

Draft Rules For Limitation Of Dangers Incurred
By Civilians In Time Of War

New Delhi

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XIXth INTERNATIONAL RED CROSS CONFERENCE
(NEW DELHI, JANUARY 1957)

DRAFT RULES
FOR THE
LIMITATION OF THE DANGERS
INCURRED BY
THE CIVILIAN POPULATION
IN TIME OF WAR



INTERNATIONAL COMMITTEE OF THE RED CROSS

Geneva, September 1956

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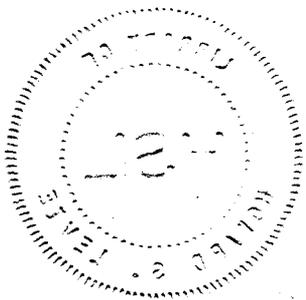
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WASHINGTON, D. C. 20520

INTRODUCTION

Nearly a century ago the Red Cross was born of the suffering observed on a battlefield. Since that time it has been organized and has grown, and its spirit of self-sacrifice has reached the four corners of the earth. It has, moreover, drafted the rules of humanitarian law, to mitigate the evils engendered by war. It deplores, more than ever, the possibility of recourse being had to war and its constant endeavour must therefore be to improve the peaceful relations which exist between the nations of the world.

There is still a danger, however, of force being used to settle disputes between States.

Since the Red Cross is essentially neutral in political matters, it cannot take direct action to prevent or stop wars, except by rejecting the very idea of war ; but it does at least strive continuously to limit their tragic consequences. It must do more than that, however : it must make every effort to ensure that if violence is used, as is always possible, certain humane rules, implemented by practical measures taken in good time, protect the people who are not taking part in the struggle. The Red Cross must multiply its efforts to achieve this, so long as it cannot, unfortunately, regard an outbreak of war as impossible.

In view of the developments which have taken place in methods of making war, and the continual invention of new weapons, a conflict would today be a catastrophe out of all proportion to the ends it might be hoped to attain. Everyone knows that the extensive use of certain weapons would mean extermination of whole nations and the end of civilization.

The greatest courage and devotion would be unavailing under such circumstances, and the recent Geneva Conventions would themselves be ineffective if the belligerents were unrestricted in their choice of means and methods of warfare.

It is true that certain restrictions do in fact exist. They found expression in the Hague Conventions of 1899 and 1907. But those rules are too often forgotten, or their validity questioned, on the grounds that one cannot stand in the way of scientific progress and that principles recognized before the time of air warfare and nuclear weapons no longer hold good. Furthermore, the fact that recourse has been had very generally to the system of indiscriminate bombing seems to have led to its becoming, as it were, an accepted practice, and given rise to a kind of fatalism.

Can the Red Cross accept such a state of affairs? Certain military considerations must give way to the demands of humanity. Reason must be the master of scientific inventions and although the law cannot disregard them, it must not merely recognize the effects they produce ; it must control them.

Convinced of this, the International Committee of the Red Cross, and encouraged by a resolution adopted unanimously by the National Societies at the XXIIIrd Session of the Board of Governors, drew up these *Draft Rules* with the help of experts designated by the Societies. The Committee wishes to thank them for their valuable contribution to this work.

The Draft Rules are now submitted, with the Committee's comments, to all National Societies and all Governments, with a view to their discussion at the XIXth International Red Cross Conference which is to be held in New Delhi early in 1957. The International Committee will there submit a resolution on the Rules.

Certain quarters, possibly considering that these Draft Rules are too complicated, would have regarded the prohibition, pure and simple, of certain weapons as the only sound solution. Others may, on the contrary, consider that the Draft Rules should contain more technical details. The International

Committee is not qualified to decide between differing opinions of that kind and has therefore approached the matter solely from the Red Cross angle.

It is necessary to proceed by easy stages, however ; for the experience of a century has shown us that if legal texts are to be accepted, ratified and applied they must take certain hard facts into account.

It is Governments which will have to draw their own conclusions from the enclosed Draft and seize the opportunity—perhaps the last—which it offers them. If they think fit, they can modify it, cut it down or add clauses of a more definitely technical description, or prohibitions of a more detailed or sweeping nature.

The International Committee of the Red Cross feels that it is fulfilling its duty in proposing that they should take the results of its work as a basis for discussion.

RULES FOR THE LIMITATION OF THE DANGERS
INCURRED BY THE CIVILIAN POPULATION
IN TIME OF WAR

Preamble

All nations are firmly convinced that war should be banned as a means of settling disputes between man and man.

However, in view of the need, should hostilities once more break out, of safeguarding the civilian population from the destruction with which it is threatened as a result of technical developments in weapons and methods of warfare,

The limits placed by the requirements of humanity and the safety of the population on the use of armed force are restated and defined in the following rules.

In unforeseen cases, the civilian population will still have the benefit of the general rule set forth in Article I, and of the principles of international law.

* * *

Chapter I. — Object and Field of Application

ARTICLE I

Object *Since the right of Parties to the conflict to adopt means of injuring the enemy is not unlimited, they shall confine their operations to the destruction of his military resources, and leave the civilian population outside the sphere of armed attacks.*

This general rule is given detailed expression in the following provisions:

ARTICLE 2

The present rules shall apply:

- OK
Field of application
- (a) *In the event of declared war or of any other armed conflict, even if the state of war is not recognized by one of the Parties to the conflict.*
 - (b) *In the event of an armed conflict not of an international character.*

ARTICLE 3

Definition of term "attacks" *The present rules shall apply to acts of violence committed against the adverse Party by force of arms, whether in defence or offence. Such acts shall be referred to hereafter as "attacks".*

ARTICLE 4

OK
Definition of term "civilian population" *For the purpose of the present rules, the civilian population consists of all persons not belonging to one or other of the following categories:*

- (a) *Members of the armed forces, or of their auxiliary or complementary organizations.*
- (b) *Persons who do not belong to the forces referred to above, but nevertheless take part in the fighting.*

ARTICLE 5

The obligations imposed upon the Parties to the conflict in regard to the civilian population, under the present rules, are complementary to those which already devolve expressly upon the Parties by virtue of other rules in international law, deriving in particular from the instruments of Geneva and The Hague.

Relation with previous Convention

Chapter II. — Objectives barred from Attack

ARTICLE 6

Attacks directed against the civilian population, as such, whether with the object of terrorizing it or for any other reason, are prohibited. This prohibition applies both to attacks on individuals and to those directed against groups.

Immunity of the civilian population

In consequence, it is also forbidden to attack dwellings, installations or means of transport, which are for the exclusive use of, and occupied by, the civilian population.

unrealistic impossible to determine

Nevertheless, should members of the civilian population, Article II notwithstanding, be within or in close proximity to a military objective they must accept the risks resulting from an attack directed against that objective.

ARTICLE 7

In order to limit the dangers incurred by the civilian population, attacks may only be directed against military objectives.

OK as written
Limitation of objectives which may be attacked

Only objectives belonging to the categories of objective which, in view of their essential characteristics, are generally acknowledged to be of military importance, may be considered as military objectives. Those categories are listed in an annex to the present rules.

Comments
Applies to
not necessary
annex
MG

However, even if they belong to one of those categories, they cannot be considered as a military objective where their total or partial destruction, in the circumstances ruling at the time, offers no military advantage.

Chapter III. — Precautions in Attacks on Military Objectives

ARTICLE 8

Precautions to be
taken in planning
attacks

The person responsible for ordering or launching an attack shall, first of all:

(whatever his
rank
may
be)

- (a) make sure that the objective, or objectives, to be attacked are military objectives within the meaning of the present rules, and are duly identified.

When the military advantage to be gained leaves the choice open between several objectives, he is required to select the one, an attack on which involves least danger for the civilian population:

- (b) take into account the loss and destruction which the attack, even if carried out with the precautions prescribed under Article 9, is liable to inflict upon the civilian population.

He is required to refrain from the attack if, after due consideration, it is apparent that the loss and destruction would be disproportionate to the military advantage anticipated:

- (c) whenever the circumstances allow, warn the civilian population in jeopardy, to enable it to take shelter.

ARTICLE 9

Precautions to be
taken in carrying
out the attack

All possible precautions shall be taken, both in the choice of the weapons and methods to be used, and in the carrying out of an attack, to ensure that no losses or damage are caused to the

civilian population in the vicinity of the objective, or to its dwellings, or that such losses or damage are at least reduced to a minimum.

In particular, in towns and other places with a large civilian population, which are not in the vicinity of military or naval operations, the attack shall be conducted with the greatest degree of precision. It must not cause losses or destruction beyond the immediate surroundings of the objective attacked.

The person responsible for carrying out the attack must abandon or break off the operation if he perceives that the conditions set forth above cannot be respected.

ARTICLE 10

It is forbidden to attack without distinction, as a single objective, an area including several military objectives at a distance from one another where elements of the civilian population, or dwellings, are situated in between the said military objectives.

Target-area bombing

ARTICLE 11

The Parties to the conflict shall, so far as possible, take all necessary steps to protect the civilian population subject to their authority from the dangers to which they would be exposed in an attack—in particular by removing them from the vicinity of military objectives and from threatened areas. However, the rights conferred upon the population in the event of transfer or evacuation under Article 49 of the Fourth Geneva Convention of 12 Aug. 1949 are expressly reserved.

OK
"Passive" precaution

Similarly, the Parties to the conflict shall, so far as possible, avoid the permanent presence of armed forces, military material, mobile military establishments or installations, in towns or other places with a large civilian population.

ARTICLE 12

The Parties to the conflict shall facilitate the work of the civilian bodies exclusively engaged in protecting and assisting the civilian population in case of attack.

OK
Civil Defence bodies

They can agree to confer special immunity upon the personnel of those bodies, their equipment and installations, by means of a special emblem.

ARTICLE 13

Parties to the conflict are prohibited from placing or keeping members of the civilian population subject to their authority in or near military objectives, with the idea of inducing the enemy to refrain from attacking those objectives.

Chapter IV. — Weapons with Uncontrollable Effects

ARTICLE 14

Without prejudice to the present or future prohibition of certain specific weapons, the use is prohibited of weapons whose harmful effects—resulting in particular from the dissemination of incendiary, chemical, bacteriological, radioactive or other agents—could spread to an unforeseen degree or escape, either in space or in time, from the control of those who employ them, thus endangering the civilian population.

This prohibition also applies to delayed-action weapons, the dangerous effects of which are liable to be felt by the civilian population.

ARTICLE 15

If the Parties to the conflict make use of mines, they are bound, without prejudice to the stipulations of the VIIIth Hague Convention of 1907, to chart the mine-fields. The charts shall be handed over, at the close of active hostilities, to the adverse Party, and also to all other authorities responsible for the safety of the population.

OK
Intentional exposure
to danger

Prohibited methods
of warfare

Prohibited
methods
of warfare
effects
of weapons

Safety measures
and devices

No. 1000

Without prejudice to the precautions specified under Article 9, weapons capable of causing serious damage to the civilian population shall, so far as possible, be equipped with a safety device which renders them harmless when they escape from the control of those who employ them.

Chapter V. — Special Cases

ARTICLE 16

When, on the outbreak or in the course of hostilities, a locality is declared to be an "open town", the adverse Party shall be duly notified. The latter is bound to reply, and if it agrees to recognize the locality in question as an open town, shall cease from all attacks on the said town, and refrain from any military operation the sole object of which is its occupation. ^{PK} "Open towns"

In the absence of any special conditions which may, in any particular case, be agreed upon with the adverse Party, a locality, in order to be declared an "open town", must satisfy the following conditions :

- (a) *it must not be defended or contain any armed force ;*
- (b) *it must discontinue all relations with any national or allied armed forces ;*
- (c) *it must stop all activities of a military nature or for a military purpose in those of its installations or industries which might be regarded as military objectives ;*
- (d) *it must stop all military transit through the town.*

The adverse Party may make the recognition of the status of "open town" conditional upon verification of the fulfilment of the conditions stipulated above. All attacks shall be suspended during the institution and operation of the investigatory measures.

The presence in the locality of civil defence services, or of the services responsible for maintaining public order, shall not be considered as contrary to the conditions laid down in Paragraph 2. If the locality is situated in occupied territory, this provision applies also to the military occupation forces essential for the maintenance of public law and order.

When an "open town" passes into other hands, the new authorities are bound, if they cannot maintain its status, to inform the civilian population accordingly.

None of the above provisions shall be interpreted in such a manner as to diminish the protection which the civilian population should enjoy by virtue of the other provisions of the present rules, even when not living in localities recognized as "open towns".

ARTICLE 17

In order to safeguard the civilian population from the dangers that might result from the destruction of engineering works or installations—such as hydro-electric dams, nuclear power stations or dikes—through the releasing of natural or artificial forces, the States or Parties concerned are invited:

- (a) *to agree, in time of peace, on a special procedure to ensure in all circumstances the general immunity of such works where intended essentially for peaceful purposes:*
- (b) *to agree, in time of war, to confer special immunity, possibly on the basis of the stipulations of Article 16, on works and installations which have not, or no longer have, any connexion with the conduct of military operations.*

The preceding stipulations shall not, in any way, release the Parties to the conflict from the obligation to take the precautions required by the general provisions of the present rules, under Articles 8 to 11 in particular.

Chapter VI. — Application of the Rules ¹

ARTICLE 18

States not involved in the conflict, and also all appropriate organisations, are invited to co-operate, by lending their good offices, in ensuring the observance of the present rules and preventing either of the Parties to the conflict from resorting to measures contrary to those rules.

OK
Assistance of third parties

ARTICLE 19

All States or Parties concerned are under the obligation to search for and bring to trial any person having committed, or ordered to be committed, an infringement of the present rules, unless they prefer to hand the person over for trial to another State or Party concerned with the case.

OK
Trial and judicial safeguards

The accused persons shall be tried only by regular civil or military courts; they shall, in all circumstances, benefit by safeguards of proper trial and defence at least equal to those provided under Articles 105 and those following of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949.

ARTICLE 20

All States or Parties concerned shall make the terms of the provisions of the present rules known to their armed forces and provide for their application in accordance with the general principles of these rules, not only in the instances specifically envisaged in the rules, but also in unforeseen cases.

OK
Diffusion and details of application

¹ Articles 18 and 19, dealing with the procedure for supervision and sanctions, are merely given as a rough guide and in outline; they will naturally have to be elaborated and supplemented at a later stage.

COMMENTARY ON THE DRAFT

I. REASON AND PURPOSE OF THE DRAFT

In prefacing the actual text of the Draft by a short introduction, the International Committee of the Red Cross¹ wished to bring out the fundamental reasons which have led to this new Code of Rules, and its object. There is no point, therefore, in reverting here to what has already been said. At the most we may allow ourselves to add some details concerning certain matters.

1. The ICRC draws attention to the danger of the Geneva Conventions remaining inoperative if the belligerents are not limited in any way in their choice of weapons or methods of warfare. It had already asked, in its Appeal of April 1950, "how blind weapons could spare hospitals, prisoner of war camps and the civilian population"?

This concern about the means of waging war is not recent. It is true that, to begin with, and later when extending the Geneva Convention, the Red Cross endeavoured to ensure the protection of certain categories of individuals, without attaching primary importance to the manner in which hostilities were conducted. The time has come, however, when it has to consider the dangers with which the victims with whom it is concerned, and non-combatants in general, are inevitably threatened, through the terrifying developments in the means of waging war.

¹ The Committee will be referred to in the following pages by the abbreviation "ICRC".

It is above all since the First World War that the ICRC has been concerned about this problem. In 1918 it protested violently against gas warfare. Two years later, in an appeal to the League of Nations, it stated the restrictions which should be placed on aerial warfare.

Since that time, encouraged by numerous resolutions of the International Red Cross Conferences, it has not ceased to concern itself with this aspect of humanitarian law. In 1931, in particular, it joined experts delegated by National Red Cross Societies in the study of legal and technical means of protecting the civilian population. But public opinion did not see all the dangers of total war and in many official quarters there was doubtless no desire for binding obligations at that juncture; the ICRC therefore endeavoured to safeguard what could be safeguarded, by encouraging "passive defence" (civil defence) and by developing the idea of safety zones.

The ICRC still remained conscious, however, of the need to set limits to the new forms of war. At the beginning of the Second World War, it accordingly submitted proposals to the belligerents, the acceptance of which would have eliminated much suffering. Since 1945, developments in the design of weapons have not ceased to provide further support for this point of view. Consequently, while applying itself first of all to the task of introducing the improvements dictated by experience into the Geneva Conventions, the ICRC did not lose sight of the necessity of reinforcing, in the interests of the civilian population as a whole, the legal barriers to the uncontrolled use of force.

It is true that the rules governing the conduct of hostilities belong rather to what is called Hague law than to the actual field of the Geneva Conventions; a point which led some National Societies to question the competence of the Red Cross to deal with such matters. But as the ICRC was able to make clear to them, and is made obvious by the preceding pages, when existing law no longer offers sufficient protection to persons not, or no longer, taking part in hostilities, whatever the field to which the law applies, the Red Cross is justified in taking up the question. It did so in the case of prisoners of war and,

more recently, in the case of inhabitants of occupied territory, matters which originally came under Hague law.

2. As stated in the Introduction, the limits imposed by humanitarian requirements on methods of war were already set forth in the Hague rules of 1907, that is to say in the IVth Hague Convention of 1907, and in the provisions of the Regulations annexed to that instrument in particular. The Preamble to that Convention and several provisions in the Regulations, especially the Articles relating to bombardments, are directly concerned with the means used to wage war, and with their possible repercussions on the civilian population. The IXth Hague Convention of 1907 relating to naval bombardments also applies in that connection.

In *reaffirming* these limits, the present Code of Rules is not therefore breaking entirely new ground. We shall, accordingly, have occasion to explain in detail further on, in our comments on Article 5, the manner in which the ICRC sees the relationship existing between the present Draft and previous international legislation relating to methods of warfare.

3. The object of the present Code of Rules, as indicated in Paragraphs 4 and 6 of the Introduction in particular, calls for a few brief comments.

In undertaking to reaffirm the requirements of humanity, to which military necessities must in certain cases give way, the ICRC is actuated by an intense desire to see the proposed Rules become a diplomatic instrument, thus giving them unquestioned authority and binding the greatest possible number of States. This idea has governed the drafting of the text—although the ICRC preferred, for the reasons stated in Chapter III, that this instrument should take the form of draft rules rather than of a draft international Convention. This was also, apparently, the feeling of the great majority of the National Societies, since the resolution they adopted at Oslo, the text of which is reproduced further on (see p. 23), speaks of “necessary additions to the Conventions in force”.

What then will be the form of that diplomatic instrument? It is necessary, in that connection, to clear up forthwith a possible source of misunderstanding¹.

Some National Red Cross Societies were under the impression that the term "additions to the Geneva Conventions in force" implied an instrument which would be supplementary to, and a revision of, the actual text of the Geneva Conventions. They were disturbed to see the question of the revision of those Conventions raised at so early a stage; that, in their opinion, was liable to delay their ratification.

The ICRC was able to reassure them by stating that it had always interpreted the Oslo resolution as referring to an instrument quite distinct from the Geneva Conventions, but intended to supplement them, in the same way, for instance, as the Fourth Convention is itself "supplementary" to the Hague Regulations². We have, moreover, shown how greatly the reaffirmation of the limits placed on means and methods of warfare will assist in making the Geneva Conventions more effective.

This interpretation was also that of the Experts (1956) who discarded the suggestion made by one of their number that the present Rules be drawn up with an eye to their subsequent insertion into the text of the Fourth Geneva Convention (see Report, p. 5). Further, the present Draft Rules should be regarded as supplementary, not only to that Convention, but also, as pointed out later in connection with Article 5, to other international treaties such as Hague Conventions or the Geneva Protocol of 1925.

Since it seems hardly possible that the proposed diplomatic instrument could form an integral part of the group of rules known as "the Geneva Conventions", should it take the form of an extension or partial revision of the Hague Conventions, or of a completely new instrument, entirely distinct from the said Conventions?

¹ This misunderstanding which might arise from the wording of the Oslo Resolution, is no doubt connected with a slip which occurred in the 1955 Commentary (p. 16), in referring to "additions to the Geneva Conventions."

² See Article 154 of the Fourth Convention of August 12, 1949.

It is too early to devote too much attention to a point which is essentially a matter to be decided by Governments. The Government representatives at the XIXth International Red Cross Conference will be able, if they so desire, to supply it with useful information in this connexion.

For the moment the Red Cross need do no more than set forth the requirements of humanity, leaving to Governments the responsibility for embodying those requirements in rules binding on the States.

II. *PREPARATION OF THE PRESENT DRAFT*

The idea of adapting the restrictive rules safeguarding the civilian population to the requirements of the new methods of warfare, forced itself more and more sharply on the Committee's attention after the Second World War.

However, before going any further, the ICRC felt it advisable to follow its customary practice of consulting highly qualified experts. In 1954, it accordingly invited to Geneva, in a purely private capacity, some 15 persons of established reputation from various countries, in whose selection a number of National Societies were of great assistance ¹.

¹ The following are the names of the persons invited (arranged in alphabetical order) : Major Richard A. Baxter, Judge Advocate General's Office, Department of the Army (Washington D.C.) ; Professor Maurice Bourquin, Professor of Law at the University of Geneva and at the Graduate Institute of International Studies (Geneva and Brussels) ; Mr. Georges Cahen-Salvador, President of Section to the Conseil d'Etat (Paris) ; Professor E. J. S. Castren, Professor of Law at the University of Helsinki ; Dr. Costedoat, Medical Inspector-General, Technical Adviser to the Ministry of Public Health (Paris) ; Dr. Jugi Enomoto, Lawyer, formerly Instructor at the Navy Staff College (Tokyo) ; Captain C. B. Falls, Fellow of All Souls College, sometime Chichele Professor of the History of War at Oxford University (London) ; H. E. Y. D. Gundevia, Ambassador of India in Switzerland (Berne and New Delhi) ; Dr. Radmilo Jovanovic, Medical General in the Yugoslavian Armed Forces (Belgrade) ; Professor La Pira, Mayor of Florence, Former Senator (Florence) ; Dr. M. W. Mouton, Captain in the Royal Netherlands Navy (Wassenaar, Netherlands) ; Mr. Hans Rumpf, formerly Major-General in charge of German Fire Services (Elmshorn, German Federal Republic) ; Major-General A. E. D. Tobiesen, Head of the Civil Defence Services (Oslo) ; Dr. M. Tsuzuki, Professor emeritus of the

The meeting lasted one week (April 6-13) and provided the ICRC with much valuable information to which reference will be found in this Commentary under the head "the Experts (1954)".

Their views were brought to the knowledge of all Red Cross Societies by a special document¹. It will suffice here to recall the essential points.

The Experts confirmed that certain basic principles of the laws of war, established before aviation existed, such as those prohibiting direct attacks on non-combatants, or the causing of unnecessary harm, were still in force. They also confirmed that total war from the air had not "paid"; according to one of them, the value of indiscriminate bombing had borne no relation either to the efforts it had cost or to the expenditure, including that of human lives, which it had involved. The Experts considered that aerial warfare was one of the fields of hostilities in which a code of rules, already very useful in the case of "localized" conflicts, was most needed. Finally, and most important of all, they recognized that military necessities must in certain cases give way to those of humanity. In the striking words of one of them, "towns and cities have a right to existence and our generation, the mere titular holder of the right, must pass it on intact, to future generations, as it received it".

However, while confirming that certain principles were still valid, the Experts did not conceal the difficulty of expressing them in the form of precise provisions, applicable to bombing from the air. Moreover, several of them stressed the point that the technical factors involved in modern warfare increased military requirements, and that any code of rules, even humanitarian rules, must necessarily take this into account. Finally, the meeting having taken place shortly after the hydrogen bomb experiment, the Experts, faced with the terrifying developments in weapons of mass destruction, felt that attempts to produce a code of rules would be all the more effective if States would agree to renounce the use of such weapons.

University of Tokyo, ex-titular Professor of Surgery at the Faculty of Medicine (Tokyo); Mr. Raymond T. Yingling, Legal Adviser's Office, State Department (Washington D.C.). H. E. Major R. J. E. M. van Zinnicq-Bergmann, Court Marshal, Major in the Royal Netherlands Air Force (Wassenaar, Netherlands). (The appointments and titles mentioned above are those held by the persons concerned at the time of the meeting).

¹ Circular letter of May 14, 1954, accompanying the report entitled "Summary of the opinions expressed by the Experts".

The positive results obtained in these discussions, taken as a whole, encouraged the ICRC to carry on the work it had begun. It felt it was advisable — and several Experts concurred—to continue to study the matter within the Red Cross as a whole, in order to benefit by the wealth of accumulated experience which this vast movement represents ; a procedure similar to that adopted in drafting the Geneva Conventions.

Furthermore, it was confirmed in that course by the unanimous adoption of a resolution at the XXIIIrd Session of the Board of Governors (Oslo, May 1954) ¹. That resolution showed the National Societies' interest in the International Committee's work by expressing the hope that it would submit draft rules for the effective protection of the civilian population to the next International Red Cross Conference.

Although the views of the Experts (1954) were of great assistance to the ICRC in its work, the latter still had to formulate rules which would form a coherent code. It, therefore, spent the greater part of a year on the long and difficult task of selecting those rules which it felt were the most important, and in drafting them in a suitable form, as a draft text which can serve as a basis for future discussions.

*

Those studies resulted in the publication of a first draft entitled " Draft Rules for the Protection of the Civilian Population from the Dangers of Indiscriminate Warfare ", a copy of

¹ The text of the resolution was as follows :

" The Board of Governors,

" Considering the resolution passed in its present session exhorting the Powers to renounce the use of atomic weapons, chemical and bacteriological warfare,

" Considering the fact that the role of the Red Cross is to protect civil populations from the devastating and indiscriminating effects of such warfare,

" Requests the International Committee of the Red Cross to make a thorough examination of the subject and propose at the next International Conference of the Red Cross the necessary additions to the Conventions in force in order to protect civilian populations efficiently from the dangers of atomic, chemical and bacteriological warfare ".

which is appended (see Annex No. I). With a view to associating National Red Cross Societies with this undertaking, the draft was sent to them all in July 1955, and also to a great many individuals interested in the subject, accompanied by Circular Letter No. 410¹, asking for their comments, if any.

