nineteenth century, with particular emphasis on the role played by three figures in Latin American history. The first is Simón Bolívar, *el Libertador*, who during the conflicts that broke out after Colombian independence proposed, negotiated and signed a treaty in 1820 with Pablo Morillo to regulate the conduct of hostilities — one of the first agreements of its kind. This was followed by a covenant governing the treatment of civilians, exchange of prisoners and burial of the dead. The second figure is Andrés Bello whose major work "*Principios de derecho de gentes*" in 1832 had a great impact on both military commanders and legislators in terms of the protection of women, children, the elderly, the wounded and the sick. Finally — again like Kwakwa — Valencia Villa devotes space to Francis Lieber, whose Lieber Code for the US army in 1863 marked the first attempt to lay down rules to make civil wars more humane.

¹ Alejandro Valencia Villa, *La humanización de la guerra — Derecho internacional humanitario y conflicto armado en Colombia*, Ediciones Uniandes, Tercer Mundo Editores, Bogotá, 1991, 202 p.

These great humanists, alongside whom Villa places the Spaniard Diego García de Palacio, author of the first work in the Americas on the law of war,² paved the way for the codification that was to take place in 1864.

In his study of the development in Colombia of the law of armed conflict, Villa skilfully highlights original and relevant historical and, above all, legal texts (treaties, truce agreements, etc.) to illustrate the humanitarian traditions of both the Colombian military and government at times of acute crisis in the country's history — well before Solferino and the earliest Geneva Convention. He thus throws into sharp relief the divergence from this historical and legal tradition of recent governments and, above all, of the armed forces. Valencia Villa dwells upon the position of the Colombian delegation at the 1974-1977 Diplomatic Conference and explains why Colombia is not party to the Protocols, in particular Protocol II, citing the contradictory interpretation of arguments concerning the material criteria for applicability (Protocol II, Article I), the fear that the provisions in that article would grant guerrillas the status of belligerents, and intervention by international organizations to restore internal public order.

Valencia Villa provides a detailed rebuttal of each of the government's arguments. Assessing the position of the dissident forces operating under the command of the *Coordinadora Guerrillera Simón Bolívar*, which has long called for ratification of the Protocols, the author voices doubt that a few rebel groups have any effective widespread control over the territory (he also doubts that they have any real desire to make the conflict more humane since they commit acts such as hostage-taking). But he is quite categorical in stating that the country has gone beyond the stage of 'internal disturbances and tensions' — the violence of the clashes between the armed forces and the guerrillas, the indiscriminate bombings and the massacres of civilians are plain evidence of an armed conflict in Colombia.

Despite the violations of the law, Valencia Villa feels that all the forces involved meet the criteria set out in Article 1 of Protocol II for that instrument's material field of application and that Colombia would do well to accede to it.

On the other hand, the author believes that humanitarian law cannot apply to the drug traffickers or paramilitary groups. Those situations do not constitute an armed conflict — however much the government may use the term "war" — but are quite simply crime and terrorism.

In the two final chapters, dealing respectively with the development of international law to cover a state of siege and with Colombian military legislation, Valencia Villa looks at the civil wars that have flared in the country since the middle of the nineteenth century and shows that the negotiations between the belligerents, i.e. the federal authorities and those of the break-away States, resulted in humanitarian agreements based on international law

² Alejandro Valencia Villa dealt with this subject in "Diálogos militares by Diego García de Palacio: The first American work on the law of nations", *IRRC*, No. 290, September-October 1992, pp. 463-468.

and the law of war, agreements that the belligerents undertook to respect. Citing Colombian legislation and parliamentary declarations to the press, he shows how the conclusion of such agreements influenced legislators when they were drawing up the country's various constitutions. For example, Article 91 of the 1863 constitution and, above all, Article 121 of the 1886 constitution (still in force albeit with amendments made in 1910 and 1968) refer to international law as constituting an integral part of national legislation, its role being to "govern conduct in the event of civil war in particular" and to "bring an end to any civil war through agreements between the belligerents". Article 121 empowers the President to implement international law in the event of war with another country or internal disturbances (*conmoción interior*).

Finally, the author shows how the various codes of military conduct in Colombia have progressively introduced rules in keeping with the law of The Hague and the law of Geneva.

This stimulating study succeeds admirably in giving us a better understanding of Colombia, a country full of contradictions and paradoxes, a country where resorting to violence to settle differences is just as traditional as the desire to make armed conflict more humane. Its final message is simple: "Promoting humanitarian law means introducing an element of moderation and courage in relations between friend and foe, between soldier and guerrilla, between city dweller and farmer, in short between all Colombians. Implementing humanitarian law means beginning to acknowledge the right of others to be treated as human beings".³

Jacques Meurant

³ "Propiciar el derecho humanitario es introducir una herramienta de moderación y de aliento, frente al amigo o al enemigo, al soldado o al guerrillero, al ciudadano o al campesino, al colombiano en últimas. Su aplicación significa reconocer en el otro su derecho a ser hombre" (pp. 191-192).

BOOK REVIEWS

- ***Derecho internacional humanitario. Su aplicación en Colombia***, Mauricio Hernández Mondragón, Office of the Presidential Adviser on Human Rights, Santafé de Bogotá, Colombia, 1992, 95 pp.

This work is a compilation of the author's experience in research on and dissemination of international humanitarian law. It is the first of a series entitled "*Biblioteca básica de derechos humanos*", to be published by the Office of the Presidential Adviser on Human Rights of the Republic of Colombia.

The author analyses the rules of international humanitarian law applicable to non-international armed conflicts. He begins with a definition of international humanitarian law and the problems that arise in its application, and goes on to discuss practical aspects, seeking possible solutions based on his knowledge of the rules that make up this body of law and of the extent to which its implications are accepted. The publication also contains valuable references to national measures for the application of international humanitarian law in Colombian legislation.

María Teresa Dutli

- ***The Movement of Persons Across Borders, Studies in Transnational Legal Policy***, No. 23, Louis B. Sohn and Thomas Buergethal, eds., The American Society of Transnational Law, Washington, D.C., 1992, 193 pp.

This monograph is a condensation of a much larger systematic study undertaken in 1989 under the joint auspices of the John D. and Catherine T. MacArthur Foundation and the American Society of International Law. The study was accomplished thanks to the help of some forty experts from all over the world.

The work is in catalogue form, setting out a series of basic rules and principles governing the movement of persons across national borders. These "governing rules" were worked out by the team of experts who based their decisions on a thorough study of international relations. Each of the governing rules is accompanied by an explanatory comment that indicates its sphere of applicability and gives the elements of international practice that define its legal nature (international agreements, international decisions and State practice).

This work is a remarkable contribution to the development and codification of international law. Its clarity renders it easily accessible to readers with no legal background.

Sylvain Vité

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- URUGUAY — Uruguayan Red Cross, Avenida 8 de Octubre 2990, *Montevideo*.
- U.S.S.R. — The Alliance of Red Cross and Red Crescent Societies of the U.S.S.R., 1, Tcheremushkinskii proezd 5, *Moscow, 117036*.
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- ZIMBABWE — The Zimbabwe Red Cross Society, P.O. Box 1406, *Harare*.

The *International Review of the Red Cross* is the official publication of the International Committee of the Red Cross. It was first published in 1869 under the title "Bulletin international des Sociétés de secours aux militaires blessés", and then "Bulletin international des Sociétés de la Croix-Rouge".

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*IMPLEMENTATION OF INTERNATIONAL
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