Numerous Red Cross Societies responded by making a careful study of the draft. Some of them even set up their own special committees, composed of military experts or jurists, to enable them to submit a more authoritative opinion. Following on those studies, numerous suggestions, comments or letters of approval were received by the Committee during the winter of 1955-1956. The latter was particularly pleased to find that the great majority of National Societies, including those who had not seen their way to submit detailed comments, approved the decision to establish these Draft Rules and the principles which inspired them.

Nevertheless, after studying this preliminary draft, three National Societies were of the opinion that, in setting up such rules, the Red Cross ran the risk of going beyond the bounds of its own humanitarian activities and encroaching on the proper province of Governments. Without denying the right, and in fact the duty, of the Red Cross to concern itself with the protection of the civilian population, they did not consider themselves qualified to take an active part, even in deciding what the rules should contain. They recognized, however, that some National Societies, on account of their war experience, were in a better position to do so than others, and that the data collected, and the studies undertaken by the Red Cross, could be of use to Governments.

Several other National Societies, on the contrary, not only forwarded detailed comments, but also advocated—in accordance with a suggestion made at a Red Cross meeting—a joint study, prior to the New Delhi Conference, of certain questions of principle raised by the proposed Draft Rules. In compliance with their request the ICRC invited them to appoint experts

¹ Circular Letter No. 410, June 27, 1955. See *Revue internationale de la Croix-Rouge*, juillet 1955.

to an Advisory Working Party, which met in Geneva from May 14 to 19, 1956, and was open to all other Red Cross Societies.

The delegates attending the meeting¹ made a survey, on the basis of the preliminary documents prepared for that purpose, of a number of questions raised in the National Red Cross Societies' comments on the Draft Rules.

Generally speaking, they stressed the importance attached by their Societies to these new rules, while drawing attention to the need to avoid their giving the impression that war, or acts of war of any nature, are justifiable. They were also of the opinion that the relationship between the new rules, intended essentially for the protection of the population against armed attacks, and the Fourth Geneva Convention of 1949 or the Hague Conventions, should be more clearly defined. In regard to several other very important questions, such as those relating to weapons with uncontrollable effects, reprisals and sanctions, they thought that the Red Cross could make a contribution which would be all the more valuable in so far as it took care to remain within its own humanitarian field.

These are only a few prominent features of the results achieved by the Working Party on numerous points ; a summary

¹ The following delegates were present at the meeting : Colonel-Divisionnaire Karl Brunner, Doctor of Laws, Expert ad hoc of the ICRC. — Mr. G. Cahen-Salvador, Honorary Vice-President of the Council of the State, Administrator of the French Red Cross. — Médecin-Général Inspecteur Costedoat, Technical Adviser to the Ministry of Public Health (French Red Cross). — Dr. Juji Enomoto, Professor (Japanese Red Cross). — Mr. J. Fautrière, Sous-Préfet H. C., Civil Defence Department (French Red Cross). — Mr. H. Fichtner, Head of the Foreign Relations Department, Red Cross in the German Democratic Republic. — Dr. R. GRAEFRATH, Legal Adviser, Red Cross in the German Democratic Republic. — Dr. H. Haug, Secretary-General of the Swiss Red Cross. — Mr. B. Jakovljevic, Legal Adviser to the Yugoslav Red Cross. — Dr. Kramarz, Assistant Secretary-General and Legal Adviser, Red Cross in the German Federal Republic. — Mr. H. van Leynseele, Counsel at the Supreme Court of Appeal (Belgian Red Cross). — Captaen J. Patrnoic, Yugoslav Red Cross. — Mr. J.-P. Pourcel, Civil Defence Department, Ministry of Internal Affairs (French Red Cross). — Major-General Rao, Director of the Army Medical Services (Indian Red Cross). — Mr. J. de Rueda, Delegate to the ICRC and the League (Mexican Red Cross). — Lieutenant-General J. D. Schepers, Member of the High Court of Military Justice (Netherlands Red Cross). — General A. Tobiesen, Head of the Norwegian Civil Defence Department (Norwegian Red Cross). — Miss D. Zys, Delegate, Polish Red Cross.

record of its discussions ¹ has been sent to the National Societies represented at the meeting. Copies are, naturally, available to other Societies or Governments wishing to receive them.

On the basis of the opinions received on the subject of the first Draft Rules (referred to hereafter as the Draft Rules (1955), either in writing, or verbally during the meeting of the Working Party in May 1956, the Committee has prepared, as announced, a new draft of these rules which is now being sent to all the participants in the forthcoming International Red Cross Conference. As will be seen, it includes the substance of all the rules and ideas contained in the 1955 Draft, the main difference being in the wording which has, in general, been simplified and, as regards several fundamental points, supplemented or amended. Details of the changes made in the previous text will be found in the commentary on the individual articles, and in the following chapter on the form and arrangement of the draft.

III. *FORM OF THE DRAFT*

In several instances, surprise was expressed in the Remarks and Suggestions on the Draft Rules (1955) that the provisions should have been given the title of "rules". In reply to a question on the subject, the Experts (1956) went on record as being unanimously in favour of the rules being issued in the form of a draft international convention, rather than as a mere declaration on principles (see Report, p. 6).

However, the ICRC thought it preferable for the draft to retain its character of a set of rules, rather than to take the form of an international convention, for the following specific reason.

¹ Legal Protection of the Civilian Population, Advisory Working Party of Experts designated by National Red Cross Societies, Geneva, May 14/19 — REPORT (Document No. 347b), (hereafter called "The Report (1956)").

When preparing the new Geneva Convention, the ICRC was in a different position in that its proposals had been approved by Governments, and the work was being done with the assistance of Government experts. At its International Conference in 1948, the Red Cross was, therefore, able to discuss an instrument conforming in every respect to the requirements of a draft convention.

In the present case, the preparatory work was carried out entirely within the confines of the Red Cross movement itself, and it cannot be said that it was also done on behalf of Governments, even though it is primarily for their consideration that the proposed rules have been drawn up. In the present instrument the Red Cross is not, therefore, submitting a complete draft Convention—that is to say, a document containing all the clauses of a technical or diplomatic nature usually to be found in an inter-governmental agreement. This applies, for instance, to clauses concerning entry into force, ratification, etc., and also, to some extent, to the arrangements for ensuring the application of the rules. In the latter connexion, the ICRC has merely included a few skeleton rules, for the reasons stated in greater detail in the commentary on Chapter VI of the Draft.

Should not the Red Cross, at this stage, be mainly concerned to formulate, and then solemnly proclaim the *fundamental rules* for the protection of the civilian population which it desires to see respected under all circumstances, while at the same time avoiding three pitfalls to wit: establishing rules of too technical a nature the primary concern of the military experts; prescribing prohibitions a matter which comes within the province of Governments; or finally, giving the impression that war is justifiable in any circumstances?

With this in mind, the ICRC has confined itself to drafting rules which represent standards applicable to the international community as a whole, and has discarded provisions which do not appear to fall into that category¹.

¹ This was the case, for instance, in regard to the clause relating to the "si omnes" condition; see commentary on Article 2.

Nevertheless, the Rules have been framed in such a way as to make it easy to embody them in an official diplomatic instrument. Thus, if the need should, unfortunately, arise, they could, in the event of a conflict, be applied by the belligerents as they stand.

The form given to the present Draft calls for further explanation.

The ICRC has endeavoured to draft the rules as simply and concisely as possible. In conformity with the comments of National Societies, it has simplified the provisions of the 1955 Draft. In particular, it has deleted, in several instances, the words "if possible" or "as far as possible". Some may be of the opinion that the present wording goes too far in that direction but it must be remembered that the rules in question must be drafted in such a manner as to be easily kept in mind by the general public and, more particularly, by the armed forces.

The same considerations of a practical nature led the ICRC to divide the 1955 Draft into two parts, the object being to be able to present at the outset, in Part I, and in a very concise and striking form, the fundamental concepts underlying the proposed rules, under the title "General Principles". But the Experts (1956), who endorsed most of the objections raised in the Remarks and Suggestions on the Draft Rules (1955), drew attention to the difficulties and inconvenience of such a division. The ICRC, therefore, discarded it in the new text. In accordance with a suggestion made by one of the Experts, the purpose of the rules has merely been stated, in an abridged form, as a provision of Article 1.

Finally, as regards the important question of terminology, the 1955 Draft has been amended quite appreciably. There are in this text one or two instances of the use of the terms "legitimate" and "justify" when referring to acts of war. Although they were under no misapprehension as to the technical nature of those terms, which are to be found in the Hague Air Warfare Rules of 1923, several National Societies pointed out that a text emanating from the Red Cross should not, in any way, appear to condone acts of war (see Report (1955), p. 3);

this objection has been taken into account in drafting the present text.

IV. INFORMATION AND TEXTS WHICH WILL BE OF ASSISTANCE WHEN CONSIDERING THE DRAFT

The present Commentary is self-sufficient ; it endeavours to give an adequate idea of the various developments in the drafting of the rules, which is all the more necessary since no reports on the preparatory studies and consultations have, so far, been made available to the general public.

For the convenience of readers closely concerned with these questions, or who are interested in the subject—Government experts or National Societies in particular—the Commentary gives numerous references to previous enactments and, more especially, to the preparatory work on the present Draft.

It was thought advisable to append to the Commentary some of those laws, certain documents showing the interest always taken by the ICRC in the aims of the present rules, and, lastly, the preliminary Draft Rules for the Protection of the Civilian Population, submitted last year to all National Red Cross Societies for examination¹.

Finally, the short titles used in the Commentary for the sake of brevity are the following :

<i>Title</i>	<i>Short Title</i>
I. Meeting of Experts, April 1954 The following documents relate to the above-mentioned meeting :	Experts (1954)
(a) Collection — Constitutional texts and documents concerning the legal protection of populations and war victims from the dangers	

¹ This last text is appended for reference only ; the *present* Draft is the official document submitted by the ICRC to the XIXth International Red Cross Conference.

- of aerial warfare and blind weapons, February 1944. Collection
- (b) Commentary on the provisional agenda, submitted to the Experts in March 1954. Commentary (1954)
- (c) Summary of the opinions expressed by the Experts, May 1954. Experts' Opinions (1954)
- II. Draft Rules for the Protection of the Civilian Population from the Dangers of Indiscriminate Warfare, June 1955. Draft Rules (1955), or 1955 Draft
- Commentary on the Draft Rules (1955), included in the said document. Commentary (1955)
- Remarks and suggestions submitted by National Red Cross Societies or individual Experts concerning the Draft Rules of June 1955. Remarks and Suggestions on the Draft Rules (1955)
- III. Advisory Working Party of Experts designated by National Red Cross Societies, May 1956. Experts (1956)
- Preliminary information submitted for the above-mentioned meeting. Preliminary information (1956)
- Report on the Advisory Working Party. Report (1956)
- Draft Rules for the limitation of the dangers incurred by the civilian population in time of war (September 1956). Draft Rules (1956) (the present Draft)

The documents referred to above have been sent to all the National Red Cross Societies, with the exception of Preliminary information (1956), and the Report (1956), sent only to Societies represented on the Advisory Working Party in May 1956.

The ICRC still has a few copies in English and French of the various documents for the use of Red Cross Societies or government departments wishing to consult them.

* * *

V. COMMENTARY ON THE TEXT OF THE DRAFT

TITLE.

Rules for the limitation of the dangers incurred by the civilian population in time of war.

While the title of the Draft Rules (1955)—“ Rules for the protection of the civilian population from the dangers of indiscriminate warfare ”, was well received, the word “ indiscriminate ” seems, according to the Experts (1956), to have been hard to translate into certain languages. These Experts, after studying the question (Report (1956), p. 11), stressed the need for a title which would be striking, short and unlikely to lead to confusion with the IVth Geneva Convention. They recognised, however, that a title could not provide either a definition or a summary.

The ICRC has endeavoured to comply with these directives and decided in favour of the present title. The new heading has the advantage of being short and, it is hoped, sufficiently striking. The term “ protection ” has been dropped in order to avoid any possible confusion with the IVth Geneva Convention “ relative to the protection of civilians in time of war ”.

For the same reason, the title mentions, not “ civilians ” but *the civilian population*, which, as a matter of fact, is the more usual expression when speaking of protection against the consequences of hostilities. But it goes without saying that the aim is always to protect individual persons and that it is they whom the safeguards laid down are intended to benefit. Moreover, Article 6 expressly says so in the second sentence of paragraph 1.

The Draft Rules do not apply to all the consequences of hostilities for the civilian population. Thus, they do not affect economic or psychological warfare but only fighting in which actual weapons are used. This restrictive definition, however, is not reflected in the title, since the ICRC felt that that was sufficiently clear from the provisions of the Draft

Rules and in particular from Article 3. Moreover, it is probable that the words *dangers incurred* will be taken to mean the risks resulting from the use of arms either in direct or in indirect attacks.

In the same way, although the expression "armed conflict" is better adapted to cover all cases of conflict to which the Rules should apply, the phrase *in time of war*, which seemed more striking and more in accordance with the normal practice, has been chosen in preference to it.

The words *for the limitation of* emphasise the fact that the proposed rules are all applied to the conduct of the war solely with a view to limiting the danger to which it exposes the population. The Draft Rules, like the greater part of the law of war¹, are restrictive and humanitarian in their inspiration: that is to say, they do not authorise, but try to *restrict* the use of violence, until such time as the latter can be abolished.

Finally, the word *rules* should show that we are not merely concerned with recommendations or resolutions but with the recognition of a standard code, to which States will be able to refer, even if it does not become an international Convention in the strict sense of the term.

PREAMBLE.

All nations are firmly convinced that war should be banned as a means of settling disputes between man and man.

However, in view of the need, should hostilities once more break out, of safeguarding the civilian population from the destruction with which it is threatened as a result of technical developments in weapons and methods of warfare,

The limits placed by the requirements of humanity and the safety of the population on the use of armed force are restated and defined in the following rules.

¹ See LAUTERPACHT, *British Year Book of International Law*, 1952, pp. 363-365.

In unforeseen cases, the civilian population will still have the benefit of the general rule set forth in Article 1, and of the principles of international law.

There were two main reasons why the ICRC decided to preface the text of the rules with a Preamble which was absent from the Draft Rules (1955).

This draft, as stated above, was divided into two parts, the first of which concerned the "General Principles". It was pointed out in the Remarks and Suggestions on the Draft Rules (1955) by a number of experts that those principles could not be considered as "rules", but rather as a declaration or commentary and that, as such, it seemed preferable to incorporate them in a preamble. This was the first reason.

The second and most important reason is that some Red Cross Societies fear lest the general public might misunderstand the significance of the rules and misconstrue them as implying in some way a willingness by the Red Cross to accept war or to justify hostile acts. The proposed Preamble would dissipate any confusion on this score.

True, the Draft Rules are already preceded by an Introduction which leaves no doubt as to the Red Cross's real sentiments. Nevertheless, this Introduction and the Draft Rules do not form a unity, and the former might be discarded if the Draft Rules were to be dealt with on the governmental level. It was thought advisable, therefore, to draw up a genuine Preamble which would be closely linked with the text itself.

The Preamble, like the Draft Rules as a whole, was drafted as concisely as possible.

In view of the fact that, as already stated, the present Draft Rules do not constitute the complete text of a draft International Convention, the Preamble could only be couched in general and impersonal terms.

The first two paragraphs refer to the motives, the "consideranda" of the Rules. The ICRC had the choice of several considerations: the need for preventing future offences against the civilian population: the limits to be fixed for acts of war

in order to facilitate the return to peaceful relations ; the menace of destruction threatening the civilian population as a result of technical developments in weapons : the idea that all danger of an armed conflict is not, unfortunately, eliminated.

The last two "consideranda" only were retained. By recalling the danger of armed conflict, the first paragraph of the Preamble emphasises the extent to which, at the present time, such a possibility is incompatible with the peaceful aspirations of all men of goodwill and of the Red Cross.

The possibility envisaged in paragraph 2, is doubtless drastic in the extreme. But, for that very reason, its impact on the general public will be all the more striking. Moreover, the Korean War, for example, has shown what destruction and harm the civilian population can suffer even in a localized conflict in which there is no recourse to nuclear weapons.

There is no need to discuss at this point the essential purpose of the present rules as expressed in paragraph 3 of the Preamble—the affirmation of the "limits placed by the requirements of humanity... on the use of armed force"; it has been defined in the Introduction and in the Commentary on the latter (under I, paragraph 2) and in the commentary on Article 5.

It may be recalled that the formula employed is drawn from the terms of the Declaration of St. Petersburg of 1868, the text of which is appended. The Powers parties to that Declaration, which is still in force, not only tried to fix "the technical limits at which the necessities of war ought to yield to the requirements of humanity"; they also agreed to "come to an understanding whenever a precise proposition shall be drawn up in view of future improvements which science may effect in the armament of troops, in order to maintain the principles which they have established, and to conciliate the necessities of war with the laws of humanity". Does not this solemn undertaking make a new agreement on these lines imperative, in view of developments in weapons since that time?

To the term *requirements of humanity*—which is of a general nature and could apply to all humanitarian rules—there have

been added the words *safety of the population*, which should thus be a reminder of the special aim of the present Draft.

The last paragraph of the Preamble is designed to take account of two suggestions put forward by National Red Cross Societies in the Remarks and Suggestions on the Draft Rules (1955). The first suggestion is for the insertion in the provisions of the Draft of an interpretative clause; in case of doubt, the rules should be interpreted to mean that their primary purpose is to protect the population and not to serve the objectives of the armed forces. Whereas the Experts (1956) were, on the whole, in favour of a clause of this kind, they considered that it would be difficult to insert it in the actual text of the Draft without giving the impression, *a priori*, that the proposed rules were not sufficiently clear and precise in themselves (see Report (1956), p. 8).

It was then suggested that it should, preferably, be placed in the Preamble, and be modelled on the wording of the so-called Martens clause in the Preamble of the IVth Hague Convention of 1907.

That is the object of the fourth paragraph. For the sake of brevity, however, the Martens clause has been abridged. In the same way as it was inserted in full in the Geneva Conventions of 1949 in the article concerning denunciation (Article 158 of the Fourth Convention), it would subsequently be possible to supplement the fourth paragraph by referring to the principles of the law of nations "as embodied in the usages established among civilised peoples, from the laws of humanity and the dictates of public conscience». It is, in any case, in this sense that the term *principles of international law* should be understood.

GENERAL LAY-OUT OF THE DRAFT RULES.

The Rules have been divided into six chapters.

The first defines their field of application, giving the details—particularly in regard to the persons protected—required to give a clear idea of the subsequent provisions.

The second chapter distinguishes between what may be attacked and what must not be attacked under any circumstances. The distinction is in itself a guarantee of security and, consequently, of protection for the civilian population.

But the population must, in addition, be protected from the consequences of attacks on military objectives; that is the object of the third chapter.

The fourth chapter deals with weapons which by their very nature expose the civilian populations to considerable danger. This question might logically have been considered in conjunction with that of the precautions to be taken during attacks, that is to say, with the preceding chapter; it is, however, of a sufficiently distinctive character to warrant treatment in a separate chapter.

These last three chapters contain the basic general rules for the protection of the population. The fifth chapter deals with situations requiring special rules.

Finally, due attention must be paid to items such as dissemination, the co-operation of neutral organisations and action in case of violation—which should play a part in the correct application of the prescribed rules—and a very broad outline of rules of this description is given in the sixth chapter.



Chapter I. — Purpose and Field of Application

ART. I. — Object.

Since the right of Parties to a conflict to adopt means of injuring the enemy is not unlimited, they shall confine their operations to the destruction of his military resources and leave the civilian population outside the sphere of armed attacks.

This general rule is given detailed expression in the following provisions.

This provision is new. The ICRC considered it necessary, from the outset, in order to facilitate the dissemination of the present rules, to preface them with a brief and easily memorised statement of the general principles on which the rules have been based, and which give the substance thereof. That was the object of the division into two parts of the 1955 Draft. This arrangement having been discarded, the ICRC had recourse to a technical legal procedure suggested by one of the Experts (1956), which was to enunciate these general principles in a preliminary article forming an integral part of the Draft Rules themselves.

It has, however, endeavoured to draft the principles in such a way as to avoid duplication with the more detailed rules which follow them.

The first principle set forth in paragraph 1 is the limit imposed on the choice of means of injuring the enemy. This principle was, in former Article 10, in the 1955 Draft; in view of its importance, however, it was considered more logical to place it at the beginning. As has been pointed out, it reproduces word for word Article 22 of the Hague Regulations (1907). This principle had already been formulated in the draft drawn up by the Brussels Conference of 1874 and in a way it prophesied the subsequent evolution of weapons. It has been brought up in this context, in a parenthesis, because it constitutes a principle applying to the laws of war as a whole, whereas the rule in Article 1 is merely one aspect thereof.

One means of injuring the enemy—direct or indirect attack upon the civilian population—is prohibited, because the extensive suffering it causes is unnecessary; experience has shown that, as a general rule, such attacks do not enable those responsible for them to achieve their purpose and, in some cases, even strengthen the enemy's will to resist; for morale, if sapped by military setbacks, is often revived by acts offending against the laws of humanity.

This formal prohibition of such means of injuring the enemy constitutes the second basic principle of the fundamental rule of the Draft: *Parties to a conflict shall leave the civilian population outside the sphere of armed attacks.* The term "outside the sphere of armed attacks" is wide enough to embrace the three aspects of the general rule which are given detailed expression in the following provisions; the belligerents must *respect* the civilian population, that is to say, they may not direct their attacks against it (Articles 6, 7 and 10) and not make use of it as a shield (Article 13); they must *spare* it, so far as possible, in acts of war directed by them against military elements (Articles 8, 9, 14 and 15); lastly they must *take practical steps to protect* the population subject to their authority from the consequences of attacks (Articles 11, 12, 16 and 17).

In the Commentary (1955), the principle that the civilian population should not be the object of armed attacks was presented as the outcome of Rousseau's theory that war is a relation between States and not between individuals. The authors of certain Remarks and Suggestions on the Draft Rules objected that this theory was not universally accepted.

Although it is not necessary to dwell on these doctrinal divergencies, it must be stressed that the principle has not the significance which is sometimes attached to it. Its object is not to spare the civilian population the vicissitudes of war. Civilians may, for example, be affected by a blockade, or other economic measures, by psychological factors, or by a series of considerations, and also, as the Draft implies, by the consequences of attacks. But a peaceful population cannot, by virtue of that

principle, be directly the subject of acts of violence in the sense defined in Article 3. In that respect, there appears to be general recognition of the principle, whatever doctrine is professed¹.

This conception is by no means invalidated by the fact that international law authorises certain hostile acts directed against civilians (when forming part of a levy *en masse* or as partisans); but it is just because those civilians take part in hostilities, in some form or other, and are thus put on the same footing as the armed forces, that they lose their immunity as non-combatants.

Finally, the third principle in Article 1 may be considered as following from the principle preceding it: since the civilian population must not be the object of armed attacks, the belligerents must confine their operations to the destruction of the enemy's military resources. The logical link between the two principles has, however, been omitted and they have been combined in one which forms the basic rule of the Draft.

A similar desire for conciseness explains why the text refers simply to operations, instead of to *military operations*, and to *destruction* of the enemy's military resources, instead of to "destruction or placing out of action".

The present wording of the third principle, unlike the former version, does not raise the question of the final object of hostile acts—a conception which had evoked certain reservations in the Remarks and Suggestions on the Draft Rules (1955). The "operations" referred to in Article 1, that is to say, the acts specified in Article 3 may be intended in the last resort, to break the enemy's will to resist or to bring down his Government; but they can only achieve their end by being directed against his *military resources*, that is to say, against armed forces and military objectives within the meaning of Article 7.

¹ A legal expert, J. L. KUNZ, recently stressed this point in an article "The Laws of War". *American Journal of International Law*, p. 331, April 1956.

It is clear that these general principles must be appraised in relation to the other rules of the Draft, which can thus be considered as provisions for the application of the preliminary criterion. The preceding remarks, in their repeated references to the various provisions of the Draft, will be sufficient to show how these provisions enable this general rule to be interpreted and understood.

The term *Parties to the conflict*, which had already been used in the Geneva Conventions of 1949 (Article 3), appeared to be the most adequate description, whatever the nature of the armed conflict, of the authorities on either side who are ultimately responsible for conducting the operations.

ART. 2. — Field of application.

The present rules shall apply:

- (a) *In the event of declared war or of any other armed conflict, even if the state of war is not recognized by one of the Parties to the conflict;*
- (b) *In the event of an armed conflict not of an international character.*

In the Remarks and Suggestions on the Draft Rules (1955) several Red Cross Societies expressed the wish that the rules should contain a provision giving a specific definition of the cases of armed conflict to which the Draft applied. They shared the opinion, expressed by the ICRC in its Commentary on the 1955 Draft, that the rules were not only valid in the case of a declared war between States, but also in the type of conflict termed a “purely domestic matter”, giving rise to hostilities which make it akin to an international war and expose to serious dangers persons wishing to stand aside from the conflict.

Article 2, which is not contained in the 1955 Draft, meets this point. It also defines the scope of the title of the Draft Rules which, for the sake of brevity, merely refers to “time of war”.

As will be seen, the text is modelled on similar provisions in the Geneva Conventions of 1949.

Paragraph (a)—which reproduces Article 2, paragraph 1 of those Conventions—is almost self-explanatory. In this connection, reference may be made to the Commentary on the Geneva Conventions published by the ICRC¹. As stated in that work, the term “armed conflict” is likely to prevent any discussion as to whether the Parties are, or are not, at war, since any dispute arising between two States and leading to the intervention of armed forces is an armed conflict within the meaning of paragraph (a), even if one of the Parties denies the existence of a state of war.

Paragraph (b), however, calls for a few comments. In this case also, the text of Article 3 of the Geneva Conventions of 1949 has been reproduced; its exact meaning can be found in the detailed explanation given in the Commentary referred to above. The examples given in that work show that the phrase “conflict not of an international character”, even if it is to be interpreted in its widest sense, is not intended to apply to any act committed by force of arms—such as banditry or unorganised and quickly suppressed rebellion—but to an armed conflict between two parties with armed forces both of which parties present a minimum of organisation.

Some authors of the Remarks and Suggestions on the Draft Rules (1955) feared that the application of the present rules in an armed conflict not of an international character might give rise to great difficulties, particularly in view of the provisions of Chapter VI, but, as the clauses relating to the execution have been shortened and as, in particular, there is no longer any question of the intervention of Protecting Powers, there appears to be no reason why such general rules—especially Articles 6 to 15—should not be applied in the type of conflict referred to under subparagraph (b).

Recent examples have shown that, on the outbreak of an “intestinal conflict”, the Parties concerned are sometimes tempted

¹ Two volumes of this work have already been published, namely, the *Commentary on the First Convention*, in French and English (Geneva 1952), and the *Commentary on the Fourth Convention* in French (Geneva 1956). An English translation of the latter is in preparation.

to try to obtain a rapid victory by resorting to air bombing of the key enemy positions (such as ministries, radio stations, etc.) ; such bombings are all the more dangerous for the civilian population inasmuch as safety measures are far less well organized in such cases than in an international conflict.

Moreover, an article of an even more detailed and technical nature, such as that concerning "open towns", can be applied in a conflict of a non-international character and provide valuable safeguards for the civilian population.

On a question of form : some of the Remarks and Suggestions pointed out that the term "enemy" employed in the 1955 Draft could not designate the adverse party in a domestic conflict. The present version uses the term *the adverse Party* in Article 3 and it could apparently apply to all the cases concerned.

Some Societies requested that the present article should specify that the implementation of the rules was not subject to the *si omnes* clause. By virtue of that clause, which is contained in the IVth Hague Convention, that agreement is not applicable in a conflict unless *all* the States engaged in the conflict are formally bound by it. In view of the nature of the present Draft Rules, there was no object in including this technical clause. Nevertheless, if, at some future date, these Draft Rules were to be transformed into a diplomatic instrument, it would be for the plenipotentiaries concerned to consider the expediency of including the clause in question.

ART. 3. — Definition of term "attacks".

The present rules shall apply to acts of violence committed against the adverse Party by force of arms, whether in defence or offence. Such acts shall be referred to hereafter as "attacks".

As already pointed out in the Commentary, the ICRC was thinking in the first place of the legal protection of the civilian population from the dangers of *air warfare*, the need for stronger protective measures having been recognised by the majority of the Experts (1954). Earlier codes often spoke of "air bombing", but these terms are inadequate ; it is necessary to cover, not

only the machine-gunning of civilians from aircraft, but also the use of new types of bombing weapons, such as the rockets which made their appearance at the end of the Second World War. The Experts recognised that the study of the question should embrace missiles dropped from aircraft and also self-propelled projectiles, or even those fired by long-range artillery.

Closer study of the problem, which appeared on the surface to be one of terminology, led the ICRC to modify to some slight extent its original conception ; it came to the conclusion that it was more logical, and also more practical, to refer, not merely to attacks by air, but in fact to *all acts of violence*.

It is extremely difficult to draw a clear distinction between artillery bombardments of the traditional type, and bombardments with long-range projectiles launched from the ground which, in the opinion of the Experts referred to above, could be described as an " air attack ". Technical developments in warfare make this distinction less and less definite. Furthermore, bombing from the air may be closely bound up with the operations of the land forces, to a point where it can be regarded as equivalent to a bombardment by field artillery ; there would therefore be no reason for making the two techniques subject to different sets of rules. Finally, in order to give these rules a general character and bring them within the reach of the general public (which was the Committee's aim), it is desirable to avoid introducing distinctions which would diminish their fundamental significance.

It was in this spirit that the Draft Rules (1955) were drawn up. They met with general approval, not only on the part of the authors of the Remarks and Suggestions on those Draft Rules, but also of the Experts (1956), (see Report, p. 16). Nevertheless, the extension of the application of the present rules to all hostile acts raises the question of the relation of the Draft Rules to other existing rules in international law which already set forth the limits of hostile acts in regard to persons (whether belligerents or non-belligerents) and property.

Article 5 of the present Draft contains a special provision concerning this relation.

The scope of Article 3 should be specified. As pointed out by the Experts (1956), the present rules do not cover all acts of war ; they disregard economic warfare, blockades, psychological warfare and other forms of hostilities ; hence, the term " hostile acts " suggested in some quarters for insertion in Article 3 appeared, to the abovementioned Experts, to be too wide in its scope. These felt that the only kind of acts involved were those committed by the use of " arms " .

In order to designate those acts, it seemed preferable to use the term *acts of violence*. Even if, as was observed, the French version gives the impression of individual action, the term is fairly frequent, in the sense used in Article 3, particularly in Anglo-Saxon countries. The term *arms* applies to all physical means of causing harm to the enemy, ranging from an ordinary stick to the most destructive engine of war.

The term *by force of arms* clearly indicates the circumstances to which the present Draft applies. It refers to the acts of violence committed by a belligerent against enemies, or the property of enemies, which are not in his power, so that recourse to arms is the only means of enabling the belligerent to attack the enemy from a distance and to cause him physical harm. On the other hand, once these persons, or property, have passed into the enemy's power, they may be the object of acts of violence, with or without the use of arms ; in that case, the acts of violence are governed by the Geneva Conventions.

Terms which convey the idea of " launching ", " directing " or " casting " missiles against the enemy have been avoided. Indeed, the rules should even apply to acts consisting of the deposit, in peacetime, by one State on the territory of another State (who might subsequently become an enemy) of a destructive engine which could be exploded, at a distance, on the outbreak of hostilities.

In addition, acts of violence in question are committed *against the adverse Party*. This term, like the expression " enemy " employed in the Hague Regulations, applies to the persons and property of the adverse Party. It was necessary to define it, otherwise the present rules would also have applied to acts of violence

coming under domestic law, such as those which might be committed by the belligerents against their nationals, in connection, for example, with police measures or the repression of crime by penal action.

The term "against the adverse Party" should not, however, be given too restrictive a sense. Many acts of violence—such as the destructions of bridges, roads and fortified positions—are performed by the Parties to the conflict on their own, or in occupied, territory, in order to cause harm to the adverse Party. In cases of that nature, the means employed should not place the neighbouring population in jeopardy. The precautions required, particularly those set forth in Articles 8 and 9, should therefore be taken.

It was necessary to avoid the repetition of the somewhat long wording of Article 3. It was therefore decided to adopt the abbreviation *attack*, which appears to be adequate, not only on account of its brevity, but also because it is usually understood by the general public in the sense defined in the Draft Rules. Certain authors of the Remarks and Suggestions on the Draft Rules (1955) observed, however, that there was a danger of this expression being understood as merely applying to the acts of the aggressor; in order to avoid this restrictive interpretation, and at the suggestion of a National Society, the present Draft specifies that it concerns acts *whether in defence or offence*.

The idea is sometimes met with in some writings that the two Parties are not bound in the same manner by the rules of the law of war and that, in particular, the "victim of the aggression" would in some cases be dispensed from observing them. Such a distinction may possibly be valid in certain spheres but, in regard to "humanitarian" rules—not only those of the present Draft but also those of the Geneva and Hague Conventions—the ICRC has always held that they should be applied by all and in all circumstances. As its Honorary President, Mr. Max Huber said, the idea of depriving the aggressor of humanitarian safeguards "should be rejected outright", for such an approach "would not in any way alter the deplorable situation which hostili-

ties, contrary to the regime of collective security, would constitute ; it could only make them more atrocious ¹".

ART. 4. — Definition of term "civilian population".

For the purpose of the present rules, the civilian population consists of all persons not belonging to one or other of the following categories :

- (a) *Members of the armed forces, or of their auxiliary or complementary organizations.*
- (b) *Persons who do not belong to the forces referred to above, but nevertheless take part in the fighting.*

There is general agreement on the principle that hostilities should not be directed against the civilian population but there are several schools of thought as regards the meaning of "civilian population". Now there is no doubt that the scope of the principle will vary widely according to the interpretation given to the term.

Former draft rules (such as the Monaco draft or that of the International Law Association) generally lump together under the heading of civilian population persons not enrolled in the army or who do not take part in hostilities. Nevertheless, efforts have occasionally been made to deny "non-peaceful" civilian persons the benefit of protection, i.e. those engaged in work regarded as being very useful to defence or attack. A typical instance is that of workers in industries closely connected with the war effort.

After mature consideration of that view, the ICRC came to the conclusion that it cannot be endorsed if the principle of the protection of the civilian population as a whole is to be maintained. *There can be no fundamental difference between the persons whom a member of the forces is authorized to attack on the ground and those he is authorized to attack from the air*: that is the basic idea by which the authors of Article 4 were guided.

¹ "Quelques considérations sur une révision éventuelle des Conventions de La Haye relatives à la guerre", *Revue internationale de la Croix-Rouge*, July 1955, p. 433.

A number of reasons can be adduced in support of this conception as will be clear if we consider the case of workers in war industries.

If the line between those civilian persons entitled to protection and those denied it is ultimately to be drawn in the light of their usefulness, where is one to stop? It might be argued that the peasant in his fields is occasionally as useful as the factory worker. And where is one to strike in order to injure the workers in their homes? The houses of workers at a given war factory are very often scattered over a whole town. In order to strike at them, is one to go so far as to destroy the whole town and in the process affect sections of the population whose right to protection is recognized by everyone?

The last and most important point is that the results of the bombings of the last World War raise the most serious doubts as to the actual military value of attacks aimed directly at workers *in their homes*. For, as several Experts (1954) pointed out, workers can often be replaced more easily than machines. In order to fill the gaps in their ranks, all the available man power is mobilized for work including, if need be, the weakest categories (such as women, children and old people), and even foreigners, internees or prisoners of war. The final outcome is thus to involve even more deeply in the dangers of war those very persons whom one is trying, by other measures, to preserve¹.

A similar line of argument applies to scientists. Their research becomes really dangerous for the enemy when they lead to experiments in establishments working for the war.

¹ The Committee was strengthened in that view by the proceedings of the Experts (1956). They examined at great length the definition of the civilian population (Report (1956), pp. 21-22). To start with, they thought of excluding from the definition those civilians engaged in the "war effort". They subsequently realised, however, that the latter term was too comprehensive and that it could be applied to a very substantial part of the population. In the end, they agreed that the question of that part of the civilian population bound up with the war effort should not be settled in this article but linked with the clauses dealing with military objectives. This was in fact the solution adopted in the present draft in Article 6, paragraph 3, and on which we will comment below.

These establishments may be regarded as military objectives. By destroying them, the enemy can strike a telling blow at the dangerous activities of the scientists, and by attacking the factory and the machines in it they can counter the dangerous activities of workers in the war industries. But they cannot achieve that end by attacking the workers themselves (who, however, are of course exposed to the risks arising from attacks while they are actually present in the military objectives).

The conception of the definition of the civilian population adopted by the ICRC may raise certain difficulties. For how are civilians in some cases to be distinguished from persons accorded temporary military status? The definition may also lead to abuses, for attempts will be made to palm off military personnel as civilians. But these are minor drawbacks compared with the danger of excluding the above categories from the civilian population. For that would amount to breaching the last defences against the flood of total war. Lastly, to take a long-term view, how can we afford to neglect the extremely important fact that attacks on categories of persons who, however doubtful this may appear to the enemy, are considered by popular sentiment in their own country as beyond any question forming part of the civilian population, may leave lasting psychological scars and fan resentment and hatred from which new conflicts will spring.

Several authors of the Remarks and Suggestions on the Draft Rules (1955) pressed for a closer approximation of the definition of the civilian population to Article 4 of the IIIrd Geneva Convention. It should be remembered, however, that the latter provision applies not to persons against whom acts of war are permissible but those who enjoy the status of prisoner of war if they fall into the enemy's hands.

The definition of the civilian population adopted in this text merely indicates that it should include persons who are not members of the armed forces or who take no active part in actual fighting.

The conception of *armed forces* is not uniformly defined by international law and varies in the main with the legislation of

each State which lays down who belongs or does not belong to the army. The addition, at Article 4, of the words *auxiliary or complementary organisations* shows that the idea of "armed forces" is to be taken in a wide sense. These words apply, for example, to the units who are responsible for certain social services on behalf of members of the regular forces, or for certain public services which are entirely "militarised", for, according to international law, the army may include non-combatants as well as combatants—a point which will be amplified in the commentary on the list of military objectives (Article 7). Persons belonging to these services or units can no longer logically be regarded as forming part of the civilian population.

Both practice and law generally place on the same footing as the armed forces those parts of the population which, even if only roughly organised, take part in hostilities; it may logically be argued that these persons cannot enjoy special immunity and that, in a manner of speaking, they cut themselves off from the peaceful population. This is the point made in sub-paragraph (b).

That sub-paragraph, then, is mainly concerned with what is called "*levy en masse*". This expression is used in the present context as meaning the momentary, occasional and spontaneous participation of the population in hostilities. If, on the other hand, a country were to decide to train its nationals as a whole to fire on the enemy, for example on parachutists, it would run the risk of affording the adverse Party substantive reasons for regarding all these persons as "taking part in the fighting". It is essential to point out this danger and also the need for grouping in regular formations, to the fullest possible extent, all persons engaged in fighting the enemy by means of arms, in order that the peaceful character of the civilian population shall not be contested.

Sub-paragraph (b) also applies to unorganised partisans who are taking part in hostilities. The authors of certain Remarks and Suggestions on the Draft Rules (1955) were of the opinion that such partisans should not be covered by sub-

paragraph (b). It is true that partisans, though not fulfilling the conditions of Article 4 of the IIIrd Geneva Convention, are entitled to protection under the IVth Convention if they fall into the enemy's hands. But, in the actual fighting, and it is this very situation which is covered by the Draft Rules, it is difficult to see how the adversary who, in any case, will often be hard put to it to distinguish between these partisans and regular resistance movements, can refrain from returning blow for blow when affected by their acts of war; all things considered, there seems no special reason why these partisans should be given more favourable treatment than that accorded to the civilian population who take up arms on the approach of the enemy.

The Draft Rules (1955) talked of participation "in active hostilities" and, as there was a request for an explanation of that phrase, it appeared advisable to go back to the simpler and traditional conception of participation *in the fighting*.

The Remarks and Suggestions on the Draft Rules (1955) raised the question of certain activities directly connected with the fighting (such as the transport of military material, the transmission of military dispatches and the occasional supply of rations for the troops). If the activities involved are of a permanent nature, the civilians carrying out these activities may be regarded as forming an auxiliary or complementary organisation of the army. If, on the other hand, the activities are merely occasional, civilians concerned will expose themselves to the dangers of war since, more often than not, they will be acting, for example when transporting military material, within the bounds of objectives which is permissible to attack.

In conclusion, certain Red Cross Societies requested that the case of civil defence bodies should be expressly reserved in such a way that even at this point in the Rules these bodies should not be regarded as forming part of the armed forces. On reflection and in the light of the proceedings of the Experts (1956), the ICRC deemed it advisable to hold over the question of civil defence bodies for treatment in a special article—No. 12—which will be commented on below.

ART. 5. — Relation with previous Conventions.

The obligations imposed upon the Parties to the conflict in regard to the civilian population, under the present rules, are complementary to those which already devolve expressly upon the Parties by virtue of other rules in international law, deriving in particular from the instruments of Geneva and The Hague.

In the commentary on the "Draft Rules (1955)", the ICRC pointed out that the relation between this code and previous Conventions might be dealt with by a special provision if the question was brought up by Governments.

The ICRC decided, however, on balance to tackle the question when preparing the present Draft Rules in order to take account of certain Remarks and Suggestions on the Draft Rules (1955) and the views of the Experts (1956).

These "rules" must not give the general public the impression that the 1949 Geneva Conventions are already out of date. It must therefore be clearly brought out that the purpose of the Draft Rules is not to "replace" in any way these Conventions or other humanitarian laws but to *be complementary* to them, to complete the structure designed to protect persons placed *hors de combat* or not taking part in hostilities.

Article 5 has been worded in such a way as to make it clear that it sets out to complete *the obligations* flowing from previous Conventions and that the Draft Rules merely aim at extending the undertakings to be contracted by the belligerents or, to be more exact, the *explicit* and *treaty* obligations, since, as we have seen, the present rules are on the whole so drafted as merely to reflect principles and rules of customary law which are universally valid.

After defining the general perspective in which the present Draft Rules are to be situated in relation to previous codes, we must now look more closely at their connection with the main rules of international law under consideration.

What are the main obligations of this kind *in regard to the civilian population*?

(a) There are in the first place those under the IVth Geneva Convention "relating to the protection of civilians in time of war", of August 12, 1949. The purpose of that Convention is, as readers will be aware, the protection of civilians *who have fallen into the enemy's hands* from violence and arbitrary action on the part of the latter, but not, as the present code of rules tends to do, to place limits on bombing and other attacks.

Section II of the IVth Convention admittedly relates to "the general protection of the civilian population against certain consequences of war" and therefore deal with a subject which is very close to that of the present article. That section, however, covers much less ground and its purpose is not so much to restrict acts of war as to provide for "passive precautions" which in fact amount to so many particular applications of Article 11 of the Draft Rules¹.

(b) Article 5 talks of the *Instruments of Geneva*, since the intention is to cover not only the 1949 "Geneva Conventions" but also, although it is more germane to the Hague law than to that of Geneva, the 1925 Geneva Protocol, the text of which is appended as Annex II. That Protocol is of vital concern to the civilian population in view of the general terms in which the prohibition of chemical and bacteriological warfare is formulated in that document.

The commentary on Article 14 shows in greater detail that the present Draft Rules do not encroach on these prohibitions but complete them as regards the important sphere of radio-activity.

¹ It should however be noted, in this connection, that there is one extremely important exception: to wit, the stipulations in section II prohibiting all hostile acts against hospitals, their staff and hospital transports (Articles 18 to 22) and thus, to that extent, coinciding with the present rules. In these and other cases it should be borne in mind that these stipulations which are designed to deal with specific situations in a particular fashion apply irrespective of rules of a general nature in the present Draft, by virtue of the principle "*lex specialis derogat generali*", although in this case there is no "departure" from precepts breathing the same spirit.

(c) The reference to the *Instruments of the Hague* has in mind above all the IVth and IXth Conventions of The Hague of 1907. The regulations appended to the former Convention, particularly at Articles 25 to 27 (cf. Annex II) and Articles 1 to 7 of the second Convention assign certain precise limits to bombardment in land and naval warfare. The purpose of these provisions is thus similar to that of the present code; it should therefore be clearly explained at this stage how this code completes such provisions, all the more so because the ICRC has repeatedly demonstrated that its intention was not to create a new kind of law but to reaffirm the law as it now stands.

In taking the initiative in drawing up this Code of rules, the ICRC worked on the premise that the legal protection of the civilian population was no longer adequate in view of the developments which had taken place in methods of waging war, as had been demonstrated with particular force during the last World War. The applicability of the provisions of the Hague Regulations to air warfare and in particular to attacks from the air unconnected with military operations on land, had been regarded as beyond question in some quarters (in view of the addition of the words "by any means whatsoever" to Article 25 of the Regulations) but as contestable in others. It must be reluctantly admitted that this uncertainty has, as one of the Experts (1954) (Experts Opinions, p. 1) said, led to conflicting practices and to a situation in which the majority of States find it easier to consider themselves as no longer bound by specific rules. In spheres such as air warfare where doubts are thus cast on the rules, the law can no longer fulfil its protective function. In consequence the ICRC felt it necessary to reaffirm and prepare a more precise formulation of that law.

What has to be done is certainly to *reaffirm the law and make it more precise* and not to construct it by making a completely fresh start. It might conceivably be admitted that the relevant provisions of the Hague Regulations were not intended to apply to the situations created by developments in methods of warfare and are hardly adapted to meet such situations. The ICRC, however, has always held the view—which was shared

by the majority of the Experts (1954)¹—that they merely expressed principles which, in the absence of any more suitable code of rules, *are and remain valid at all times*. This applies in particular to the principle prohibiting the causing of unnecessary suffering (Article 23 (e) the stipulation that warning should, whenever possible, be given of a bombardment (Article 26), the principle that there should be no bombardment of anything not bound up with military operations (Article 25) and that of the precautions to be taken during bombardment, which implies the rejection of indiscriminate bombardment (Article 27).

The sole purpose of the present Draft Rules is therefore to express and reaffirm the above principles by means of concrete rules which shall be more in keeping with the new situations. In particular, these rules have the advantage of being based on the modern conception of a military objective which had, incidentally, already been outlined in the IXth Hague Convention.

The proposed code is therefore mainly intended to apply to those spheres where the law is questioned, for it is generally admitted that the stipulations of the Hague Conventions are still applicable to the situations which they were undoubtedly meant to meet, i.e. "classical" artillery bombardments by land or sea—and, as is often added, bombing from the air when it is closely bound up with military operations on land.

(d) Lastly, the humanitarian obligations devolving on belligerents in regard to the civilian population also include those designed to safeguard the security of civil navigation, i.e., in particular, certain provisions of the XVIIIth Hague Convention of 1907 relating to submarine contact mines and the London Protocol of 1936 relating to submarine warfare.

Care must also be taken to define the relation between the present Draft Rules and these provisions, since the Rules may affect the same spheres, e.g. Article 6, paragraph 2 (means of transport) and Article 15 (mines).

It must be emphasised, however, that the ICRC's intention is not that the provisions of the present Draft Rules should

¹ "Experts' Opinions (1954)", pp. 2 and 14.

settle questions relating to international law for maritime war ¹. Accordingly, it felt unable to adopt the suggestions put forward by certain national Societies that merchant ships should be explicitly excluded from the list of military objectives or that the question of submarine mines should be covered, in the Draft Rules, by more comprehensive regulations. The ICRC is of course aware of the important bearing of such suggestions on civil navigation and hence on the civilian population, but it considers that this question should be examined by more detailed studies which might be carried out by the experts of the States directly concerned. The fruits of these studies might be incorporated, at the appropriate moment, in the preparation of a document to be appended as an annex to the present rules and might deal more particularly with the safety of civil navigation.

In consequence, the articles of the Draft Rules quoted above (i. e. Article 6, paragraph 2, and Article 15) have been drafted to comply with the current provisions of international law for maritime war, although the Experts (1954) showed how controversial the question of merchant ships had remained in this type of law.

In connection with the relation between the present Draft and the rules of international law protecting not civilians but belligerents or property, special mention should be made at this point of the first three Geneva Conventions, the provisions of the Hague Conventions concerning the conduct of hostilities and the Convention for the protection of cultural property.

Some of these rules are paralleled in the present Draft since, owing to its general nature (more specifically Articles 3 and 7) it covers, and imposes limits on, all armed attacks. In cases of this kind it may be admitted, in the light of the principle formulated above, that these rules, since they deal in a

¹ A national Red Cross Society made a suggestion on these lines, to the effect that the Draft Rules should apply only to attacks on "land" objectives. The ICRC considered this restriction might be omitted, partly in order to confer a general character on these rules and partly to avoid the difficulties of interpretation which the addition of the word "land" might entail.

particular fashion with specific attacks, take precedence over the stipulations of the present Draft. This is the case, for example, with the obligations relating to the respect of hospitals or monuments.

The present stipulations, moreover, cannot be considered as incompatible with these other rules. Both groups of provisions may be applied simultaneously, sometimes running parallel and sometimes reinforcing each other. It need only be observed that the touchstone of "military necessity" which sometimes determines whether an attack is permissible or not under humanitarian Conventions finds expression in Articles 7 and 8 of the present Draft in a more complex form and in such a way as to offer a greater number of safeguards for the protection of persons or of property.

Chapter II. — Objectives barred from Attack

ART. 6. — Immunity of the civilian population.

Paragraph 1.

Attacks directed against the civilian population, as such, whether with the object of terrorizing it or for any other reason, are prohibited. This prohibition applies both to attacks on individuals and to those directed against groups.

This rule is generally accepted in the teaching of qualified writers and previous attempts to codify the matter (such as the Monaco Draft, Article 1, the draft of the International Law Association) and the Geneva Conventions have drawn liberally on it. It is also included in the instructions given to certain air forces during the last World War ¹.

The Experts (1954) like those in 1956 were unanimous in recognising the validity of this rule, which is basic to the present Draft Rules ². This formula was given general approval in the Remarks and Suggestions on the Draft Rules (1955) and reproduces the original version with only slight modifications.

That version made no allusion to *terror* attacks—which are admittedly prohibited as such in several previous codes of rules (such as the Hague Rules of 1923). For, as was emphasised by the Experts (1954), it is extremely difficult to prove that there is any intention of terrorising the population, particularly as most such attacks might in practice be considered as bound up with operations against military objectives.

Certain Red Cross Societies, however, stressed the psychological importance of explicitly prohibiting terror attacks, in

¹ According to the British Instructions of October 29, 1942, which are appended as Annex IV: "the intentional bombing of the civilian population as such is banned".

² The Experts' main divergencies as regards the question were on the definition of the civilian population, which has already been dealt with in Article 4, or on the question of what was meant by "intention" and "terrorising" in the attacks.

order to reassure the population (Report (1956), p. 24). While endorsing this view and including mention of these attacks in the new wording of Article 6, the ICRC was careful not to give the banning of terror attacks precedence over the general rule and turn it into a special prohibition. The vital point is that the population should not be attacked directly, whatever the motives for such attacks.

In fact, the efficacy of terrorisation of civilians as a means of achieving the desired ends is, in the opinion of the military experts themselves¹, very doubtful and one which the Red Cross cannot but condemn. This is not the only case in which attacks on the population are made more serious by perverse intentions. These intentions might possibly be adopted as aggravating circumstances by those passing judgment on acts running counter to the rule we are commenting on.

The specific provision in the second sentence of the paragraph might at first sight appear to conflict with the rest of the Draft Rules dealing with "the civilian population". This expression, which implies that several persons are involved, is rendered necessary because, as one of the Experts (1956) pointed out, the military cannot always distinguish, and hence spare, a few isolated civilians. The precautions to be adopted by the attacking side increase in proportion to the observable or presumed number of individuals making up the civilian population. Nevertheless, the Draft Rules, like the Geneva Conventions, are based on the respect due to the human personality, and whenever those engaged in military operations can or should recognise that the person involved is a civilian, even a single person, they should refrain from attacking. That is the meaning of the second sentence. The memory of civilians, indeed women and children, machine-gunned during the second World War is still too much with us to make a provision on these lines anything but indispensable.

¹ Cf. for instance the study by Brigadier Colonel FRICK: "Some thoughts on the new strategy" (in German), *Neue Zürcher Zeitung*, 24.5.1954, p. 1191.

A number of previous codes of rules cover the *intentional* bombing of the population and several Red Cross Societies would have liked to see this expression retained. The ICRC, however, considered, as did several of the Experts (1956), that the words *directed against the civilian population* to some extent met that desideratum. Attacks directed against a military objective but such as to cause serious injury to the population because the attacking side has failed to take the necessary precautions come under Article 9 rather than the present Article.

As against this, the actual wording of the rule should cover cases in which the attacking side knows beforehand that his blows are bound to strike the civilian population but accepts this implication in order to be more certain of securing a direct hit on his military target. This type of case which is called *dolus eventualis* is met with in certain target-area bombings.

What is certain is that it will often be difficult for an airman to distinguish between "civilians" and "military personnel", since the two categories are in some cases closely intermingled.

The absence of the word "intentional" may therefore lead to the authors of attacks being burdened with a greater measure of responsibility. Accordingly, the Experts (1956) recognised how necessary it was for breaches of this Article to be judged in the light of the various circumstances (intentions, factual errors, orders from superior officers, etc.) which may aggravate, attenuate or even dispose of the offender's guilt. If these circumstances could not (for the reasons which will be adduced in the commentary on the Article) be formally dealt with in Article 19, emphasis has at least been laid on the need for trial before regularly constituted courts and for procedural safeguards in harmony with the practice of civilised nations.

It should be added that the expression *as such* used in the opening sentence is meant to show that this provision does not concern the population which might suffer the consequences of attacks directed against a military objective, since such cases are governed by Articles 8 and 9. This situation is also covered by the third paragraph of the present article.

Article 6, paragraph 2.

In consequence, it is also forbidden to attack dwellings, installations or means of transport, which are for the exclusive use of, and occupied by, the civilian population.

The Hague Regulations (1907) allowed the belligerents latitude to bombard a *defended* town, with the exception of specific buildings. The present Draft lays down what can be attacked, thus excluding everything else. It follows from this that dwellings and other buildings reserved for the use of the civilian population, especially outside the area of operations, may not be attacked.

Nevertheless, the ICRC felt that it was desirable to draw attention, by an explicit provision, to the prohibition of attacks on dwellings. It is no doubt true that paragraph 1, which bans attacks on the civilian population, only refers to the persons themselves, but such a prohibition would not be operative unless it were linked with a clause prohibiting attacks on the buildings sheltering these persons¹.

This approach was therefore given general approval in the Remarks and Suggestions on the Draft Rules (1955). All that was suggested was to take that provision out of the article relating to military objectives and to place it in the present article after the first paragraph. Not only has the ICRC adopted this suggestion but it thought it necessary to stress the logical connection between the two paragraphs.

It was necessary, however, to obviate one difficulty. Constructions sheltering civilians may, in certain circumstances, take on a military character, particularly if they are in the operational zone. The prohibition of attacks on these dwellings can therefore not be an absolute one as it is in the case of persons, but only relative, that is to say, qualified by a reservation as to their military use. This reservation is expressed by the words *for the exclusive use of, and occupied by, the civilian popula-*

¹ Several Experts (1956) did in fact emphasise how vitally necessary dwellings were in winter, especially in cold countries.

tion. These words, however, must not be given too restrictive an interpretation. If, for example, soldiers who are on leave, or even unarmed, were found in a house far from the actual front, it should not be contended that these houses do not meet the conditions laid down in this paragraph ¹.

The words *for the... use of* refer to dwellings or installations inhabited by the population in its "civilian" capacity as opposed, for instance, to the time civilians spend in factories. Dwellings should be not only for the use of the population but also *occupied* by it. They need not be occupied permanently. The occupation need only be effected at specific hours during the day or night. But this rule would not, for example, be applicable to a town which had been completely evacuated.

Lastly, the word "dwellings" is supplemented by that of *installations* which has been adopted in preference to "constructions", since that expression was generally thought to be too narrow. For the provision should apply to everything designed to serve as accommodation for the civilian population. Thus, these two categories, taken jointly, should cover not only churches, schools, dispensaries and homes of various kinds but also huts, tents and other emergency installations for use as accommodation for evacuees and refugees. As against this, the joint definition does not apply to stations, factories, depots, monuments and museums.

In the new wording *means of transport* have been added to dwellings as thus defined, provided that such means comply in all respects with the prescribed conditions, i.e., that they are for the exclusive use or are effectively occupied by the civilian population. There is no doubt that the development of hostilities frequently leads to the evacuation and transfer of parts of the population ². To meet such cases, it was essential to reaffirm the principle that the protection of the civilian population is also

¹ Besides, the outcome of the application of Article 8 would in any case rule out an attack in a case of this kind.

² The Draft Rules themselves, in Article 11, urge the removal of the civilian population from military sectors and objectives.

imperative in these circumstances, in which civilians run possibly even more serious risks than when in their normal places of residence.

It is undoubtedly true, however, that the distinction between civilian and military will be still more difficult for those in charge of operations to make when the persons involved are using means of transport, the more so since transport is of such importance to the belligerents that the latter are hardly likely to be willing to allocate a part of them to the civilian population. It follows that the conditions which should govern the application of the rule run the risk of not being always observed when means of transport are being used.

It is to be hoped that this rule will stimulate Governments to make an exclusive allocation of means of transport to the civilian population and adopt special rules to that end, as is already the case as regards hospital transports, which are governed by the IVth Geneva Convention of 1949 (Articles 21-22). In any case, if formulated in such general terms, this rule raises a host of problems of which the ICRC is aware and which call for a thorough examination.

At the start of these studies, the ICRC had thought of completing the definition of a military objective by a precise enumeration of the installations and constructions which have to be protected. This idea was designed to meet the suggestions put forward by certain national Red Cross Societies.

On careful examination, this approach appeared difficult to apply. On the one hand, certain civilian constructions are already specially protected under international Conventions and, on the other, any attempt to protect certain constructions inevitably raises the question of their identification. But can the number of protective signs be increased over and over again without running the risk of detracting from the value of those that already exist?

Accordingly, if the present Draft Rules do not go beyond the provision of general indications, it goes without saying that the special protection conferred on certain constructions such as

hospitals, monuments or museums by the Geneva or the Hague Conventions retain their full force ¹.

Article 6, paragraph 3.

Nevertheless, should members of the civilian population, Article II notwithstanding, be within or in close proximity to a military objective they must accept the risks resulting from an attack directed against that objective.

It was not without some hesitation that the ICRC inserted this new provision in the Draft Rules, since it appears to restrict the scope of the preceding paragraphs. The ICRC did, however adopt this provision in the end because it was desired in the first instance to clarify a point in the code of rules which might give rise to some doubt. Article 6 bans attacks on the civilian population, but Article 7 allows attacks on military objectives. It was open to question whether the combined effect of these two articles was to forbid or permit attacks on such objectives when they contain civilians. The words "civilian population *as such*" in the first paragraph ought to be enough to dispose of such doubts and to show that both practice and legal theory allow of attacks in such cases and that civilians who happen to be on the objective under attack can only stay there at their own risk ².

It is worth recalling once again that the Experts (1956) rather than widen the definition of the civilian population to an extent which they considered dangerous, preferred to deal with the problem of civilians working in war factories by a provision on the same lines as that in the present paragraph,

Lastly, an unambiguous text covering this point will avoid the possibility of any dispute between the Parties to the conflict and thereby of reprisals at the expense of the civilian population.

¹ Article 5 of the present Draft Rules is in any case sufficiently explicit on that point.

² The same kind of idea, although applying to a different situation, is to be found in the IXth Hague Convention in Article 2 which states that the Commander of a naval force "does not in that case incur any responsibility for damage involuntarily caused by the bombardment".

Nevertheless, in harmony with the spirit of the other rules in the Draft, care has been taken to avoid giving the impression that any civilians within the military objective would lose their personal immunity as regards all attacks directed not at the objective but solely at them. If, for instance, a fighter aircraft delivers a low level attack on a non-militarised war factory, he is not authorised, after having bombed the plant, to machine-gun the civilian workers, male or female, who were in it at the time.

It is sometimes argued that these civilians lose their immunity in the objective. But must we really adopt this extreme solution, so fraught with danger from the humanitarian point of view, even if making the fullest possible allowance for the exigencies of warfare? Custom has sanctioned a state of affairs whereby the belligerents are allowed to regard certain objectives, besides the armed forces, as being of a military nature and to attack them. But it does not seem to follow inevitably from this practice—at least there is no official deed or declaration to that effect—that the military character of these objectives is automatically transferred to the civilians stationed therein. Land forces, moreover, would not be authorised to shoot at these persons. In addition, this idea is hardly in line with practice, particularly in the case of occupied countries. For it can be shown by a host of examples that, far from seeking systematically to destroy civilians working in the war industries, belligerents have been at pains to attack these industries but to spare the people in them as far as possible.

The rule applies to civilians within or *in close proximity* to the objective. The latter phrase should be taken in a restrictive sense: what is meant is people contiguous to the military objective who will almost inevitably suffer the consequences of the attack on that objective, however accurate it may be. Any other interpretation would be incompatible with Article 9, since that implies that the population situated beyond this strictly demarcated zone should be protected.

In conclusion, the words *Article II notwithstanding* show that the situation is one which the ICRC hopes will prove to be an exceptional one. To be true, it will often be difficult in

practice to fall back on removing civilians working in a plant of military importance in order to spare them the risks of an attack on that plant. But other safety measures may be taken in order to obviate these risks. It is to be hoped that paragraph 3 will act as an incentive to the adoption of such measures by showing so clearly the dangers to which these persons are exposed.

ART. 7. — Limitation of objectives which may be attacked.

Paragraph 1.

In order to limit the dangers incurred by the civilian population, attacks may only be directed against military objectives.

Developments in air warfare and, more recently, advances in the production of rockets has put belligerents in a position to bomb objectives scattered throughout the whole of enemy territory. The result has been to increase the dangers incurred by civilians within or in the vicinity of these objectives. Furthermore, the indiscriminate use of these weapons may nullify the ban on attacks directed against the population itself. It is essential, therefore, to lay down or to re-affirm certain limits to bombing.

There are two possible methods of determining these limits. One is to enumerate what may not be bombed, as in the Hague Regulations, or to restrict attacks to so-called military objectives of which a definition should be given, as was the general trend in the codes evolved between the two World Wars. After having thought of adopting a formula combining the two methods, the ICRC deemed it wiser to adhere to the second approach. The advantage of trying to define a military objective is that it permits of reference being made to a conception which is both concrete and generally accepted, especially in certain military circles¹. This conception, moreover, is one which Governments have constantly invoked since the first World War and which

¹ The British instructions of 29 October 1942, reproduced in an annex, lay down that: "Bombing is to be limited to military objectives".

has also been embodied in the international law in force as the result of the 1949 Geneva Conventions¹.

The rule as set out in paragraph 1 is generally accepted and, although there is a slight departure from the wording of the Draft Rules (1955), it has not led to any major objections.

The heading of the article constitutes in a way the "consideranda". In their Remarks and Suggestions, certain national Societies had expressed doubts as to the wisdom of efforts by the Red Cross to define military objectives. On going into this point, the Experts (1956) recognised that, as a result of the abuses committed during the last World War, the conception of a military objective had at times become so wide as to warrant consideration by qualified bodies and that, in examining it, the Red Cross's action was consistent with its traditional concern to tighten up the protection of the population (Report (1956), p. 30).

However, in order to avoid any possible misunderstanding as to the attitude of the Red Cross on this point, the ICRC thought it advisable to include in the text itself a brief reminder that, if the code of rules deals with military objectives, its sole object is always to *limit the dangers* incurred by the civilian population in wartime.

Article 7, paragraph 2.

Only objectives belonging to the categories of objective which, in view of their essential characteristics, are generally acknowledged to be of military importance, may be considered as military objectives. Those categories are listed in an annex to the present rules.

As has been shown above, it is the lack of agreement as regards the conception of what constitutes a military objective which exposes the population to great dangers. Wartime practice has accustomed certain circles to consider "industrial centres", for example, as military objectives. The expression

¹ Cf. especially the IVth Convention, Article 18 and Annex I, Article 4.

is all the more dangerous because of its vagueness, for it could be applied to the whole of economic areas in which industrial installations properly so-called occupy only a small or clearly demarcated area. Abetted by the power of modern weapons, we might reach the position in which a so-called " industrial " area is regarded as one large military target and attacks which were quite incompatible with the spirit of the present code could be portrayed as complying with the rule in the first paragraph. It is therefore imperative to curb these tendencies and to define in the Draft Rules themselves what is meant by a " military objective ".

Several regulations relating to war in the air have attempted to provide a general definition of a military objective. The Experts (1954) paid particular attention to Article 24 of the Hague Air Warfare Rules of 1923. Several of them considered that that provision offered a starting point for working out this definition, while others showed that a number of cases was not covered by that definition (Experts Opinions (1954), p. 9). The main point brought home to the ICRC by the discussions was the difficulty of preparing an abstract definition of a general nature. The Committee therefore came down in favour of a solution based on *practical considerations*. It will be noted, however, that the Draft Rules do not entail any basic alteration in the definition, given in the Hague Rules of 1923, which is already officially accepted by several countries, but merely make it more precise and complete,

The solution actually adopted by the ICRC is that an objective may be regarded as of a military nature *when it fulfils two cumulative conditions: the first being set out in the present paragraph and the second, in a negative form, in paragraph 3.*

It is generally admitted that a military objective is one which is to the enemy's advantage to destroy. But this is a point which should not be left to the attacking side alone to judge. If it were, the outcome would be to justify any destruction which the attacking side, in the tense atmosphere of war, might deem such as to present a military advantage. Taking a long-term view of acts and their consequences, mankind con-

demns certain kinds of destruction and doubts their usefulness. It is essential, therefore, that the bounds by which the conception of a military objective should be circumscribed—and these bounds must doubtless be kept broad enough to pay due regard to the exigencies of the fighting—should be determined as far as possible in advance by general assent and not under the pressure of circumstances prevailing during the struggle.

That is precisely what the first condition sets out to do : to show that an attack is only admissible when directed against an objective *generally* regarded as being of military importance. The vital safeguard lies, it will be seen, in the word “generally”. In other words, the military importance of the category which includes the objective in question must have been recognised by the vast majority of countries and that recognition should be based on jurisprudence or on any other vehicle for the expression of the sentiments of the international community. It is easier for agreement on these lines to be reached in peacetime ; but it is also possible that, in wartime, a new category will qualify for inclusion as military objectives.

In some quarters this safeguard has given the impression of being very slender. In reality, it affords substantial protection, for there is every reason to assume that the international community will be at great pains to avoid giving too wide a meaning to the conception of a military objective¹ in official of its views (such as conventions, jurisprudence, etc.).

The basic consideration which the ICRC took as its starting point was of a practical nature : which is that, in several attempts to codify this matter, the objectives which were liable to be attacked are grouped into “categories” and this classification corresponds to the practice followed by the belligerents. That explains the form of words in paragraph 2 “... belonging to *the categories of objective* which... are generally acknowledged to be of military importance...”.

¹ The proof of this is to be found in the Hague Convention of 1954 for the protection of cultural property. The diplomatic Conference which drew up that Convention was careful to exclude from the instances of military objectives given at Article 8 over-comprehensive formulas such as “large industrial centres”.

It is not enough, however, to talk of categories of objective. It is also necessary to describe these categories, as in fact the ICRC had already requested in its March 1940 appeal, which was to the effect that the codification should give at least some slight indication of the type of places threatened in the event of a conflict in order to enable suitable steps to be taken for the removal there from of the persons concerned.

Hence the ICRC's proposal in the Draft Rules (1955) that the list of categories of objectives, the military importance of which is now recognised, should be attached as an appendix to the rules. This list would not in any way be constitutive of rights and duties. *It would merely sanction the state of affairs which admittedly exists.*

This proposal was accompanied by an explanatory detail which the ICRC would like to stress. That organisation had emphasized that this whole problem, and particularly the drawing up of a list on those lines, *is at bottom a matter for Governments and military experts*, although it is clear that the humanitarian point of view must always make itself felt. The Red Cross can, in any case, request that a list of the categories of military objectives should be appended as an annex at the rules once they have been elaborated by Governments.

Generally speaking, that proposal was fully understood and favourably received in the Remarks and Suggestions on the Draft Rules (1955). Most observations were concerned with the question whether that list should be of a mandatory nature or should merely afford guidance. The ICRC is of the opinion that it is difficult to draw up an exhaustive mandatory list and is strengthened in that view by the discussions of the Experts (1956) (Report (1956), p. 30). The adoption of this type of list might lead to certain States refusing to accept it and hence to their rejection of the present rules solely on that ground. Furthermore, if a category not covered by the list should acquire genuine military importance for most countries, the rule in paragraph 2 does not offer any obstacle to these objectives being regarded as of a military nature. Such a list, however, even if it were supposed merely to afford *guidance*, would be

of great value if only because a general consensus of opinion could grow up round it—a development which would attain the practical aim in question.

These considerations, therefore, govern the interpretation of the words in paragraph 2 : “ Those categories are *listed* in an annex... ”. Nevertheless, the ICRC did not make this point explicitly, since it felt that it was in the first instance for Governments to determine the value which they wish to attach to the list. It goes without saying that, if they wished to make a mandatory list, the Red Cross would welcome such a step as affording additional safeguards.

Moreover, with the sole aim of facilitating subsequent action, the ICRC thought fit to provide a tentative draft list of categories of military objectives, as was done in the previous Draft. This model, with a few explanatory notes, will be found at the end of the commentary on Article 7. The Experts (1956) encouraged the ICRC to submit as comprehensive a list as possible and, by transmitting remarks on the items in the list contained in the Draft Rules (1955), many national Societies endorsed this initiative.

Article 7, paragraph 3.

However, even if they belong to one of those categories, they cannot be considered as a military objective where their total or partial destruction, in the circumstances ruling at the time, offers no military advantage.

This paragraph states the second condition which has to be met if an objective is to be regarded as of a military nature.

The general compass of what may be regarded as a military objective in the light of the preceding paragraphs and of the list appended thereto is necessarily very wide. It comprises objectives which are of an intrinsically military character (such as fortresses, naval bases or munition dumps) but it also includes “ mixed ” objectives, that is, those, which, while not of an intrinsically military character have acquired considerable military importance by reason of their close connection

with the war effort (munitions factories, stations, telephone exchanges); such targets may be of military importance, either temporarily or permanently in the course of the conflict. In any case, however, on the termination of hostilities, they return to their civilian function. If it is assumed that war is an exceptional state of affairs and that every possible step should be taken to preserve from destruction the persons and property needed by humanity when peace returns, it is essential that objectives, even when they come under one of the categories covered by paragraph 2, should not be regarded as being of a military nature when their destruction is of no real military advantage to the attacking party.

In previous codes, especially in the 1923 Air Warfare Hague Rules, an objective can only be considered as being of a military nature if its destruction in whole or in part presents a distinct military advantage. As will be seen, paragraph 3 is broadly in line with that conception. By putting the proposition in the negative and in stronger terms, it avoids the argument which would have arisen over the interpretation of the word "distinct".

This condition clearly provides an additional safeguard against pointless destruction. It may be added that the rule will apply, not so much to operations decided upon by the High Command who are always concerned about the value of attacks, as to acts of their subordinates¹.

* * *

¹ There is a striking illustration of this in the memoirs of a bomber pilot: having been unable to drop a bomb on the target assigned to them, the crew decided, in order to get rid of it before returning to their base, to drop it on a group of houses at a small crossroads inland. The whole hamlet was naturally wiped out. Even if the crossroads could be regarded as a military objective, there was no military advantage justifying the attack (see Louis GERMAIN, *Mémoires d'un incendiaire*, Paris, 1951, p. 89).

List of Categories of Military Objectives according to Article 7, paragraph 2

I. The objectives belonging to the following categories are those considered to be of generally recognized military importance :

- (1) Armed forces, including auxiliary or complementary organisations, and persons who, though not belonging to the above-mentioned formations, nevertheless take part in the fighting.
- (2) Positions, installations or constructions occupied by the forces indicated in sub-paragraph 1 above, as well as combat objectives (that is to say, those objectives which are directly contested in battle between land or sea forces including airborne forces).
- (3) Installations, constructions and other works of a military nature, such as barracks, fortifications, War Ministries (e.g. Ministries of Army, Navy, Air Force, National Defence, Supply) and other organs for the direction and administration of military operations.
- (4) Stores of arms or military supplies, such as munition dumps, stores of equipment or fuel, vehicles parks.
- (5) Airfields, rocket launching ramps and naval base installations.
- (6) Those of the lines and means of communication (railway lines, roads, bridges, tunnels and canals) which are of fundamental military importance.
- (7) The installations of broadcasting and television stations ; telephone and telegraph exchanges of fundamental military importance.
- (8) Industries of fundamental importance for the conduct of the war :
 - (a) industries for the manufacture of armaments such as weapons, munitions, rockets, armoured vehicles, military aircraft, fighting ships, including the manufacture of accessories and all other war material ;
 - (b) industries for the manufacture of supplies and material of a military character, such as transport and communications material, equipment for the armed forces ;
 - (c) factories or plants constituting other production and manufacturing centres of fundamental importance for the conduct of war, such as the metallurgical, engineering and chemical industries, whose nature or purpose is essentially military ;

- (d) storage and transport installations whose basic function it is to serve the industries referred to in (a)-(c) ;
 - (e) installations providing energy mainly for national defence, e.g. coal, other fuels, or atomic energy, and plants producing gas or electricity mainly for military consumption.
- (9) Installations constituting experimental, research centres for experiments on and the development of weapons and war material.

II. The following, however, are excepted from the foregoing list :

- (1) Persons, constructions, installations or transport which are protected under the Geneva Conventions I, II, III, of August 12, 1949 ;
- (2) Non-combatants in the armed forces who obviously take no active or direct part in hostilities.

III. The above list will be reviewed at intervals of not more than ten years by a group of Experts composed of persons with a sound grasp of military strategy and of others concerned with the protection of the civilian population.

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Some comments are called for on this model list of military objectives which does not of course presuppose any official recognition by the Red Cross of its content. It was drawn up with the help of military experts and is based on codes which go back to before the last World War and on Article 50 of the 1949 Geneva Convention on prisoners of war.

Full account has been taken of the observations of the National Red Cross Societies but it was not possible to accept all their proposals. As it is, a number of their observations are taken account of, not in the list itself, but in the application of the Draft Rules.

Thus, a national Society was prompted by the family nature, or at least the scattered layout, of a number of industries to propose that the list should only include installations constituting *large* industrial centres. If only a very small and unimportant concern is involved, Article 8, sub-paragraph (b) should be so applied as to spare it. If, on the other hand, its activity is essential to the defence economy, it is difficult to see how it can be protected, however small it may be, from all attacks.

There is obviously wide scope for differences of interpretation in a list of this kind, particularly in the case of expressions such as "of essentially military importance" or "for military consumption". But, as we have already pointed out, the list assumes in all cases the application of the Draft Rules, which offer the necessary additional safeguards.

The above model not only reserves persons and property protected by the Geneva Conventions but also non-combatants in the armed forces. The teaching of writers generally admits, though there is not complete unanimity on that point, that non-combatants should not be directly the subject of acts of violence if the adversary is able to distinguish them as being non-combatants. The problem of defining that category has taken on, with new developments in warfare and with the evolution of armed forces, a new aspect which has not so far been studied as closely as it deserves. The object of the reservation in the above list is not to settle this question but simply to draw up a list which will be in harmony with current international law.

Lastly, the list mentions a procedure for its revision. That idea was given general approval in the Remarks on the 1955 Draft Rules and the Experts (1956) regarded it as all the more helpful since they felt it would be difficult to make the list in question mandatory and exhaustive. Several National Societies even put forward proposals as regards the procedure for revision. In this way, it was suggested that the Commission for the revision of the list should be composed of experts nominated by the States who were members of the Economic and Social Council of the United Nations ; another suggestion was that these experts should be nominated partly by the Great Powers and partly by the other States who were bound by the Rules. The general feeling was that humanitarian organisations such as the ICRC should be represented on that body.

The ICRC is grateful to the national Societies for these suggestions and will not fail to submit them in detail to those persons responsible for drawing up the final list.

Chapter III. — Precautions in Attacks on Military Objectives

The precautions to be taken during an attack and the prohibition of attacks on the civilian population are the two corner-stones of the present Rules. The importance of those two safeguards will be realised if it is borne in mind that the development in the design of weapons would enable a belligerent, even in the case of an attack directed with precision against a military objective, to destroy all life over a considerable area.

The necessity for such precautions has been affirmed for some time past, although it was not at first expressed with all the clarity desirable. It was already implied in Article 27 of the Hague Regulations of 1907; according to the resolution adopted in 1938 by the League of Nations, attacks from the air have to be carried out "in such a way that civilian populations in the neighbourhood are not bombed through negligence"; a rule of the same description appears in the instructions (see Annex No. IV) given by some of the belligerents to their air forces during the last World War.

In addition to the precautions to be taken by the attacking side (Articles 8 and 9) there are corresponding precautions incumbent upon the authorities to whom the objective belongs, and who are responsible for the safety of the population thus threatened (Articles 10 to 13). The latter provisions have been clearly defined only in the more recent humanitarian regulations¹.

The contents of this Chapter, with the exception of the clause relative to civil defence bodies, already appeared in Section III of the 1955 Draft; however, the arrangement of the material in this section has been considerably modified. The amendments will be pointed out as and when they occur in the text.

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¹ In particular the Geneva Conventions of 1949, in regard to the protection of hospitals, and the Hague Convention of 1954, in regard to the protection of cultural property.

ART. 8. — Precautions to be taken in planning attacks.

The person responsible for ordering or launching an attack shall, first of all:

Article 8 now takes an important place in the rules; it assembles and sets forth, in a logical form, ideas or rules contained in Articles 4, 6 and 7 of the 1955 Draft. The Experts (1956) emphasised, in particular, the necessity of bringing out with greater clarity than in the 1955 Draft the responsibilities incumbent upon those engaged in the conduct of hostilities, firstly in the choice of the attack and, secondly, in launching it (see Report (1956), p. 26 and 35.)

Article 8 lays those responsibilities upon the person who is preparing an attack upon one or several military objectives. The attack has not yet been launched; nevertheless, even at this preliminary stage, it is necessary for the responsible person, whatever his military rank may be, to give due weight, in making his decision as to the planning and choice of an attacks, to the consideration due to the civilian population. It is the next provision (Article 9) which deals with the humanitarian duties to be fulfilled prior to or during the *launching* of an attack.

It will be seen that the provision essentially concerns those who order military operations. The 1955 Draft put forward, in this connexion, the notion of the "higher command" in regard to strategic attacks. In 1956 the Experts carefully examined this notion (see Report, p. 17) which was criticised by some and approved by others. According to the present wording, the person who orders the attacks may hold any rank; certain Experts showed, in fact, that the fire power now available to armies sometimes gave even a junior officer in the front line, for example, such possibilities of causing destruction that humanitarian precautions must be taken by all ranks.

It was necessary, therefore, to give the rule a general application. Actually, however, the provision applies in particular to the higher command, which is usually responsible for attacks likely to have the most serious effects upon the civilian population, i. e. attacks on objectives situated far behind the front line.

But the provision is not limited to the person who "orders" the attack; it also refers to the person who *launches* it. The case must be envisaged, and frequently occurs, of an officer invested with sufficient authority both to choose the objective and launch the attack. That would be the case, for instance, as regards airmen sent on a general mission which left them free to act very largely according to their own judgment. In this respect the term "responsible for ordering" would, by itself, have been too restrictive.

Article 8, under (a), paragraph 1.

make sure that the objective, or objectives, to be attacked are military objectives within the meaning of the present rules and are duly identified:

This obligation is a logical sequel to Article 7. Nevertheless, it appears expedient to specify it expressly. The person who is planning an attack must make sure that the target is a military objective and that it fulfils the two conditions laid down in Article 7, i. e., that it belongs to a category of objective of generally recognised military importance, and that it presents a real military advantage in the circumstances ruling at the time.

Moreover, the military objective in question must be *duly identified*. That condition was one of the safeguards usually to be found in previous regulations. It appeared, in particular, in the principles laid down by the League of Nations, and again in the instructions issued to airmen in the last World War.

It is true that in 1954 some of the Experts drew attention to the difficulty of locating objectives on account of the use of camouflage or similar methods of concealment. Experience has shown, however, that the responsible authorities only launch attacks on objectives at a distance from the area of operations after their identification by the special army services concerned¹.

¹ If the objective has not been previously identified, the military advantage to be gained by the attack is open to question.

In regard to the obligations prescribed in this paragraph, it is necessary to examine an objection which might be made in some quarters to the provisions of Article 8, or other Articles. Are those obligations not unduly severe, where the combat area is concerned? It would not seem so, taking in to consideration the ground the latter would cover in practice. It must be presumed that the military element is predominant in such an area; it cannot therefore be reasonably required that the obligations should apply to members of the armed forces to the same extent as they would do in situations ruled by the contrary presumption, that is to say, in areas behind the lines where the civilian element is predominant. Hence, in the combat area, the care to be taken by the person responsible for the attack in examining according to Article 8 (a) the true character of the military objective and in its identification will necessarily be less, since, on the presumption referred to above, everything or practically everything contained therein will be a military objective fulfilling the conditions laid down in Article 7. For that reason the 1955 Draft drew a distinction between objectives in the immediate vicinity of military operations, and those at a distance from them. The precautions it laid down were less strict in the first case. But the Remarks and Suggestions on the Draft Rules rightly pointed out that it was preferable to refrain from stressing this distinction which, in many cases, no longer corresponds to present conditions of warfare.

With the exception of Paragraph 2 of Article 9, where special reasons warrant its inclusion, the present Draft makes no further reference to that distinction. The general application thus given to the obligations under Article 8 is fully justified if one considers the far greater danger incurred by the civilian population as a result of the mobile nature of military operations and the greater power of destruction placed in the hands of the "rank and file".

Article 8, under (a), paragraph 2.

When the military advantage to be gained leaves the choice open between several objectives, he is required to select the one,

an attack on which involves least danger for the civilian population.

This rule appeared as a separate provision in the 1955 Draft (former Article 6) and met with the general approval of the Red Cross Societies. In the new version it was only natural to place it among the humanitarian obligations incumbent upon those responsible for attacks.

It is, in fact, an essential precaution. After ascertaining the nature of the objectives he intends to attack, the person responsible must consider whether, by selecting some objectives for attack rather than others, he could obtain the same military advantage while causing less harm to the civilian population.

This rule (entitled the "choice of a lesser evil" in the 1955 Draft), although based on the humanitarian principles applicable to operations of war, was never clearly defined in previous regulations. It corresponds, however, to the practice followed by belligerents in some cases, particularly in regard to an occupied country.

To illustrate this rule, we may quote, as an example certain attacks directed against enemy lines of communication. During military operations of this nature, certain belligerents, wishing to spare the inhabitants of allied territory under enemy occupation as far as possible, tried to limit their attacks on the enemy to points where they would be effective without causing serious damage to the civilian population. Instead of bombing railway stations, the attacks were directed at the railway lines or roads, at points which were vulnerable but nevertheless far removed from centres of population.

A similar method could be used in operations directed against other types of military objectives, especially against a country's economic structure, where attacks on certain key points may suffice to paralyse the whole.

The ICRC considered, therefore, that such an idea was worth expressing in completely general terms. All civilians, whether friends or enemies, must, in fact, be placed on an equal footing in relation to the provisions of the present Draft Rules.

It must be pointed out, however, that the choice lies only between objectives presenting the *same* military advantage, a condition which will not always obtain. For that reason, the value of the provision is, in fact, limited; it is more of a recommendation than a strict obligation. It nevertheless provides a necessary reminder and once again shows that a state of war is the exception rather than the rule, and that the safeguarding of the population remains the predominant factor.

Article 8, under (b).

take into account the loss and destruction which the attack, even if carried out with the precautions prescribed under Article 9, is liable to inflict upon the civilian population.

He is required to refrain from the attack if, after due consideration, it is apparent that the loss and destruction would be disproportionate to the military advantage anticipated.

The principle of the proportion in an attack between the military advantage sought and the risk incurred by the civilian population has been generally accepted by recognised publicists on the subject and the Experts (1954) made a point of stressing it. It was implicit in the 1955 Draft (former Article 4) which prohibited attacks that did not promise a "sufficient" military advantage.

Although they did not reach unanimous agreement in regard to this last concept, the Experts (1956) (see Report, p. 26), at least insisted on one essential obligation—that of weighing the military advantage against the harm which the attack would be liable to cause the civilian population.

The principle of due proportion is better known in the form it assumes in Paragraph 2. The new and important factor here is that it becomes compulsory for the comparison to be made in all circumstances. Even if it turns out that an attack is possible, the comparison must have been made and, particularly in the case of strategic attacks of great importance, a record of it should be available for future reference, if required.

The term *loss and destruction which the attack is liable to inflict upon the civilian population* should be understood in a very wide sense. It is, in fact, not only a matter of the loss and destruction which the attack may cause in the vicinity of the objective. The objective itself—principally in the case of a “mixed” objective, such as a railway station, cultural assets or a school—may have, for the civilian population, a peace-time value which is sometimes very great and may even be irreplaceable. Moreover, there may be, within the area, members of the civilian population who, on account of the suddenness of the attack, have not had time to take shelter. All those facts must be conscientiously weighed by the person responsible for the attack against the military advantage to be gained.

The incidental clause *even if carried out with the precautions prescribed under Article 9*, confirms and strengthens such an interpretation. Without it the provision might give the impression that these humanitarian rules envisage a priori extensive loss and destruction among the civilian population.

Does the reference to loss and destruction also concern the *indirect effects* of an attack on a military objective? The question was raised in several instances in the Remarks and Suggestions on the 1955 Draft, in connection with the former Article 8.

The person responsible for the attack may reasonably be required to take account, in his estimate of loss and destruction, of the indirect effects which may normally be anticipated, inasmuch as they are liable to occur and are characteristic of the given circumstances. Such is the case, for example, where incendiary bombs are liable, on account of a very high wind, to set fire to dwellings in the neighbourhood. If, on the other hand, the said bombs result in an outbreak of fire in the surrounding area owing to the fact that the authorities of the territory under attack have left highly inflammable matter in the immediate vicinity of the objective, such indirect effect could not be anticipated by the person responsible for the attack. The latter is justified in considering that the opposing side, in accordance with Article 9, has taken the necessary precautions to reduce the

dangers, direct or indirect, to which the population is exposed as a result of the hostilities.

This question is of particular importance in the case of operations conducted against installations such as those referred to in Article 17, that is to say, those the destruction of which may have very dangerous indirect effects over a wide area. For that reason, Article 17 makes special reference to the rules of Articles 8 to 11, among which this obligation to consider all foreseeable effects of the attack upon the civilian population is of particular significance.

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Paragraph 2 (b) follows logically from the preceding paragraph. It sets forth, in the form most generally accepted, the principle of due proportion in the laws of war.

The proper estimation of loss and destruction naturally depends upon the person responsible for the attack, but it can be required that such estimation should be normal and objective. The two factors involved—civilian loss and military advantage—must be appraised at their true value. The military advantage should not be arbitrarily overvalued; on the contrary, it must be weighed in the light of experience, which has often proved that the results obtained may be very much less than was anticipated¹. As to the question of the civilian loss, in the event of any doubt as to its extent, the person responsible for the attack should always rate it as highly as possible, in accordance with the principle quoted during the meeting of the Experts (1956): “in dubio pro humanitate”.

It is, of course, difficult to give any definite rule for determining when the civilian loss is out of proportion to the military

¹ A particularly significant example is that of the attacks made on French railway centres prior to the Allied landing in 1944. The Higher Command could have reasonably considered those attacks effective. But according to one of the conclusions of the American commissions who were given the task of investigating the results of the bombardments “... the pre-D Day attacks against the French rail centres were not necessary and the 70,000 tons involved could have been devoted to alternative targets”. (*The Army Air Forces in World War II*, Vol. III, p. 160-161.)

advantage. In appreciating the situation, however, it must be borne in mind that there is no question of equality, which would be more difficult to appreciate, but of the relation between two factors, one of which is obviously of much greater importance than the other.

Two examples may be given in this connection ; one, quoted during the meeting of the Experts (1956), was the fact that the bombing of a railway station dislocated the traffic for a few hours only—an insignificant military advantage—whereas tens of thousands of persons were killed in the vicinity of the railway station, the town being full of refugees.

The other example is that of troops entering a locality and being fired upon. Was it necessary, in order to deal with a few snipers, to bombard the entire locality ? On many occasions, the officers, acting in the spirit of Article 8 (b), refrained from doing so and had recourse instead to measures which were less dangerous to the civilian population.

Article 8, under (c).

whenever the circumstances allow, warn the civilian population in jeopardy, to enable it to take shelter.

In 1954, the Experts considered the question whether Article 26 of the Hague Regulations of 1907 (which stipulates that the attacking force is to warn the authorities before commencing a bombardment, except in cases of " assault ") could still be applied in the case of air warfare. The Experts did not reach an agreement, as some were of the opinion that the rule was still valid, and others that it had fallen into abeyance.

The ICRC nevertheless thought it necessary to insert in the Draft Rules (1955), Article 7, the principle of giving warning, as its long standing and wide field of application required its inclusion in any code of rules for the protection of the civilian population ¹.

¹ During the last World War, and the Korean War, warning was sometimes given before aerial attacks, but in most cases the warning was, it is true, intended for the civilian population of an occupied territory.

In 1956, the opinions of the Experts were divided in regard to the former Article 7 (see Report, p. 32-34). Some of them pointed out that a stipulation of that nature would be liable to raise false hopes and, further, that warning given during the last conflict was, in many cases, intended to mislead the enemy. Others, however, were in favour of the rule being maintained. For the reasons mentioned above, the ICRC concurred with the latter opinion, and in accordance with one happy suggestion, included previous warning among the humanitarian obligations incumbent upon those responsible for attacks.

The purpose of the rule is brought up more clearly by the new wording ; the warning must be directed, not at the civilian population in general, but at those who are in jeopardy, that is to say, those who are liable to suffer from the effects of the attack. Further, the warning should enable that portion of the population to take shelter ; it should be given in good time, therefore, and be unmistakable.

In its present form, with the words *whenever the circumstances allow*, the scope of the rule is, naturally, limited. As has already been said, surprise attack is the military commander's "trump card", and, in many cases, circumstances do not permit the person ordering the attack to warn the population. Nevertheless this provision will have the effect of forcing the attacking side to examine the possibility of giving a warning and that is its main advantage.

The present code of rules in itself tends to reduce the number of cases where a warning will be necessary. By means of the list of the categories of military objectives appended, it gives the civilian population an approximate idea of the places or objectives which are the most directly exposed to attack, and , in other clauses, it invites it to remain at a distance from them.

It stands to reason that this rule must in no case be used as a pretext for giving a warning which is not followed by an attack, with the intention of causing a panic among the civilian population. Such practice would have to be considered as an abuse and, in fact, as a form of warfare aimed at the civilian population.

ART. 9. — Precautions to be taken in carrying out the attack.

Paragraph 1.

All possible precautions shall be taken, both in the choice of the weapons and methods to be used, and in the carrying out of an attack, to ensure that no losses or damage are caused to the civilian population in the vicinity of the objective, or to its dwellings, or that such losses or damage are at least reduced to a minimum.

A resolution adopted in 1938 by the League of Nations required attacks from the air to be carried out "in such a way that civilian populations in the neighbourhood are not bombed through negligence". Similarly, the instructions to airmen in an annex to this document state that "the attack must be made with reasonable care to avoid undue loss of civilian life in the vicinity of the target".

A rule relating to this matter is already to be found in the 1955 Draft Rules (former Article 8). The substance of the rule met with general approval, but it was thought that the criterion laid down, namely that any loss or damage caused to the civilian population should not be disproportionate to the military advantage anticipated, would, in many cases, be difficult to apply; in particular, it was pointed out that, for the Red Cross, a military advantage, however considerable, could not justify extensive losses among the civilian population.

The ICRC was in full agreement with this view, and took it as a basis for the wording of the rule in the present Draft. The principle of due proportion between the military advantage to be gained and the harm caused has, as we have seen, been dealt with in Article 8 (*b*). Once the decision to attack has been taken, the effects must be limited, so far as possible, to the military objective itself, particularly in populated areas.

The military specialists among the Experts (1956) did, in fact, stress that modern weapons could, and should, be adapted to the object in view (see Report (1956) p. 19).

Paragraph 1, however, takes into account the difficulty of sometimes avoiding all losses among the civilian population;

therefore it places the attacking side under the obligation to reduce such losses *to a minimum*. This last conception is, of course, relative, but it is difficult to be more precise. The commander responsible for the attack must endeavour to assess that minimum in the same way as would be done by impartial judges called upon to pass judgment on his action, and who would attach particular weight to such factors as the extent of the objective the effectiveness of the defence, the weather etc.

In any case, the basic principle of the provision : the avoidance of losses to the civilian population, requires that this conception of a minimum should be strictly interpreted ; an interpretation under which harm could be caused to the civilian population at a reasonable distance from the objective under attack should be definitely ruled out.

As was pointed out by the Experts (1956), (see Report (1956), p. 35), the precautions to be taken were obligatory, not only for the person carrying out the attack, but also for the person giving the order for it. The latter person should, as far as possible, decide on the weapons and methods to be employed, with the object of reducing to a minimum the harm suffered by the civilian population, and the person who carries out the attack should, in launching it, adopt those methods best calculated to avoid dangerous effects on the neighbouring population.

The *civilian population in the vicinity* of the objective should, of course, be taken to mean the people *relatively speaking* nearest to the objective in question, since, under Article 11, the civilian population should be removed from military objectives and threatened areas.

Hence, when there is little or no civilian life in the vicinity of the objective, which will usually be the case in areas where land operations are taking place, Article 9 will not go further than the Hague Regulations ; this will also be the case where objectives are at some distance from land operations, but situated in the open country (aerodromes, stores and dumps in forests, emplacements for firing rockets, etc.). In densely populated civilian areas, on the contrary, greater precautions would be

necessary and there would appear to be grounds for applying to these precautions the special rule set out in Paragraph 2.

With regard to the term *losses or damage*, the commentary on Article 8 is also applicable, subject, however, to one important exception. The term no longer applies to the objective itself, the destruction of which, whatever its value, has been decided on, but only to civilian persons or dwellings situated outside the objective.

In several cases the Remarks and Suggestions on the Draft Rules (1955) proposed that reference should be made at that stage to the fact that respect should be paid in all circumstances to hospitals and other installations protected under the Fourth Geneva Convention. In view, however, of the new Article 5, which fully reserves the obligations prescribed by other humanitarian Conventions, the ICRC thought it preferable not to refer to the matter.

The ICRC is nevertheless of the opinion that, in the light of this new code, the respect due to hospitals and installations protected by the Geneva Conventions calls for *special precautions* to spare them during attacks on military objectives. Such precautions are, in fact, entirely justified in view of the vital assistance provided by those installations to the civilian population.

Article 9, paragraph 2.

In particular, in towns and other places with a large civilian population, which are not in the vicinity of military or naval operations, the attack shall be conducted with the greatest degree of precision. It must not cause losses or destruction beyond the immediate surroundings of the objective attacked.

In the absence of generally recognised standards or of jurisprudence, it is to be feared that the conception of minimum damage, set forth in Paragraph 1, may be too liberal. It would appear essential, moreover, specifically to stipulate the "right

to existence" of all towns and cities which was stressed by one of the Experts in 1954.

The rule has another distinctive feature, in that it applies solely to attacks which are not closely linked with military operations on land or at sea. In the case of attacks affecting towns in the actual theatre of operations, it is hardly possible to call for more stringent precautions than those required by the general rule in Paragraph 1 and by the principles of international law.

The case of "strategical" attacks on objectives in towns had been provided for in the Hague Air Warfare Rules (1923). These Rules prohibited such attacks when the objectives were so situated as to run the risk of involving the bombardment of the neighbouring civilian population. That prohibition has often seemed too harsh to military experts; hence, apparently, the refusal of Governments to subscribe explicitly to this Rule. The ICRC has therefore put forward a slightly different solution, since experience has shown that preference must be given to a provision which may be less restrictive, but will work. The ICRC is of the opinion that this type of attack should be required (1) to be as accurate as possible and (2) to confine the damage to civilian life within certain limits.

Precision in attack is the reverse of indiscriminate bombing, which in practice usually means target-area or carpet bombing. For the ICRC, as well as for a number of experts and writers, such methods of warfare are unacceptable, and the rule contained in Article 10 expressly confirms that point of view.

That approach appears to be in line with the views of military experts. The indiscriminate bombardment of urban areas or whole towns seems to be an expedient adopted pending the development of methods allowing of greater precision, or, above all, as a means of striking at the morale of the enemy population¹. And does not the constant effort to attain greater

¹ See on this subject, the *Royal Air Force 1939-1945* by D. RICHARD and H. St. G. SAUNDERS, London 1953, Vol. I, pp. 230/231, Vol. II, p. 118, Vol. III, pp. 383-384. See also the work quoted above, *The (USA) Army Air Forces in World War II*, especially pp. 591, 597 and 603 of Vol. I, and pp. 58 and 638 of Vol. III.

precision in bombing¹ bear out the idea that this requirement is in the real interests of the belligerents?

As regards the limitation of losses and destruction, the 1955 Draft Rules were based on an area within a radius of 300 metres from the target. The authors of the Remarks and Suggestions on these Draft Rules as well as the Experts (1956) who devoted a good deal of care to the question (Report (1956), p. 36) had numerous reservations on this point.

The ICRC had, however, pointed out that what was involved was not simply a question of the order of magnitude "On the surface", it said, "what we are talking about is the number of metres. In reality, the point under discussion is whether a town can be razed to the ground simply because it contains a military objective."

Nevertheless, the limit of 300 metres was thought insufficient by many experts (who had perhaps taken it too literally). For its part, the ICRC thought particularly, in view of certain comments on the subject, that the 300 metres radius appeared to authorise over the whole area within these limits a measure of destruction which could, in reality, be still further reduced. The ICRC therefore preferred not to put a figure on the extent of the zone, and to be satisfied with the rule that losses and destruction should not be caused beyond the *immediate surroundings* (in French: "les abords") of the objective attacked. This conception is, it is true, only relative; it should therefore be worked out as a function of the dimensions of the objective and other factors already mentioned in connection with Paragraph 1. That conception shows, in any case, that an attack on a single objective in a town behind the lines should not involve the destruction of a large part of the town; if the effects of the attack are not strictly limited to the objective itself, they should definitely affect only the area in which the objective is situated. Numerous instances during the last

¹ Striking examples of the degree of precision attained by a trained crew when carrying out certain attacks are given in P. BRICKHILL'S work *The Dam Busters* (translated into French as *Les briseurs de barrages*, Paris 1954).

World War prove that attacks within these limits both safeguard the population, and satisfy the real interests of States in general.

Article 9, paragraph 3.

The person responsible for carrying out the attack must abandon or break off the operation if he perceives that the conditions set forth above cannot be respected.

This stipulation is implicit in the preceding rules; nevertheless, it seemed advisable to formulate it explicitly in order to meet the wishes of the Experts (1956).

A rule of this kind, which did not appear in the 1955 Draft, seems to be generally accepted, both by the publicists¹ and in practice. The instructions to air forces, to which frequent reference has been made in these pages, state that "if any doubt exists as to the possibility of accurate bombing, or if a large error would involve the risk of serious damage to a populated area, no attack should be made".

This rule does not apply to the commander ordering the attack, but only to the person who carries it out. He alone will be in a position to appreciate, at the time, whether circumstances will, or will not, make the attack permissible within the terms of the humanitarian provisions of Article 9. Thus, he may be led to deviate from orders. In that case, this rule would release him of his responsibility towards his superior officers.

ART. 10. — Target-area bombing.

It is forbidden to attack without distinction, as a single objective, an area including several military objectives at a distance from one another where elements of the civilian population, or dwellings, are situated in between the said military objectives.

In the 1955 Draft, the ICRC had included this provision as the second paragraph of the article concerning the precautions required in carrying out an attack. It was thought pre-

¹ See SPAIGHT, *Air Power and War Rights*, 3rd Edition, p. 268.

ferable, in the new version, to insert it as a separate clause, as it deals with a special aspect of the delivery of attacks.

Article 9 is, in fact, more particularly concerned with the effect of attacks on an individual military objective, whereas consideration should also be given to cases in which several military objectives are situated in one particular area. In such cases, there would be a far greater risk of the Parties to the conflict neglecting, or completely ignoring, the precautions which they should take as regards the civilian population.

The practice of target area bombing is not of recent inception. It has been current practice for some time in land warfare—in order to capture a strong point the enemy positions are subjected to a heavy concentration of fire. In such cases, this practice is not contrary to the laws of war, since the military factor in the zone attacked is predominant, or even exclusive.

On the other hand, progress in methods of warfare makes it possible completely to destroy areas where military factors, far from being predominant, are, on the contrary, relatively unimportant. This new and disturbing phenomenon is due at bottom to two factors: the possibility afforded by air warfare of engaging in hostilities over the whole of the enemy territory and the increase in the destructive power of weapons.

It was to combat the temptation to belligerents to exploit those two developments and to prevent target area bombing from being accepted as the regular practice, or even condoned, that the ICRC felt it desirable to insert the relevant rule in Article 10 and thus to lay emphasis on the prohibition of indiscriminate attacks.

The only amendments to this provision, the substance of which met with general approval in the Remarks and Suggestions on the Draft Rules (1955), were on points of drafting.

The term *dwelling*s which is also used in Paragraph 1, Article 9, should be understood in the more specific sense to be found in Article 6, paragraph 2.

Elements of the civilian population situated *in between the said military objectives* must be taken in the main as covering

persons situated, in accordance with Article 11, at a sufficient distance from those objectives. It is not possible, however, to rule out the case of persons unable to leave positions which have suddenly become military objectives (for instance, as a result of an attack by airborne troops behind the enemy lines).

The above comments explain the general import of the conception of military objectives *at a distance from one another*. In this context, as in Article 9, it seemed necessary—in order that the rule might still be generally valid—not to give any actual figure for the distance separating military objectives thus attacked. The essential point is to realise that the objectives in question are not adjacent, but at a sufficient distance from one another for civilian life between them to be broadly speaking possible, and that the person responsible for the attack should work on that assumption.

While the rule in Article 10 is general in its scope, it should be observed that in the area of land operations, where the military element usually predominates, the belligerents are confronted as it were with a series of contiguous military objectives ; consequently the rule is hardly applicable. Moreover in places with a dense civilian population Article 9, paragraph 2 would be decisive.

It follows therefore that the rule in Article 10 is particularly important in what might be described as areas with a sparse civilian population outside the zone where military operations are taking place.

ART. 11. — “ Passive ” precautions.

Paragraph 1.

The Parties to the conflict shall, so far as possible, take all necessary steps to protect the civilian population subject to their authority from the dangers to which they would be exposed in an attack—in particular by removing them from the vicinity of military objectives and from threatened areas. However, the rights conferred upon the population in the event of transfer or evacuation under Article 49 of the Fourth Geneva Convention of 12 August 1949 are expressly reserved.

Although the Experts experienced difficulty in 1954 in working out precise rules for the precautions to be taken by the attacking side, as expressed in Articles 8 and 9, they were unanimous in considering (see Summary 1954, p. 10) that provision should be made for "passive" precautions, or, in other words, the practical steps taken by each Party to the conflict to protect its population from the consequences of attacks.

In making this recommendation, the Experts merely fell in with an idea which has always been followed in regulations for the protection of civilians. Under the Hague Regulations, the precautions which the attacking side must take in respect of certain buildings depend on the measures for marking them taken by the State responsible for the buildings in question. The same provision for the protection of installations is also to be found in the Geneva Conventions; and the Hague Convention of May 14, 1954, for the Protection of Cultural Property, makes a clear distinction between *respect* for cultural property (precautions to be taken by the attacking side) and the *safeguarding* of cultural property (corresponding to the "passive" precautions).

The ICRC feels that it is also essential to include in the Draft Rules general provision for obliging Parties to the conflict to take "passive" precautions. *That obligation is, indeed, the inevitable and necessary counterpart of the measures and limitations which the attacking side is itself required to adopt.* In the interest of the civilian population, it is essential that the efforts demanded of the attacking side to spare civilians should be met by the enemy with measures facilitating such efforts.

The rule under Article 11, by making what is described as "civil defence" obligation, not only applies to the relations between States and their nationals; it is also a valuable safeguard for the inhabitants of occupied territories.

The text of the rule, which met with general approval in the Remarks and Suggestions on Draft Rules (1955), has been slightly amended in order to take certain observations into account.

A reservation has been accepted by the addition of the words *so far as possible*. Some Red Cross Societies had pointed out that the cost of adopting measures of protection to meet the large-scale modern methods of warfare would be beyond the means of certain States. It goes without saying that this reservation must be honestly interpreted, and that on no account could it justify, especially in an occupied country, the deliberate evasion on the part of the authorities concerned of their duties as regards civil defence.

The Remarks and Suggestions on Draft Rules (1955), and the Experts (1956), were not in favour of entering in detail into the practical steps which should be taken by the States concerned. The only surviving provision is the recommendation to keep the population away *from the vicinity* of military objectives (which implies, of course, that it should be removed to a *sufficient* distance), which constitutes a normal counterpart of the obligation laid upon the attacking side, under Article 9, to limit the effects to the vicinity of the objective attacked. In regard to civilians whose duties compel them to remain in proximity to, or even within, the threatened areas, the State in question should endeavour to ensure their safety by other measures such as shelters, prior warning, etc.

Several Red Cross Societies requested that special mention should be made of civil defence bodies. This request has been complied with in the present Draft in Article 12.

It had been rightly pointed out that the obligation to remove the civilian population might be used as a pretext for transfers of population, which would be contrary to the provisions of the Fourth Geneva Convention of 1949. In accordance therefore, with a suggestion made by the Red Cross Experts (1956) (see Report (1956), p. 38), the rights conferred under Article 49 of that Convention (which prohibits forced transfers and deportations and applies very strict safeguards to evacuations by the Occupying Power) have been expressly reserved under Article 11.

Article 11, paragraph 2.

Similarly, the Parties to the conflict shall, so far as possible, avoid the permanent presence of armed forces, military material,

mobile military establishments or installations, in towns or other places with a large civilian population.

In organising passive precautionary methods it is essential to separate as far as possible what is military from what is civilian. Paragraph 1 indicates one of the methods which may be used to that end when the military element cannot be removed. Paragraph 2 sets forth the opposite method for case where it is possible to apply it. The favourable reception given to this provision in the Remarks and Suggestions on Draft Rules (1955) proves that it meets a real need.

Paragraph 2 is merely a recommendation. The ICRC is quite aware that areas may become indispensable strong points for armed forces. However, the term *towns or other places with a large civilian population* shows clearly that the provision applies in the main to centres outside the area of operations. If it is desired to reaffirm the principle of the "right of existence" of towns, belligerents can also be required in the interests of these towns to endeavour not to leave military or militarised installations in the area or troops who could easily be placed or stationed elsewhere.

There is no question, of course, of preventing the passage of any troops or military elements through towns behind the lines, but their *permanent* presence must be ruled out. In this connection, the term "*mobile military establishments*" must be interpreted very widely and should be regarded as covering industries which are important to the war effort and which could be placed elsewhere.

The full significance of the recommendation is felt when it is taken in conjunction with Article 9. The essential corollary of paragraph 2 of that article in particular, which applies solely to "strategical" attacks, is that the Parties to the conflict should not leave in towns military installations of major importance, i.e. airfields, military scientific research establishments or munitions depots. The non-observance of the rule would entail a grave responsibility for the parties concerned in the event of attacks against those objectives causing extensive losses to the civilian population.

Finally, the rule contained in paragraph 2 should, in the same way as the rule under paragraph 1, give general protection to the civilian population, whoever the responsible authorities may be.

ART. 12. — Civil Defence bodies.

Paragraph 1.

The Parties to the conflict shall facilitate the work of the civilian bodies exclusively engaged in protecting and assisting the civilian population in case of attack.

In the Remarks and Suggestions on Draft Rules (1955), several National Red Cross Societies suggested that the Draft Rules should contain a provision relating to civil defence bodies ; reference was, in fact, made to the latter in the former Article 12 concerning " open towns ". The question was carefully studied by the Experts (1956), (see Report, p. 23 and 38).

Some of them pointed out the vital role of civil defence services, in which several National Red Cross Societies play an important part. They observed that the Fourth Geneva Convention (Articles 20 and 63) could only apply indirectly to civil defence bodies, and stressed the need for any humanitarian code put forward by the Red Cross to afford full facilities to the personnel lending their aid to persons protected by these provisions.

When inserting a clause on these lines in the Draft Rules, however, the ICRC confined itself to making a stipulation of a very general nature and of a strictly limited scope.

In the first place, it was proposed that Article 12 should only apply to organisations who are really engaged in providing *assistance*. The organisations concerned include *civilian* bodies, i.e. those which are not in any way connected with the army and—this is an essential point—whose members will in no case be called upon to take part in hostilities, even against enemy parachutists.

The activity of the bodies covered by Article 12 should be restricted to safeguarding the civilian population. It should not, therefore, be employed for the protection of establishments or industries of military significance. These bodies can not only take action during or after an attack, but they can also take preventive measures (such as warning and evacuating the population, forming first aid teams and training the population).

Viewed in this light, civil defence takes its place in the framework of humanitarian action. No doubt, it also to some extent serves the cause of national defence, but its position is the same, in that respect, as that of the medical services of the armed forces which, it could be contended also help to maintain the military potential of the Parties to the conflict. For the Red Cross the work of organisations and their staffs whose purpose is to assist persons who should be spared the consequences of hostilities will always rank as humanitarian.

In the second place, this rule does not confer special immunity on the bodies in question. These enjoy the protection conferred upon the civilian population in general by the preceding rules and by Article 6 in particular.

Some Experts pointed out that the staff of those organisations would, on account of their duties, run a greater risk than other members of the civilian population of being mistaken for members of the armed forces, and that it would therefore be to their advantage to enjoy special immunity. The granting of such immunity would, however, raise complicated and delicate problems which are dealt with in the pages that follow. In consequence, the ICRC thought it advisable not to go beyond the general rule in paragraph 1, while reserving the possibility, in paragraph 2, of granting special immunity to civil defence personnel.

The clause therefore merely requests States to *facilitate* the work of the bodies in question ; their activity should obviously not be hampered and, in addition, all steps should be taken, not only during but also before the attack, to ensure that this activity will be effective. It will be seen that this provision is linked with the rules in Article 11 ; it is addressed more particularly to the authorities responsible for the civilian

population rather than the enemy, and it is of special importance in the case of occupied territories.

Many countries already comply with this prescription. Others, however, have not yet taken any civil defence measures. In such cases Article 12 provides valuable support for organisations, in particular the Red Cross Societies, qualified to deal with civil defence.

Moreover, in several countries, civil defence is organised on military or para-military lines. Every country is of course free to adopt a civil defence scheme based on its needs and resources. Nevertheless, as emphasised by the Experts (1956), Article 12 should induce those countries, when organising their civil defence services, to make a clearer distinction, between those which are of a military nature or concerned with the protection of its war potential, and those which fulfil the conditions set forth in Article 12. Only the latter services' activity will be recognised, or even in some cases, facilitated, by the enemy.

It is therefore imperative in the interests of the population that the national civil defence service should be organised in such a manner as to fulfil those conditions in part, if not entirely, and thus to be in a position to carry out its work regardless of the hazards of war. If we consider the trouble and the cost incurred in setting up even a sketchy civil defence scheme, is it not to the advantage of Governments too to see that such services are organised in such a way as to comply with Article 12?

Article 12, paragraph 2.

They can agree to confer special immunity upon the personnel of those bodies, their equipment and installations by means of a special emblem.

The conferring of immunity upon civil defence bodies would probably facilitate their good work, and would be in line with

certain solutions adopted in the latest humanitarian regulations¹.

Nevertheless, in the case of civil defence bodies, the granting of immunity involves considerable difficulties. This is due to the fact that the structure, nature and work of those organisations varies from one country to another, and that their activities is sometimes not restricted to purely humanitarian ends.

Moreover, special immunity can only work if the persons and installations enjoying it wear a special emblem, to enable the enemy to identify and spare them. The question then arises, not only of the choice of the protective emblem, but also of ways of controlling its use and the sanctions applicable in the event of its abuse.

During the meeting of the Advisory Working Party in May 1956, it was pointed out that under Article 20 of the Fourth Geneva Convention, the Red Cross emblem was strictly reserved for the personnel of civilian hospitals. In some countries, the medical services of the civil defence body are on the same footing as that personnel and are thus under the protection of the Geneva emblem. But this is not always so, and, in any case, the protection of the emblem could not be extended to cover other services of the civil defence bodies, such as technical and social services, etc. It would therefore be necessary to make arrangements for the adoption of an emblem other than that of the Red Cross for the protection of the personnel and installations in question.

The ICRC did not think it desirable to settle these questions in the present Draft Rules. Paragraph 2 is merely intended to afford some guidance and to provide a basis for further developments of the law in this matter.

¹ This is so in the case of the personnel of civilian hospitals, under the Fourth Geneva Convention, or of the guards employed on the protection of monuments, under the Hague Convention for the Protection of Cultural Property (1954). In addition to the general protection conferred upon them as civilian persons these personnel or guards enjoy special immunity on account of the duties they perform.

ART. 13. — Intentional exposure to danger.

Parties to the conflict are prohibited from placing or keeping members of the civilian population subject to their authority in or near military objectives, with the idea of inducing the enemy to refrain from attacking those objectives.

In the Draft Rules (1955) this rule was inserted in the article relating to passive precautions (Article 9, paragraph 3). In fact however, it applies to a particular situation which warranted separate treatment, all the more so as any failure to comply with this rule would, ipso facto, constitute a serious infringement.

This article is merely the application to the question of the general protection of the civilian population of a principle which is already embodied in the humanitarian Conventions on war victims (Article 23, paragraph 1 of the Geneva Convention of 1949 regarding the treatment of prisoners of war).

This provision met with general approval in the Remarks and Suggestions on Draft Rules (1955). It has therefore been retained, subject to a few slight formal amendments.

In particular, the previous wording of the rule might (in view of the term "*protected* from attack") give the impression that the presence of civilians within or in the vicinity of a military objective would necessarily confer general immunity thereon. The new wording makes it clearer that under the rules of the Draft, the presence of civilians does not prevent the Parties to the conflict from attacking the objective, but invites them to take greater precautions which may, in certain cases (Article 8, sub-paragraph (b)), lead them to refrain from attacking.

Chapter IV. — Weapons with Uncontrollable Effects

ART. 14. — Prohibited methods of warfare.

Paragraph I.

Without prejudice to the present or future prohibition of certain specific weapons, the use is prohibited of weapons whose harmful effects—resulting in particular from the dissemination of incendiary, chemical, bacteriological, radioactive or other agents—could spread to an unforeseen degree or escape, either in space or in time, from the control of those who employ them, thus endangering the civilian population.

Article 9 provides that the belligerents must take precautions to ensure that their attacks on military objectives do not injure the population in the vicinity. The actual wording of the article shows that the rule applies both to the weapons employed and to the manner in which the attack is carried out. It might therefore be considered that the question of the lawful or unlawful nature of weapons has already been settled.

It nevertheless appeared necessary to have a special provision dealing with the subject. For Article 9 is really concerned with the use of weapons whose effects can, generally speaking, be controlled; its object is to prevent a force which attacks a military objective from using weapons whose "controllable" effects are obviously out of proportion to the end to be achieved. But it is possible to conceive of an attack on a military objective carried out with weapons which perhaps strike home but whose dangerous effects would be much greater than expected by the attacking force and which would injure civilians either far beyond the objective or long after the attack. It is with this point in particular that Article 14 must deal if it is to take account of the relatively recent and rapid development of armaments¹.

¹ In this connection, we may recall the words of the Honorary Chairman of the ICRC, Mr. Max Huber: "All through history, or for most of it, the weapons used by men in their fratricidal struggles could only kill one man at a blow, or at most a handful of men. It was not till the XIXth century that the advent of shrapnel marked the introduction

In addition, since hostilities may now extend over a considerable area, the use of weapons contrary to the laws of humanity may sometimes become more dangerous for the civilian population than for the combatants. For if precautionary measures are taken against the effects of these devices, it is probable that the first people to benefit from them will be the combatants, whereas civilians run the risk of finding themselves completely without protection against these weapons.

Moreover, in view of the wording of the Oslo resolution voted by all Red Cross Societies, the text of which is reproduced above ¹, the Draft Rules should pay special attention to the protection of the civilian population against the dangers of atomic, chemical and bacteriological warfare.

In order to meet the concern of the national Societies the ICRC had, in the Draft Rules (1955), adopted almost textually the prohibition contained in the 1925 Geneva Protocol, and had stressed the fact that the dissemination of radioactive elements was covered by that Protocol ².

The ICRC has since gone into the question even more thoroughly and has been induced by the Remarks and Suggestions on the Draft Rules (1955) to make a slight modification in the former Article 10 dealing with weapons whose effects are uncontrollable. In particular, it was decided not to link it so closely to the Geneva Protocol. That text, although often regarded as an expression of customary law, has un-

of a weapon acting by dispersal. Gas and bacteriological techniques have resulted in an even greater extension of the destructive effects of weapons in space and time, which may, from now on, with nuclear weapons, assume incalculable and unforeseeable proportions, the effects being felt even after the termination of hostilities. Those who now seek to foresee and codify the conditions of warfare are at the parting of the ways. Their conscience is called on to deal with a grave problem." *Op. cit.*, p. 46, *Revue internationale de la Croix-Rouge*, July 1955, p. 432.

¹ See above, p. 23.

² The Experts (1954) paid a great deal of attention to the question of radioactive warfare, that is, warfare in which radioactivity becomes the main means of injuring the enemy. A number of the Experts were of the opinion that, precisely because of its broad phrasing, the Geneva Protocol should also apply to radioactivity, which is a form of poisoning (Experts' Opinions (1954), p. 3).

fortunately not yet been universally ratified. Moreover, it provides for the total prohibition of certain weapons, which therefore also applies to engagements between armed forces only, which is a question falling essentially within the purview of governments. All the same, the Red Cross can not remain indifferent to the choice of weapons used in the actual fighting. It cannot forget that weapons may cause unnecessary suffering to military personnel as well, and in particular to the wounded, and this brings the matter within the scope of the Geneva Conventions. Was not the ICRC one of the first to protest at the use of gas in the first World War?

Be that as it may, in the light of all the views submitted the ICRC thought it wise to keep to the fundamental premise of all the Draft Rules, which is that the civilian population must be protected. It follows that the question of whether the acts of warfare or the weapons employed are permissible or not should be determined by the danger to which they expose the population.

The ICRC has thus limited the scope of the provisions as regards the categories of persons covered but brought it more into line with the aims of the Draft Rules. Moreover, by the use of the words *Without prejudice to the present... prohibition of specific weapons*, the ICRC has been at pains to emphasise that the rule in Article 14 in no way weakens the general ban on the employment of certain weapons as instruments of warfare.

Accordingly, the new wording no longer tries to list a certain number of means of causing harm which are particularly dangerous to the civilian population but to deduce from them their common and general characteristic, i.e., *their uncontrollable effects*, which, as a matter of fact, had already been mentioned in an incidental sentence in the former version.

As the ICRC has often pointed out, the draft Rules should concern themselves not so much with this or that specific device but with the *use* of weapons and their effects contrary to the principles of humanity. For a weapon, *per se*, may undergo substantial technical modifications, and even an ordinary

missile may be directed against civilians. It is preferable, therefore, to adhere to a permanent criterion in the Draft Rules and to avoid overtechnical definitions which might leave other indiscriminate weapons outside the scope of the rules or which would have to be brought up to date every time a new scientific discovery was made.

By adopting this very course, the Draft Rules express in a standardized form an idea dear to the Red Cross world and contained in a number of resolutions of its international Conference, which, it will be recalled, has already denounced more than once the use of "blind" weapons.

This striking expression has two aspects. In the first place, it applies to weapons with clearly defined effects but which are used blindly, that is to say, without distinguishing between what may be attacked and what ought to be respected. Secondly, it applies to those weapons which, by virtue of their unforeseeable and uncontrollable effects, also make it impossible to observe such a distinction ¹. It is precisely this last aspect of the question that is reflected in Article 14 and which is repeated in the actual title of the chapter ².

Certain terms need special definition. The effects of *weapons* refers to the use of one weapon in each particular case. Certain weapons, such as bacteriological devices, always seem to involve uncontrollable consequences. Others, on the contrary, such as incendiary weapons, are sometimes limited in their effects e.g. the flamethrower or napalm when used against a tank, but sometimes have uncontrollable consequences as in the case of certain bombs scattering inflammable material over a considerable distance. Other weapons may or may not have effects which are prohibited, depending on the place where they are used (e.g. in a desert, on the ocean or in densely populated territories).

¹ A military Expert has pointed out the advantage of this expression over the words "weapon of mass destruction" which appears to cover only the latter aspect. (See SLOUTZKY, *op. cit.*, Annex V).

² It has been observed, quite rightly, that the former title "weapons contrary to the laws of humanity" could properly be applied to all weapons.

By *harmful effects* is meant the harm caused by the weapon itself, by its constituent elements or by its primary or secondary products or effects, but not its indirect effects. In the case of bacteriological warfare, for example, the harmful element multiplies and is spread by contagion, but it is still a matter of the initial harmful principle.

There is no reference to "unforeseeable harmful effects", for it could be argued that the weapons covered by Article 14 produce effects which are not at all unexpected by the people using them. What is unforeseeable, or, at least, uncontrollable, is the *extent* of the harmful effects.

The Rules, as we pointed out in connection with Article 9, are based on the idea that the strength of a military action should be in proportion to the object it proposes to achieve. In order to respect the persons and the property protected by the law, it must be possible to determine beforehand the scope of the weapons being used.

This is what is brought out by the phrase *escape, either in space or in time, from the control of those who employ them*. The term "control" is used here in the current English sense which has made its way into other languages. Thus, it is used in this sense in the French and Spanish versions of this very provision. In this acceptation of the word, control means the mastery or power of someone over something. Moreover, it has a figurative sense in this passage, for the point at issue is not the actual mastery of the harmful consequences once they have made themselves felt; if that were so an ordinary shell would fall within the scope of the provision. The "control" that is meant here is *the ability of the person using the weapon to determine in advance with precision the extent of its harmful effects in space and time*.

Finally, the words *thus endangering the civilian population* express the additional condition to be fulfilled by a weapon with uncontrollable consequences if it is to come within the scope of Article 14. These words, however, in no way imply that the article applies to these weapons only when they are used against places inhabited by the civilian population. It

applies equally to weapons employed in the combat zone and only against armed forces but capable, on account of the scope of their harmful effects, of endangering even the population at a considerable distance from the theatre of military operations.

In conferring a general character on that rule, the ICRC could have abstained from giving examples of the kind of harmful action to be prohibited. Some instances have in fact been given in order to make the meaning of the rule clear. These examples, however, as is specifically emphasised by the words in *particular* and *or other agents* attached to them are merely intended to afford guidance and it goes without saying that the provision is equally applicable to other weapons with uncontrollable consequences such as poison, a weapon prohibited by the Hague Regulations, but which is not listed in the present article.

The inclusion of bacteriological and chemical techniques in this list does not call for any lengthy comments. *Chemical* must naturally be regarded as meaning asphyxiating gases and other toxic substances which are dangerous for man. It will be observed that, even for those countries not bound by the Geneva Protocol, perhaps because of certain interpretations of the word "gas", the rule which we are commenting on would nevertheless represent a salutary restriction, from the point of view of the civilian population, of such techniques of warfare.

The word *incendiary* deserves a more detailed explanation. The Draft Rules (1955) made no allusion to that weapon, their authors having worked on the premise that the terrible damage to the civilian population by incendiary bombs was mainly due to their indiscriminate use which, as it is, is contrary to Article 9 and 10. But, in view of a number of remarks and in the light of the opinions of several Experts (1956) (Report (1956), p. 47), the ICRC thought it desirable to mention incendiary agents in the list of examples in Article 14 and thereby to include in that article those incendiary weapons, which, by their nature or in certain circumstances, would constitute devices with uncontrollable effects.

As regards the dissemination of radioactive agents, most

of the Experts (1956) were of the same opinion as their 1954 colleagues and, although differing as to the prohibition of atomic weapons, they stressed the dangers of radioactive warfare (Report (1956), p. 40) whether as a result of radioactivity employed by itself or of radioactive contamination produced by nuclear weapons¹.

* * *

Since the ICRC is led to mention nuclear weapons more particularly in connection with the provision discussed in these pages, it may not be amiss, at this point, to add certain particulars as regards its attitude to this extremely important problem, especially in order to deal with some of the questions which have rightly been causing concern to the Red Cross Societies.

A number of them, in their Remarks and Suggestions on the Draft Rules (1955), suggested, for reasons which have been carefully considered by the ICRC, that the rules should include an explicit and complete prohibition of nuclear weapons. In particular, they made the point that the insertion of such a provision would be in line with the resolutions adopted by the Red Cross, that complete prohibition was necessary if the population were to be effectively protected and that the Red Cross should blaze the trail for Governments by so doing. As against this, other Societies and other Experts mainly raised the objection that the question of nuclear weapons had already been submitted to the United Nations and that the Draft Rules should therefore avoid tackling it. Moreover, by proclaiming a complete prohibition, the ICRC would run the risk of adversely affecting discussions within that organisation (Report (1956), pp. 40 et sqq.).

¹ As is stated by an authoritative publication, *The Effects of Atomic Weapons* (Los Alamos Scientific Laboratory, 1950, p. 287), "the atomic bomb may be described as an *indirect weapon of radioactive warfare*, for its main purpose is to cause physical destruction, the radioactive contamination being a secondary consideration".

The fact that a problem possessing a definitely humanitarian aspect has been raised in other quarters can in no way prevent the ICRC or the Red Cross from concerning themselves with it, especially in a sphere in which they have long been interested. On the other hand, they must deal with it from the point of view of the Red Cross and with what has always been their primary consideration in mind, i.e. the need to protect the victims of war and, in this particular case, the civilian population.

The reasons referred to above which prompted the ICRC not to link the Draft Rules too closely to the Geneva Protocol apply, with even greater force, to the complete banning of atomic weapons. The ICRC therefore decided that the very nature of the Draft Rules did not allow of the introduction of a new rule imposing an absolute ban on nuclear weapons. In addition, it has been seen that, in its desire to preserve the general nature of the rule in Article 14, the ICRC considered it preferable not to insert a special provision covering these weapons in addition to the reference in the list of instances. But it can easily be seen that the application of Article 14 and also of the rules as a whole would in practice rule out the use of nuclear weapons in the manner which all can remember.

Does such a conception imply that the ICRC does not regard the question of nuclear weapons as of cardinal importance? Quite the contrary. Was not the ICRC one of the first to be concerned about this matter? It is not even necessary at this point to recall at length the Circular Letter sent to all Red Cross Societies on 5 September 1945 and the appeal regarding atomic or non-directed missiles dated 5 April 1950, in which the ICRC expressed its anxiety on that score.

Whatever the reasons, the only use made of atomic weapons in wartime was against two towns (even if the bombing on these occasions was not more deadly in itself, discounting the surprise factor, than certain earlier bombings). These raids alone justified the ICRC in wondering whether it was possible in using such weapons to distinguish between combatants and non-combatants, an essential Red Cross principle. They gave the

ICRC grounds for calling upon states to do everything possible to reach agreement on the prohibition of these weapons.

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Since these appeals, there have been considerable developments which are bound to continue, so that the idea of nuclear weapons seems to embrace a very complex set of realities.

On the one hand, the ICRC has noted with concern the creation of, and experiments with, more and more powerful nuclear weapons. Their dangerous effects would be on such a scale, whether direct or indirect (radioactive contamination), that their use appears to be *a priori* contrary to the rules of humanity in general, and to the essential principles of the Red Cross in particular; their use would, in any case, be prohibited by the fundamental rules of the present Draft. Moreover, even the States concerned are at pains to emphasise that they will only use these missiles if the enemy does so first.. The clear implication is that they consider the use of these weapons contrary to the principles and rules mentioned above.

On the other hand, if certain statements and publications are to be believed, there is a tendency to develop nuclear weapons of less and less potency which would be equivalent, as regards their effects, to a heavy bombardment by "conventional" projectiles. When they explode at a sufficient height from the ground, their radioactive effects are believed to be almost instantaneous, and are in practice indistinguishable from their other harmful effects. Several of the Experts (1956) confirmed this point and the press has recently given prominence to the efforts of certain Powers to impose strict limits on the radioactivity of nuclear weapons.

Is it permissible, under these circumstances, to envisage the emergence of nuclear weapons which could be used in such a way as to satisfy the requirements of humaneness—especially those laid down in the present Draft and in the Geneva Conventions? In particular, is it possible to reduce their radioactive

effects to a point where the danger is really very slight and thus no longer comes within the provisions of Article 14, and to limit the distance at which their other effects are felt sufficiently to ensure that the stipulations of Article 9 or the provisions of the Geneva Conventions, particularly those protecting hospitals, are fully respected? In short, could nuclear weapons then be classed as *selective* weapons whose dangerous effects would always be *limited and controllable* even if they were used in large numbers?

To put this question in its proper perspective, we must think not only of the tragic cases of Hiroshima and Nagasaki (for that would mean raising the whole question of the bombing of towns from the air) but also of the use of such weapons on isolated or very large purely military targets—ships or military airfields for example.

It is not for the ICRC to give a reply on this essentially technical point, but for Governments. For the moment, the ICRC must confine itself to noting that opinions differ.

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At all events, even if the Red Cross is not called upon to reply, it must, on the other hand, on the assumption that a reply can actually be given, raise three questions which are causing it concern.

(1) Experience shows that, if recourse is once had to "reprisals", belligerents tend to take measures which become more and more violent. When such measures include the possible use of thermo-nuclear bombs, is there not every reason to prohibit, over and above recourse to war itself, anything which might set such a disastrous process in motion, that is, any means of combat (method or weapon) which, by its nature, appears *a priori* to be incapable of distinguishing between combatants and non-combatants?

(2) What is the position with regard to the long-term genetic effects not only of residual but also of the initial radio-activity of nuclear weapons? Although scientists differ as

regards this problem—since the observations made on the Hiroshima and Nagasaki survivors and their offspring do not yet allow of any final conclusion—the international exchanges of views at Geneva in the summer of 1955, which were attended by representatives of the ICRC, have confirmed the existence of profound uneasiness among scientists throughout the world on this score.

If the radioactivity of nuclear weapons—even when strictly limited in time or space and only affecting purely military elements—should have consequences which are dangerous for future generations, such weapons would then come within the category of devices whose effects are uncontrollable and indiscriminate and the Red Cross should be the first to draw attention to this danger. The ICRC is therefore following this question particularly closely.

(3) Finally, the possibility of nuclear weapons being employed is an incentive to experiments which may themselves, even in peacetime, present certain dangers. The ICRC cannot simply ignore such experiments. The dangers which arise from them are not only physical but also and above all moral. The repetition of atomic experiments accustoms mankind to the idea that the next war will necessarily be total and on a vast scale.

These three queries are sufficiently menacing for the ICRC to confirm its earlier appeal and associate itself with all those urging the Governments concerned to reach agreement on the prohibition of these weapons and to abandon atomic experiments. For that reason, in the hope that Governments find a solution to this problem, the ICRC has expressly reserved, in Article 14, any agreement forbidding all use of nuclear weapons by the words *Without prejudice to... future prohibition of certain specific weapons.*

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But the ICRC cannot rest content with this attitude, which is that of any man of good will. Agreement on these prohibitions has become a highly political question, that it to say, it has,

for several years, been the subject of negotiations within the appropriate organisations between the Governments most directly concerned. Furthermore, it is closely linked with the complicated question of disarmament and the effective supervision thereof. The Red Cross cannot but be conscious that in regard to these matters divergencies—which, it is to be greatly hoped, will be smoothed out—still exist between Governments speaking in the name of their peoples, and that the agreement desired may therefore take time.

If a conflict were unfortunately to break out before complete agreement was reached on the express prohibition of nuclear weapons, would the lack of such agreement result in total licence, in a widespread recourse to these weapons? It goes without saying that the Red Cross cannot admit such a possibility and it is here that it must make its voice heard and try to make a useful contribution.

Pending the realisation of such an agreement between the nations, which it desires with all its heart, the Red Cross must put forward its minimum demands, which are that, in the event of a future conflict, no resort must ever be had to nuclear weapons, unless it is possible strictly to observe the humanitarian rules which the Red Cross has always upheld.

That is precisely the point made in the rule in Article 14 and, in general terms, in the main rules in the present Draft, which must on this point voice the general feeling of all those who are attached to the ideals of the Red Cross and facilitate research for universally acceptable solutions. And there is reason to think that a large measure of agreement has already been achieved as regards the minimum requirements formulated above.

Article 14, paragraph 2.

This prohibition also applies to delayed-action weapons, the dangerous effects of which are liable to be felt by the civilian population.

The ICRC had consulted the Experts (1954) on the question of those delayed-action weapons as devices calculated

to cause unnecessary injury and certain of these Experts had expressed the view that the military value of these weapons was doubtful and that it might perhaps be possible to reach agreement on their prohibition (Experts' Opinions 1954, p. 6).

On going into the subject in greater detail, the ICRC was led to consider three cases of so-called "delayed-action" weapons. The first was that of submarine mines, the use of which is partly governed by the VIIIth Hague Convention of 1907. Then there are the mines used by armies during land operations and the explosive devices dropped from aircraft which only explode after a given lapse of time.

The question of submarine and land mines is dealt with in Article 15. That provision refers to devices whose action occurs as a result of contact, in the widest sense, with an outside agent who is assumed to be the adversary. *The provision under discussion covers only those weapons whose delayed action is fixed by the persons using them.* We are thinking especially of cases in which such weapons are used in "strategic" attacks. It appeared difficult, however, to provide for the complete banning of this kind of weapon; for, ultimately, they are equivalent to a repetition of the attack on the target, and if they are used in cases where they do not endanger the population—particularly if their consequences are confined to the objective itself—there would be good grounds for arguing against their prohibition.

On the other hand, what should, in the opinion of the ICRC, be banned are delayed-action projectiles used in circumstances such as to endanger the civilian population. Let us take the example of an attack from the air on an objective situated within a town, in the course of which delayed-action devices were dropped together with ordinary bombs. If the explosion of these devices were to affect the civilian population in the vicinity, the danger to it would be particularly grave because of the element of surprise and the hindrance to rescue operations. This in itself brings delayed-action explosives into that very category of weapons whose effects cannot be controlled which Article 14 is designed to prohibit.

That was the basic idea guiding the authors of this provision, which was, generally speaking, favourably received in the Remarks and Suggestions on the Draft Rules (1955). The article reproduces the rule which figured in the former Draft Rules in Article 10, paragraph 3, with this difference that the word *weapons* has been substituted for *projectiles*. It was not wished to exclude the case of those devices which, though not definable as "military mines" used for land operations, might be laid by enemy agents far behind the lines.

ART. 15. — Safety measures and devices.

Paragraph 1.

If the Parties to the conflict make use of mines, they are bound, without prejudice to the stipulations of the VIIIth Hague Convention of 1907, to chart the minefields. The chart shall be handed over, at the close of hostilities, to the adverse Party, and also to other authorities responsible for the safety of the population.

In its Comments on the Draft Rules (1955), the ICRC had indicated that it was continuing to study the question of mines employed in land operations. These devices, whether buried in the ground or hidden in buildings, may constitute grave dangers for the civilian population. Many children have been killed as a result of mines which exploded while, all unwitting, they were playing with them.

For their part, several Red Cross Societies drew the ICRC's attention, in their Remarks and Suggestions on the Draft Rules (1955), to the question of submarine mines. They stressed the new developments in connection with these devices, which explode not only when the enemy comes into contact with them, but also as a result of other factors (such as pressure). These Societies considered that, in consequence, the VIIIth Hague Convention of 1907 on Automatic Submarine Contact Mines no longer regulates this problem satisfactorily. The result is an increase in the danger to civil navigation.

As noted in connection with Article 5, the ICRC could not in the present Draft and at this stage, settle this particular question which is one for international law relating to maritime war.

The ICRC decided to adhere to a very broad rule after studying the question of landmines, which appears difficult to circumscribe within strict limits, and in view of its attitude to the problem of submarine mines. The content of the present paragraph, in so far as it concerns landmines, conforms to the general practice of armed forces and, in so far as it concerns submarine mines, to the spirit of the VIIIth Hague Convention, the provisions of which, incidentally, it reserves.

A rule of this kind, however limited, may afford valuable safeguards. Moreover, it forms a starting point and it will be for the military and Government Experts to say to what extent they wish to go beyond it. Would it be possible, for example, in certain cases to hand the charts of the minefields to the adverse Party and to the Authorities who are responsible for the safety of the population before the termination of active hostilities?

Article 15, paragraph 2.

Without prejudice to the precautions specified under Article 9, weapons capable of causing serious damage to the civilian population shall, so far as possible, be equipped with a safety device which renders them harmless when they escape from the control of those who employ them.

This paragraph reproduces a rule which, in the Draft Rules (1955), was formulated in Article 11. This rule, which does not figure in former sets of rules relating to war in the air, is partly based on a principle drawn from Article 1 of the VIIIth Hague Convention of 1907¹.

All States which design and manufacture powerful explosive devices—not to mention nuclear weapons—must be conscious of the danger these would represent for the civilian populations as a whole, including their own, if they were to explode under circumstances which those using them had not expected. Take, for example, the case of a guided rocket which, for some reason or another, strays from the radar network or other means of

¹ According to that article (paragraph 3), it is forbidden "to use torpedoes unless they become harmless when they have missed their objective".

control, or again that of an aircraft loaded with extremely powerful bombs which is hit by enemy fire and crashes with its load or drops it at random, as has often occurred.

The idea expressed in Article 15 undoubtedly corresponds to some extent to the actual practice of military circles.

A rule of this kind was given general approval in the Remarks and Suggestions on the Draft Rules (1955) and, in experts' opinion, it would be possible, technically speaking, to pay due regard to it if the competent authorities were ready to contemplate the adoption of the necessary measures and to meet the expense involved. For that reason, the provision to be found in the Draft Rules (1955) has only been slightly modified.

According to the previous version, the safety device attached to the weapons in question should function when it was no longer possible "to direct them accurately against a military objective". The new wording uses the wider expression—*when they escape from the control*—which is consistent with Article 14.

This situation may arise repeatedly and two instances were given above. The main point is to regard such a situation as existing when the person using the weapon is no longer able to direct it accurately against a military objective.

One point must be made clear. The weapons covered by this rule are not, as has sometimes been believed, those which are so defective from the technical point of view that it was necessary to exclude their utilisation by virtue of Article 9. What is involved is the type of accurate weapon whose effects are fully realised but which escape from the control of those who employ them as a result of outside circumstances, usually beyond their power to influence. The above example of the bomber brought down by the enemy brings out clearly the point which we are trying to make. Nevertheless, in order to avoid any confusion on this score, it is specified that the safety measures demanded are distinct from the precautions required under Article 9.

Chapter V. — Special Cases

ART. 16. — “ Open towns ”.

Paragraph 1.

When, on the outbreak or in the course of hostilities, a locality is declared to be an “ open town ”, the adverse Party shall be duly notified. The latter is bound to reply, and if it agrees to recognise the locality in question as an open town, shall cease from all attacks on the said town, and refrain from any military operation the sole object of which is its occupation.

The aim of the provisions of Article 16 is to spare the suffering caused by war to localities which do not, as such, constitute an obstacle to the operations of the adverse Party. These localities are ready to fall without a blow into its hands and it can attain its objects in those sectors where the localities are situated without unnecessary fighting or destruction.

It was in order to achieve much the same ends that Article 25 of the Hague Regulations (1907) laid down that : “ The attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended, is prohibited ”. Nevertheless, the application of this rule to air warfare, and especially to operations which are not directly linked to land fighting, raises numerous difficulties, as was recognised by the Experts in 1954 ¹ and 1956. For this conception of “ defencelessness ” involves difficult problems of interpretation in a large number of cases. It has therefore been gradually replaced by the idea of “ military objective ”. The provision in the Hague Regulations does not therefore now seem to offer the requisite protection as regards war in the air.

If a locality does not take part in the fighting and is ready to fall into the enemy’s hands without putting up any resistance and if there is no longer any military activity therein, it is clear that, if only by virtue of the general provisions of the present Draft, more particularly of Articles 6 to 9, the locality

¹ Experts’ Opinions (1954), pp. 4-5.

may in no case be attacked. There is still, nevertheless, one danger, which is that the adverse Party will often be unaware that installations rightly regarded by him as military objectives, such as stations, airfields or war factories, are no longer used for military purposes. This danger will be particularly serious in the case of localities situated near the combat zone where the belligerents are inclined to attack, as a precautionary measure, everything which seems to constitute a possible military object.

Article 16 is designed to obviate that risk and avoid all the consequent dangers to the civilian population. *It must supply a town which is ready to fall into the hands of the enemy without any show of resistance with a general outline of the conditions to be fulfilled in order to be more easily recognised as an "open town"*. By defining those conditions in peace time, it is possible to avoid disputes when hostilities have broken out. But it is nevertheless clear that under this article immunity cannot be acquired by a town merely by fulfilling the conditions laid down and informing the enemy accordingly: formal recognition of this situation by the latter is also necessary.

A similar effort to offer complete safeguards regarding the peaceful character of certain places or things is to be found as regards safety localities or zones in the Geneva Conventions of 1949 and as regards areas containing monuments in the Hague Convention of 1954 on cultural property.

But it is clear that Article 16 meets a wider set of conditions. It should even allow a town which, at the outbreak of hostilities, was essentially military in character, to fulfil the requisite conditions, if, in the light of the circumstances, it appears desirable to the responsible authorities to strip it entirely of that qualification. In order to define this arrangement, the expression of "open town" has been used, as being a term familiar to the general public and also corresponding to the practice adopted in a number of cases during earlier wars. *The main aim of Article 16 is to give authority to and define this custom and not to create a new institution.*

The Red Cross Societies have generally approved this provision. While certain Experts had doubts about its usefulness,

most of them, on the contrary, wished to extend its application and recognised that a rule of this kind might have saved a number of localities on the point of surrendering during the last World War.

One of the suggestions most frequently submitted in connection with this article was designed to avoid restricting the institution of an "open town" to localities "in the vicinity of land operations". This restriction which was in the Draft Rules (1955) has not therefore been retained in the present text. Given the mobility and rapidity of military operations in modern warfare, it was undesirable to restrict the use which might be made by the Parties of the valuable possibilities offered by Article 16.

A number of the authors of the Remarks and Suggestions stressed the need for any town declaring itself an "open town" to obtain a reply from the adverse Party. It is for that reason that the new text specifies that the adverse Party *is bound to reply*, within, of course, a reasonable period. The idea that an excessive number of notifications on these lines would prevent the adversary from replying in time does not merit serious consideration. The military interests of the Parties to the conflict will of necessity limit the number of localities which they can no longer hold or defend to the bitter end. Moreover, the advantage of any attacking side would lie on the whole in occupying these towns, if possible, without striking a blow.

The provision does not, on the other hand, specify the person or persons by whom the notification should be sent. The parties concerned must be left wide latitude on this point¹ and we should not rule out cases in which the municipal authorities had to take such steps, although, generally speaking, the notification should be addressed to the enemy by the military commander of the sector in which the town is situated.

The juridical consequence of the recognition of an "open city" is that Article 16 imposes in a completely general manner

¹ See, for example, the Protocol signed between the adverse Parties regarding the recognition of Paris as an "open city" in June 1940, in the *Revue historique de l'armée* (1948, No. 2).

the duty of *ceasing from all attacks on the said town*. This general formula replaces the old wording which allowed of the interpretation that attacks might be authorised on certain points in the locality.

The last phrase calls for some explanation. The words *military operation the sole object of which is its occupation* are meant to indicate in particular an operation by airborne troops which enables the adverse Party to obtain, without fighting, in order to use it at a later date for offensive aims, a locality recognised by it as an "open town". There is no doubt that such a manoeuvre would be contrary to the spirit of the Draft Rules. An "open town" should fall into enemy hands in the normal course of an advance by its land forces. As a matter of fact, a similar problem is met with over other protected objects or places, such as field-hospitals and safety zones and localities, which should under no circumstances be used for landing airborne troops.

This provision was drafted in order to take account of these considerations which had been advanced in a number of observations on the Draft Rules (1955). As this point was not brought explicitly out in the article itself, it is essential to remind readers of the considerations underlying the wording of this last sentence.

Article 16, paragraph 2.

In the absence of any special conditions which may, in any particular case, be agreed upon with the adverse Party, a locality, in order to be declared an "open town", must satisfy the following conditions:

- (a) *it must not be defended or contain any armed force;*
- (b) *it must discontinue all relations with any national or allied armed forces;*
- (c) *it must stop all activities of a military nature or for a military purpose in those of its installations or industries which might be regarded as military objectives;*
- (d) *it must stop all military transit through the town.*

The conditions to be satisfied by a locality in order to be declared an "open town" are derived from the very nature of the protection which it seeks to obtain. They correspond, on the whole, to those conditions generally required for other places covered by a particular immunity and were already included in the Draft Rules (1955), with the exception of the stipulation relating to military transit which it was considered necessary to mention explicitly.

The reservation *In the absence of any special conditions* at the beginning of the paragraph is in response to the wish expressed by certain Experts (1956) (Report (1956), p. 50). For it is important that the creation and recognition of "open towns" should not be hampered by overrigid conditions. If all the conditions listed at a), b), c) and d) form a logical minimum which must be realised in principle, the parties must nevertheless be allowed to reach whatever agreement is possible on a different basis.

Article 16, paragraph 3.

The adverse Party may make the recognition of the status of "open town" conditional upon verification of the fulfilment of the conditions stipulated above. All attacks shall be suspended during the institution and operation of the investigatory measures.

This paragraph sets out one of the main characteristics of "open towns". As was recognised by most of the Experts (1954), the belligerent will usually refuse to grant recognition unless he can be satisfied that the necessary conditions are fulfilled. Care has been taken, however, to make it clear that recognition may be given without verification. In addition, it was not thought necessary to give a precise definition of the supervisory machinery. The reason for this was the wish to leave the Parties complete discretion. In certain cases the verification can be effected by the representatives of the Protecting Power, while in other cases this task will simply devolve on the officers of the adverse party sent ahead of the main forces.

The second sentence of this paragraph deals with the main object of the provision, i.e. it tries to eliminate the danger of attacks on installations wrongly considered as being used for military purposes.

Article 16, paragraph 4.

The presence in the locality of civil defence services, or of the services responsible for maintaining public order, shall not be considered as contrary to the conditions laid down in Paragraph 2. If the locality is situated in occupied territory, this provision applies also to the military occupation forces essential for the maintenance of public law and order.

Several Remarks and Suggestions on the Draft Rules (1955) suggested that, as has been done in the present text, it should be brought out that the presence of those bodies responsible for maintaining public order (which basically means the police) in addition to civil defence bodies is not an infringement of paragraph 2. The aim of this clarification was to cut short any danger of dispute, but it is not necessary to make this point in the case of the other public services.

As against this, it will be incumbent on the Party concerned promptly to dissolve the military or para-military organisations in the locality and to make special arrangements for the headquarters staff, bearers of truce or sections of the troops who had been unable to leave the locality.

It must also be possible for localities in occupied territory to be declared "open towns". The last sentence of this paragraph has been drafted with that end in view.

Article 16, paragraph 5.

When an "open town" passes into other hands, the new authorities are bound, if they cannot maintain its status, to inform the civilian population accordingly.

Finally, it was desirable to devote special attention to the status of "open towns" falling into the hands of the Party

who has recognised them as such. The undertaking not to use a locality for military purposes, as formulated in the declaration of an "open city", is only valid for the belligerent making that declaration. It would no doubt be a gratifying development if the adverse Party, once it had occupied the locality, did not suppress the conditions making it an "open town". Legally speaking, however, the adverse Party cannot be prevented from carrying out therein activities having a bearing on hostilities, if it thinks this necessary.

In that case, it must at once inform the population. If it does not, the population will imagine that the previous position still holds good and will therefore be inclined to neglect those precautions called for by the reversal of the situation.

Article 16, paragraph 6.

None of the above provisions shall be interpreted in such a manner as to diminish the protection which the civilian population should enjoy by virtue of the other provisions of the present rules, even when not living in localities recognised as "open towns".

In conclusion, the last paragraph meets a psychological need arising from fears which have been repeatedly expressed. The recognition of privileged places enjoying special immunity as compared with the rest of the territory may, it is sometimes thought, give the impression that, beyond the bounds of these localities, belligerents are released from all constraint in the conduct of hostilities. In order to dissipate this erroneous idea, it was necessary to emphasise that Article 16 not only represents an *additional* safeguard but that it in no way diminishes the extent of the protection afforded the population by the general tenor of the Draft Rules.

ART. 17. — Installations containing dangerous forces.

Paragraph 1.

In order to safeguard the civilian population from the dangers that might result from the destruction of engineering works or installations—such as hydro-electric dams, nuclear power stations or

dykes—through the releasing of natural or artificial forces, the States or Parties concerned are invited:

- (a) *to agree, in time of peace, on a special procedure to ensure in all circumstances the general immunity of such works where intended essentially for peaceful purposes;*
- (b) *to agree, in time of war, to confer special immunity, possibly on the basis of the stipulations of Article 16, on works and installations which have not, or no longer have, any connexion with the conduct of military operations.*

By releasing natural forces, attacks on dams or other similar works may well do the civilian population a great deal of harm. Similarly, damage to an atomic reactor would result in the dissemination of dangerous radioactive substances.

The ICRC therefore deemed it advisable to include a provision relating to dangers of this description, and universal interest in this question is revealed by the Remarks and Suggestions on the 1955 Draft.

It will be recalled that the attacking force is required, under Articles 8 and 9 in particular, to take into account the normally foreseeable indirect effects of its attacks. Also, through the action of the general provisions of the present Code of rules, and more specifically, by virtue of the principles of "the choice the lesser evil" (Article 8 (a)) and of "due proportion" (Article 8 (b)), he will frequently be led to refrain from launching an attack on an installation which might release dangerous forces.

Similarly, the Parties controlling such installations must, for their part, pay special attention to "passive precautions", such as for instance duly lowering the water level of hydro-electric reservoirs.

As may be seen, the general rules of the Draft forbid such attacks if they are not inspired by an imperative military necessity, or do not promise a very great military advantage. That is the reason why the idea of imposing further and more restrictive conditions, as in the former Article 13, has been discarded; the reference here is more particularly to the obligation to give warning which, it was considered, would be very difficult to fulfil.

The final provision is therefore no more than an appeal, an invitation, to the States. It has, however, the advantage of drawing attention to the dangers which certain installations represent for the civilian population in time of conflict, and to the fact that the Parties concerned can, if they so wish, agree to grant special immunity to these installations.

As suggested in the Remarks and Suggestions on the 1955 Draft, dykes and atomic power plants have been added to the list of examples of dangerous installations. Obviously, a dyke could not *in itself* constitute a military objective, since its purpose is, on the contrary, essentially a peaceful one. It nevertheless appeared advisable to stress the considerable dangers which could result from its destruction.

Subparagraph (a) relates to what might be termed "safety zones for dangerous installations". Arrangements should be made, in time of peace, to confer special immunity on such of these installations as are intended essentially for peaceful purposes and which the owner State wishes to see protected in time of war. To that end, and taking as its model the relevant provisions of the Hague Convention of 1954 on Cultural Property¹, the ICRC proposed, in connexion with the corresponding article in the Draft (1955), the insertion of a clause providing for the international registration of such installations. This proposal received very favourable comment in the Remarks and Suggestions on the 1955 Draft.

Again following the pattern of the corresponding provisions of the Hague Convention, the clause should specify the authority to be entrusted with the keeping of such a register, and also lay down the conditions for entry in the register, the procedure for checking fulfilment of the conditions and the procedure whereby a State could, should occasion arise, oppose the entry in the register of installations not fulfilling the required conditions. These points could be dealt with in detail at a later

¹ Articles 8-11 of this Convention, which provide for special protection for "refuges intended to shelter movable cultural property" and "centres containing monuments".

stage, and possibly form the subject of an annex to the present Rules.

Subparagraph (b) has reference to granting what might be described as the status of an "open town" to a specific category of dangerous installations. It is no longer a question here of the immunity to be accorded to installations of an essentially pacific nature, but of granting such immunity to installations originally utilised for military purposes which the belligerents may wish to withdraw from the danger of attack. For this category of installation, a procedure as complicated as that laid down in subparagraph (a) is not necessary. *Mutatis mutandis*, certain provisions of Article 16, such as those relating to demilitarization, verification of the fulfilment of conditions and notification, could be applied. Hence the suggestion that a special agreement on immunity for such installations could be based on that particular article.

Article 17, paragraph 2.

The preceding stipulations shall not, in any way, release the Parties to the conflict from the obligation to take the precautions required by the general provisions of the present Rules, under Articles 8 to 11 in particular.

This provision derives from the same considerations as those which prompted the inclusion of the last paragraph of Article 16. We have, moreover, in explaining the meaning of Article 17, shown above how very necessary it is that all the precautions stipulated in the general rules of the present Draft should apply in the case of attacks on installations which might release dangerous forces.

Chapter VI. — Application of the Rules

The ICRC has attached a note to this chapter which calls for some comment and which may be reproduced by way of a preliminary :

Articles 18 and 19, dealing with the procedure for supervision and sanctions, are merely given as a rough guide and in outline; they will naturally have to be elaborated and supplemented at a later stage.

As was pointed out by one of the Experts (1954) : “ However useful the rules reinforcing the observance of the Conventions may be, they must not represent a condition for their observance. The fundamental provisions are the first essential, and we must take as our starting point the principle that the obligations undertaken are to be respected independently of the sanctions and controls provided ”.

This opinion is sound. Furthermore the elaboration and above all the final drafting of the provisions regarding the application of the rules is a matter in the first place for Governments. That is why the ICRC has confined itself, in this chapter, to setting out provisions which represent primarily data designed to afford guidance and which call for further study and development. Nevertheless, the inclusion of these brief provisions makes a coherent whole of the Draft Rules. In addition, they may serve as a starting point for discussion and even, if need be, constitute directives applicable to the conduct of the belligerents.

ART. 18. — Assistance of third parties.

States not involved in the conflict, and also all appropriate organisations, are invited to co-operate, by lending their good offices, in ensuring the observance of the present rules and preventing either of the Parties to the conflict resorting to measures contrary to those rules.

Article 18 amalgamates two ideas which were dealt with in the Draft Rules (1955) in two separate articles—14 and 15. We can therefore treat them separately. The two ideas are (a) what is generally called the “control” of humanitarian Conventions and (b) infringements of these Conventions.

(a) It seemed essential that the application of the present rules should not be left solely to the goodwill of the Parties to the conflict, but that they should be applied as far as possible with the cooperation of an independent and impartial body.

A characteristic of advanced effective law is that it includes procedures for ensuring its observance. If, for example, the 1929 Geneva Convention relating to Prisoners of War marked a considerable step forward by comparison with the law which had existed up to that time, this was due in particular to the provision which it made for supervision by the Protecting Powers of the application of its clauses. In the field of the legal protection of the civilian population, the Commission convened by the ICRC in 1931 had already emphasised the desirability of making provision for an impartial body which could establish the existence of or curb violations.

It was probably with this consideration in mind that several Red Cross Societies, in their Remarks and Suggestions on the Draft Rules (1955), asked that the former Article 14 should be made stronger.

The ICRC, however, had already stressed the difficulties of going so far as to create a real “supervision” in the sense used by the Geneva Conventions. It had underlined the fundamental difference between the rules in the present draft and most of the provisions of the Geneva Conventions: the treatment received by prisoners or civilian internees is comparatively easy to verify, whereas supervision of the application of most of the present rules would, on the contrary, come up against serious difficulties, especially if it were to be extended to the areas of military operations.

In addition, the attribution of this supervision to the Protecting Powers would entail giving them responsibilities lying

outside their traditional province and it is not desirable, by multiplying the functions of the Protecting Powers, to discourage neutral States from accepting such functions. The discussions of the Experts (1956) (Report (1956), p. 53) strengthened the ICRC in this view. Some of them, indeed, showed that supervision in the form contemplated by several experts aimed at nothing less than the international supervision of the conduct of war.

In these circumstances, the ICRC thought it preferable not to refer to supervision by the Protecting Power, until the Government Experts, and in particular the Experts of those countries which had discharged the functions of a Protecting Power, had stated their views on this point.

For that reason, the ICRC thought it better to give expression, however briefly, in the first part of Article 18, to a principle which is already contained in Article 1 of the 1949 Geneva Conventions. That principle lays it down that the contracting Parties shall not confine their efforts to themselves applying the Convention but shall also try to secure the *universal* application of the humanitarian principles on which the Convention is based ¹.

This is the meaning underlying the invitation in the first phrase of Article 18. As a matter of fact, that idea reflects a point of view which is increasingly current and which is sometimes expressed by the "one-world" formula. In view of the nature of existing weapons, neutral States themselves might be affected by the effects of certain weapons if the limitations laid down by the present Draft were not observed in a conflict.

Article 18 not only refers to States not involved in the conflict, but also provides for the possibility of "appropriate organisations" cooperating in ensuring the observance of the present Rules. The document has in mind primarily inter-

¹ This article lays down that: "The High Contracting Parties undertake to respect and to *ensure respect* for the present Convention in all circumstances".

national organizations but we must not exclude those special bodies which might be created in peacetime in spite of the difficulties involved.

Could this expression also apply to humanitarian organisations? At its meeting in May 1956, the ICRC, for its part, showed that the scope for its cooperation in applying the Draft Rules was much less than in the case of the Geneva Conventions. It is certain, however, that if no other body were in a position to intervene, particularly in the case of a non-international conflict, the ICRC would feel obliged to examine any steps open to it to assist in the application of the present rules.

Lastly, as regards the functions to be discharged by the States or bodies invited to cooperate in the application of the rules, the provision makes no mention of supervision; all that these States or bodies are asked to do is to lend their *good offices*. These words could apply with particular force to any mediation in connection with the application of the rules, to services where there is a danger of a dispute, and, at the request of one of the Parties, to enquiries concerning alleged violations of the present Rules, or even to the supervision of civil defence measures.

Nor must the possibility be ruled out that in certain cases the States not involved in the conflict may address rebukes to that Party guilty of serious infringements of the present rules, or even that they may adopt sanctions against the offender.

(b) As a well-known publicist¹ has pointed out, the question of the restriction of bombing is very closely linked with that of reprisals. The truth of this statement was once again amply demonstrated during the last World War. The increased volume of bombing from the air and the indiscriminate nature of many of the bombing raids were often portrayed as measures of reprisal.

Thereby fresh confirmation is afforded of the danger, inherent in reprisals, of a rapid and disastrous extension of operations to the detriment of non-combatants. This process which

¹ SPAIGHT, *Air Power and War Rights*, 2nd edition, p. 45.

—and this cannot be too strongly emphasised—far from re-establishing the rule of law, destroyed it, had, for example, been noted during the 1914-1918 war, in connection with the treatment of prisoners of war.

The ICRC cannot, of course, remain indifferent to the dangers to which this disastrous process leads. Its earlier efforts, such as its work between the two World Wars and its March 1940 appeal (Annex III), were directly aimed at eliminating them. In that spirit, and irrespective of the present rules which themselves act as a restraining factor, it had devoted a special clause in the former Article 15 to the consequences of violations of the rules.

Nevertheless, the Remarks and Suggestions on the Draft Rules (1955) have shown the ICRC that such a clause had not always been correctly understood. The basic aim of that provision was to emphasise that *it is essential, even after an infringement, for both sides to continue to observe the rules necessary for the safety of the civilian population as far as they possibly can, and for the Parties not to take justice into their own hands at every turn.* Furthermore, drawing on one aspect of its March 1940 appeal, the ICRC had laid down in this provision the need for appropriate notice being given in case one or other of the Parties might deem it indispensable to take reprisals.

This solution was approved by certain remarks relating to the Draft Rules (1955). On the other hand, numerous Red Cross Societies saw a danger in this provision and the ICRC itself was not unaware of these implications. The Red Cross Societies felt that the Draft should avoid giving in any way the impression that it admitted or regarded as legitimate any measures of reprisals. The Experts (1956) confirmed that point of view and in particular showed that it would be difficult to put the notice into effect.

Several Experts, however, thought (Report (1956), p. 54) that a procedure should be adopted for curbing or ending reprisals and, to that end, supported the idea of an appeal for the collaboration of the impartial organisation contemplated

in Article 18. Such a body would be in a good position to try to prevent infringements by either of the Parties giving rise to similar measures by the adverse party, for such a development would end up by jeopardising the whole application of the present rules.

This is precisely the idea expressed briefly in the second part of Article 18.

At this point we might add a reflection of a more general nature. The Red Cross is obliged to be realistic and, in that spirit, it could not fail to study the problem of reprisals in preparing the present set of rules. But the only principle which it would like to see unanimously recognised is that of the observance of the present rules in all circumstances as expressing the dictates of humanity.

ART. 19. — Trial and judicial safeguards.

Paragraph 1.

All States or Parties concerned are under the obligation to search for and bring to trial any person having committed, or ordered to be committed, an infringement of the present rules, unless they prefer to hand the person over for trial to another State or Party concerned with the case.

As we have pointed out, this matter requires careful study, all the more so since questions of national law are involved. Nevertheless, the Red Cross cannot disregard the problem of penal sanctions, as is shown by the numerous comments on Article 16 of the 1955 Draft, received from National Red Cross Societies. While the Experts (1956) did not reach agreement on the question of supervision, the majority were, none the less, in favour of sanctions to ensure the systematic observance of the present rules (see Report (1956), p. 57). Persons in charge of military operations must be held responsible for their acts, and be fully aware of the sanctions they will incur in the event of infringements.

The 1955 Draft established a rough and ready rule, based on the relevant provisions of the Geneva Conventions of 1949.

The originators of several of the comments submitted to the

ICRC on the subject wanted this provision to be framed in more precise terms some even wished it to make it the outline of an international penal code. The ICRC agreed with the Experts (1956), that it was neither necessary, nor even advisable, to go so far, while, at the same time, recognising that the said provision could be slightly expanded so as to bring it into line with the provisions of the Geneva Conventions.

Article 19, therefore, embodies a principle contained in Article 146 of the Fourth Geneva Convention and known as the universality of jurisdiction. It was not, however, considered advisable to try, in this code of rules, to deal with a question which, in that convention is closely associated with that of prosecution, i.e. the question of "grave breaches".

A distinction should be made here: breaches may be grave on account of the consequences they entail, and, seen from that angle, nearly all infringements of the present rules are grave, since they will be the cause of loss to the civilian population. But from the penal point of view, the term "grave" has reference to the seriousness of the offence; one Red Cross Society suggested, in this connexion, a classification of infringements of the Draft Rules, in which only breaches of the provisions of Articles 6 (paragraph 1) and 13 were classified as "grave".

For the reasons stated above, Article 19 does not go into those details, but the ICRC is very grateful to the National Societies which have made a close study of the question of penal sanctions, and will take care to bring such studies to the notice of those called upon examine the question in detail.

Lastly, the term *All States or Parties concerned* covers both the States not involved in a conflict and the Parties to a conflict themselves.

Article 19, paragraph 2.

The accused persons shall be tried only by regular civil or military courts; they shall, in all circumstances, benefit by safeguards of proper trial and defence at least equal to those provided

under Article 105 and those following of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949.

Humanitarian conventions are, undoubtedly, given greater force by the inclusion of provisions relating to penal sanctions. On the other hand, such provisions should not be allowed to serve as a pretext for arbitrary sentences. As a result of its own experiences, and without, in any way, calling into question the propriety of penalties imposed on offenders, the ICRC has always laid stress on the safeguards to which the accused is entitled, i.e. a proper trial and the right of and means of defence.

That point of view was forcibly expressed by certain of the Experts (1956) (Report, page 59). We have already seen, moreover, in connexion with previous provisions of the draft, Article 6 in particular, that the Experts recognised the difficulties which members of the armed forces would sometimes face in the strict observance of some of the clauses, and hence the need, when cases are brought to trial, of taking all the relevant circumstances into account in assessing the extent of the accused person's guilt. If such guilt is to be justly assessed, the accused must be allowed the benefit of the above-mentioned safeguards.

That is the object of this paragraph, the drafting of which is based on Article 146 of the 4th Geneva Convention of 1949 and Article 84 of the 3rd Geneva Convention of 1949.

ART. 20. — Diffusion and details of application.

All States or Parties concerned shall make the terms of the present rules known to their armed forces and provide for their application in accordance with the general principles of these rules, not only in the instances specifically envisaged in the rules but also in unforeseen cases.

This provision combines two suggestions made in the Remarks and Suggestions on the Draft Rules (1955), both of which cannot but help to promote the systematic application of the present rules.

The first concerns the obligation to make the rules known to the members of the armed forces (see Report (1956), p. 8).

Only the essential point has been dealt with here, that is to say the diffusion of this knowledge, among the troops in the first place, since the conduct of hostilities is the main issue. Officers in command of troops must be fully aware of their humanitarian obligations, and refrain from acts that would seriously affect the civilian population.

At a later stage, the way in which the present rules should be brought to the notice of the civilian population will also have to be examined. A thorough knowledge of some of the provisions of the present proposals, Articles 6 (paragraph 3), 11, 12, 13 and 16, for instance, may be very valuable to civilians to enable them to take the measures required for their own security.

The second part of Article 20 is based on Article 45 of the First Geneva Convention. It was inserted in the present Draft at the suggestion of a Red Cross Society. This rule already appears in the Geneva Convention of July 6, 1906 for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field. Its inclusion is particularly appropriate in a code which, like the present, does no more than formulate general rules, calling for numerous measures to be taken for their application (see in this connexion, Articles 6, 7, 8 and 14, for instance). Moreover, it is a matter of common knowledge that, even between the two world wars, several countries issued reasonably detailed instructions to their air forces, based in part on the Hague Air Warfare Rules of 1923 (see Annex No. II).

Instructions of that nature are a particularly suitable medium for recalling the other obligations in international law which the present rules are intended to supplement. They should include, more especially, the obligations formulated in the Geneva Conventions and the provisions of the Conventions for the protection of cultural assets. Finally, when giving instructions to their armed forces, the Parties should also provide for cases not specifically mentioned in the present rules. In speaking of *general principles*, the reference is, of course, primarily to the rule in Article 1.

ANNEXES

ANNEX I

DRAFT RULES FOR THE PROTECTION OF THE CIVILIAN POPULATION FROM THE DANGERS OF INDISCRIMINATE WARFARE (1955 Draft)

Part I

GENERAL PRINCIPLES

I

Acts of violence are only justified by the existence of a state of war if their object is the destruction, or placing out of action, of the enemy armed forces.

II

Acts of violence directed against persons not belonging to the enemy armed forces that is to say, speaking generally, against the civilian population, are prohibited.

III

During military operations all possible steps shall be taken to ensure that persons not forming part of the armed forces are not affected.

IV

The use of weapons, which, when directed against the enemy armed forces, would, by their nature or effect, cause considerable losses among the civilian population, is therefore excluded.

V

These principles, which impose imperative limits, determined in accordance with the requirements of humanity, to the necessities of war, have long been proclaimed by public opinion and recognized in international law; they are applicable under all circumstances, whatever the means or weapons employed.

Part II

RULES OF APPLICATION

I. Field of application

Art. 1. — The present rules shall apply to acts of violence committed against the enemy, whatever the means or weapons employed ; such acts shall be referred to hereafter as “ attacks ”.

Art. 2. — For the purpose of the present rules, the civilian population is formed of all persons not belonging to the following categories :

- (a) Members of the regular armed forces or of other corps formed with the object of taking part in active hostilities, together with their auxiliary or complementary organizations ;
- (b) Persons who do not belong to the forces or corps referred to above, but nevertheless take part in active hostilities.

II. Objectives which may not be attacked

Art. 3. — Attacks directed against the civilian population, as such are prohibited.

This prohibition applies both to attacks directed against groups and to those on individuals.

Art. 4. — Attacks are only legitimate when directed against recognized military objectives, the destruction, even partial, or placing out of action of which may lead to a military advantage sufficient to justify the attack.

It is, in particular, forbidden to attack dwellings or other constructions sheltering the civilian population, unless they are used for military purposes sufficiently important to justify their destruction.

Moreover, attacks on objectives on land which are not in the immediate vicinity of military operations are only legitimate where such objectives have been duly identified, localized and their destruction ordered by the higher command.

Art. 5. — Recognized military objectives are those belonging to the categories of objective whose military importance in times of armed conflict is generally acknowledged. These categories are indicated in an annex to the present rules.

III. *Protection from the effects of attacks*

Art. 6. — In selecting the objectives to attack in order to attain a given military result, the responsible commander shall be bound to include among the factors on which he bases his decision, the necessity of safeguarding the civilian population.

Art. 7. — In so far as possible, the attacking force shall warn the civilian population by one means or another, of attacks on military objectives which are liable to involve the said population in serious danger, especially when they have no reason to anticipate the attack.

Art. 8. — The attacking force shall take all possible precautions to ensure that its attacks do not, by the manner in which they are carried out or by the weapons employed, cause the civilian population in the neighbourhood of the objectives attacked, or the dwellings and other buildings which shelter them, harm or damage disproportionate to the military advantage which it could normally expect to gain.

It is, in particular, forbidden, where elements of the civilian population or dwellings are situated in between military objectives which are in relatively close proximity to one another, to attack without distinction, as one single target, the whole of the area comprising such objectives.

Moreover, in towns and other places with a large civilian population, which are not in the immediate vicinity of military operations, attacks shall be conducted with the greatest possible degree of precision and must not cause major destruction or other dangerous effects at a distance of more than 300 metres from the outer limits of the objectives attacked.

Art. 9. — The Parties to the conflict shall take all necessary practical steps to protect the civilian population for whom they are responsible, from the dangers to which the latter are exposed by attacks, in particular by keeping them, where necessary, at a sufficient distance from the threatened areas and military objectives.

Similarly, they shall, in so far as possible, avoid the permanent presence of armed forces on duty, military material or mobile military installations in towns or other places with a large civilian population.

The Parties to the conflict are prohibited from placing or keeping members of the civilian population for whom they are responsible either in the outskirts of or within military objectives, with the idea of protecting the latter from attack.

IV. *Weapons contrary to the laws of humanity*

Art. 10. — Since the right of Parties to the conflict to adopt means of injuring the enemy is not unlimited, and in order to prevent the civilian population from being affected by attacks whose consequences are unpredictable and uncontrollable, the following rules shall apply to weapons and means of attack and defence :

- (1) In confirmation of existing rules of international law, the use of asphyxiating, poisonous or other gases, bacteriological methods of warfare and all similar liquids, material or devices is prohibited.
- (2) The above prohibition shall also extend to the use of substances which, when disseminated by the deflagration of a projectile or by any other means, are dangerous to human beings by reason of their radioactivity or other similar effect.
- (3) The use of so-called delay-action projectiles is only authorized when their effects are limited to the objective itself.

Art. 11. — Weapons capable of causing serious damage shall, so far as possible, be equipped with a safety device which renders them harmless when they can no longer be directed with precision against a military objective.

V. *Special cases of protection*

Art. 12. — When one of the Parties to the conflict declares a town situated in the immediate vicinity of military operations to be an "open town", and informs the adverse Party to that effect, the latter, if he agrees to recognize such declaration, shall be bound to cease from all attacks on installations, places and buildings in the locality, which he might at other times have regarded as military objectives.

In order to be declared an "open town", a locality must satisfy the following conditions :

- (a) it must not be defended or contain any armed force ;
- (b) it must discontinue all relations with any allied armed forces which may be in the vicinity ;
- (c) it must stop all activities of a military nature or for a military purpose in those of its installations or industries which might be regarded as military objectives.

The adverse Party may make its recognition conditional upon verification by its agents or by representatives of the Protecting Powers, of the fulfilment of the conditions stipulated above. The said attacks shall be suspended during the institution and operation of the supervisory measures.

The presence, in the locality, of civil defence personnel and installations shall not be considered as contrary to the conditions stipulated in paragraph 2 (a).

Art. 13. — By reason of the great danger to which the destruction of engineering works and installations—such as hydro-electric barages—may expose the civilian population through the releasing of natural or artificial elements, the Parties to the conflict shall only attack such works when they clearly constitute military objectives of the first importance. Such attacks shall be preceded by a warning enabling the civilian population to take refuge in time.

The Parties to the conflict may agree, in accordance with a procedure to be established, to recognize the immunity of certain works or installations of this nature, designated in advance, particularly in the case of works:

- (a) intended essentially for peaceful purposes;
- (b) which from the outbreak of an armed conflict discontinue all action having any connection whatsoever with the hostilities.

The said procedure shall be specified in an annex to the present rules.

VI. *Execution of the rules*

Art. 14. — The present rules shall be applied with the co-operation of the Protecting Powers—or their substitutes—responsible for safeguarding the interests of the Parties to the conflict, within the meaning of the Geneva Convention of 12 August 1949.

Art. 15. — Infringements of the present rules shall not dispense the injured Party from his obligation to respect the said rules.

Nevertheless, in case of violations which, by their repetition or magnitude, constitute a serious danger for the Party to the conflict who suffers them, the latter shall be bound, should it deem it necessary to resort to the same methods of war, to address, before so doing, an appeal to the Authorities of the adverse Party, inviting them to put an end to such violations. It shall at the same time offer them an opportunity of having the justice of its allegations established by the Protecting Powers concerned.

The Protecting Powers concerned, or possibly other neutral States, shall, by offering their good offices to the Parties to the conflict, endeavour to prevent either of such Parties resorting to measures contrary to the present rules.

Art. 16. — The punishment for offences against the present rules, as well as the judicial safeguards of which the accused persons must have the benefit, shall be determined in accordance with the spirit of the provisions of the Geneva Conventions governing similar matters.

ANNEX II

Texts of international Conventions or Resolutions relating, directly or indirectly, to the Protection of the Civilian Population in time of War ¹

- I. *Declaration of St. Petersburg of 1868 to the Effect of Prohibiting the Use of certain Projectiles in Wartime, signed at St. Petersburg, November-December 1868.*
-

Considering :

That the progress of civilization should have the effect of alleviating as much as possible the calamities of war ;

That the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy ;

That for this purpose it is sufficient to disable the greatest possible number of men ;

That this object would be exceeded by the employment of arms which uselessly aggravate the sufferings of disabled men, or render their death inevitable ;

That the employment of such arms would, therefore, be contrary to the laws of humanity ;

The contracting Parties engage mutually to renounce, in case of war among themselves, the employment by their military or naval troops of any projectile of a weight below 400 grammes, which is either explosive or charged with fulminating or inflammable substances.

They will invite all the States which have not taken part in the deliberations of the International Military Commission assembled at St. Petersburg by sending Delegates thereto, to accede to the present engagement.

¹ Other texts of this nature, emanating from official or private sources, will be found in the mimeographed document published by the ICRC, entitled " Collection : Constitutional texts and documents concerning the legal protection of populations and war victims from the dangers of aerial warfare and blind weapons ", Geneva, February 1954. This Collection gives the lists of States which are Parties to the Conventions contained therein.

This engagement is compulsory only upon the Contracting or Acceding Parties thereto in case of war between two or more of themselves ; it is not applicable to non-Contracting Parties, or Parties who shall not have acceded to it.

It will also cease to be compulsory from the moment when, in a war between Contracting or Acceding Parties, a non-Contracting Party or a non-Acceding Party, shall join one of the belligerents.

The Contracting or Acceding Parties reserve to themselves to come hereafter to an understanding whenever a precise proposition shall be drawn up in view of future improvements which science may effect in the armament of troops, in order to maintain the principles which they have established, and to conciliate the necessities of war with the laws of humanity.

Done at St. Petersburg, the twenty-ninth of Novembereleventh day of December one thousand eight hundred and sixty-eight.

2. Annex to the IVth Hague Convention, October 18, 1907: Regulations respecting the Laws and Customs of War on Land (extract).

Art. 22. — The right of belligerents to adopt means of injuring the enemy is not unlimited.

Art. 23. — In addition to the prohibitions provided by special Conventions, it is especially forbidden :

- (a) To employ poison or poisoned weapons ;
- (b) To kill or wound treacherously individuals belonging to the hostile nation or army ;
- (c) To kill or wound an enemy who, having laid down his arms, or having no longer means of defence, has surrendered at discretion ;
- (d) To declare that no quarter will be given ;
- (e) To employ arms, projectiles, or material calculated to cause unnecessary suffering ;
- (f) To make improper use of a flag of truce, of the national flag, or of the military insignia and uniform of the enemy, as well as the distinctive badges of the Geneva Convention ;
- (g) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war ;
- (h) To declare abolished, suspended, or inadmissible in a court of law the rights and actions of the nationals of the hostile party.

A belligerent is likewise forbidden to compel the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war.

Art. 24. — Ruses of war and the employment of measures necessary for obtaining information about the enemy and the country are considered permissible.

Art. 25. — The attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended is prohibited.

Art. 26. — The officer in command of an attacking force must, before commencing a bombardment, except in cases of assault, do all in his power to warn the authorities.

Art. 27. — In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the same time for military purposes.

It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand.

Art. 28. — The pillage of a town or place, even when taken by assault, is prohibited.

3. *Rules concerning the Control of Wireless Telegraphy in Time of War and Air Warfare, fixed by the Commission of Jurists entrusted with studying and reporting on this revision of the laws of war, assembled at The Hague on December 11, 1922 (extract).*

Art. 18. — The use of tracer projectiles, whether incendiary or explosive, by or against an aircraft is not forbidden.

This rule applies as well to the States which are parties to the Declaration of St. Petersburg of 1868, as to those which are not.

Art. 19. — The use of false exterior marks is forbidden.

Art. 20. — In the event of an aircraft being disabled, the persons trying to escape by means of parachutes must not be attacked during their descent.

Art. 21. — The use of aircraft for propaganda purposes shall not be considered as an illicit means of warfare.

The members of the crew of such aircraft are not to be deprived of their rights as prisoners of war on the ground that they have committed such an act.

Art. 22. — Any air bombardment for the purpose of terrorizing the civil population or destroying or damaging private property without military character or injuring non-combatants, is forbidden.

Target
Bombing

Art. 23. — Any air bombardment carried out for the purpose of enforcing requisitions in kind or payments of contributions in ready money, is forbidden.

Art. 24. (1) An air bombardment is legitimate only when directed against a military objective, i.e. an objective whereof the total or partial destruction would constitute an obvious military advantage for the belligerent ;

Legitimate
military
objective

(2) Such bombardment is legitimate only when directed exclusively against the following objectives : military forces, military works, military establishments or depots, manufacturing plants constituting important and well-known centers for the production of arms, ammunition or characterized military supplies, lines of communication or of transport which are used for military purposes.

Military
Targets

(3) Any bombardment of cities, towns, villages, habitations and buildings which are not situated in the immediate vicinity of the operations of the land forces, is forbidden. Should the objectives specified in paragraph 2 be so situated that they could not be bombed but that an indiscriminating bombardment of the civil population would result therefrom, the aircraft must abstain from bombing ;

zone of
ops

(4) In the immediate vicinity of the operations of the land forces, the bombardment of cities, towns, villages, habitations and buildings is legitimate, provided there is a reasonable presumption that the military concentration is important enough to justify the bombardment, taking into account the danger to which the civil population will thus be exposed ;

(5) The belligerent State is bound to pay compensation for damage caused to persons or property, in violation of the provisions of this Article, by any one of its agents or any one of its military forces.

Art. 25. — In bombardments by aircraft, all necessary steps should be taken by the commander to spare, as far as possible, buildings dedicated to public worship, art, science and charitable purposes, historic monuments, hospital ships, hospitals and other places where the sick and wounded are gathered, provided that such buildings;

objectives and places are not being used at the same time for military purposes. Such monuments, objects and places must be indicated, during the day, by signs visible from the aircraft. Using such signs to indicate buildings, objects or places other than those herein-before specified shall be considered a perfidious act. The signs of which the above mentioned use is to be made, shall be, in the case of buildings protected under the Geneva Convention, the red cross on a white ground and, in the case of the other protected buildings, a large rectangular panel divided diagonally into two triangles, the one white and the other black.

A belligerent who desires to ensure by night the protection of hospitals and other above mentioned privileged buildings, must take the necessary steps to make their aforesaid special signs sufficiently visible.

4. *Protocol of Geneva of 1925 for the Prohibition of the Use in War of Asphyxiating, Poisonous or other gases, and of Bacteriological Methods of Warfare, signed at Geneva, June 17, 1925.*

The undersigned Plenipotentiaries, in the name of their respective Governments :

Whereas the use in war of asphyxiating, poisonous or other gases, and of all analogous liquids, materials or devices, has been justly condemned by the general opinion of the civilised world ; and

Whereas the prohibition of such use has been declared in Treaties to which the majority of Powers of the world are Parties ; and

To the end that this prohibition shall be universally accepted as a part of International Law, binding alike the conscience and the practice of nations :

Declare :

That the High Contracting Parties, so far as they are not already Parties to Treaties prohibiting such use, accept this prohibition, agree to extend this prohibition to the use of bacteriological methods of warfare and agree to be bound as between themselves according to the terms of this Declaration.

The High Contracting Parties will exert every effort to induce other States to accede to the present Protocol. Such accession will be notified to the Government of the French Republic, and by the latter to all signatory and acceding Powers, and will take effect on the date of the notification by the Government of the French Republic.

The present Protocol, of which the French and English texts are both authentic, shall be ratified as soon as possible. It shall bear to-day's date.

The ratification of the present Protocol shall be addressed to the Government of the French Republic, which will at once notify the deposit of such ratification to each of the signatory and acceding Powers.

The instruments of ratification of and accession to the present Protocol will remain deposited in the archives of the Government of the French Republic.

The present Protocol will come into force for each signatory Power as from the date of deposit of its ratification, and, from that moment, each Power will be bound as regards other Powers which have already deposited their ratifications.

In witness whereof the Plenipotentiaries have signed the present Protocol.

Done at Geneva in a single copy, the seventeenth day of June, One Thousand Nine Hundred and Twenty-Five.

5. *Reduction and Limitation of Armaments and Protection of Civilian Populations against Bombing from the Air in case of War (Resolution and recommendation adopted on the report of the Third Committee of the League of Nations (September 30, 1938 — extract).*

The Assembly,

Considering that on numerous occasions public opinion has expressed through the most authoritative channels its horror of the bombing of civilian populations ;

Considering, further, that, while this principle ought to be respected by all States and does not require further reaffirmation, it urgently needs to be made the subject of regulations specially adapted to air warfare and taking account of lessons of experience ;

Considering that the solution of this problem, which is of concern to all States, whether Members of the League of Nations or not, calls for technical investigation and thorough consideration ;

Considering that the Bureau of the Conference for the Reduction and Limitation of Armaments is to meet in the near future and that it is for the Bureau to consider practical means of undertaking the necessary work under conditions most likely to lead to as general an agreement as possible ;

I. — Recognises the following principles as a necessary basis for any subsequent regulations :

(1) The International bombing of civilian populations is illegal ;

- (2) Objectives aimed at from the air must be legitimate military objectives and must be identifiable ;
- (3) 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 ;

II. — Also takes the opportunity to reaffirm that the use of chemical or bacterial methods in the conduct of war is contrary to international law, as recalled more particularly in the resolution of the general Commission of the Conference for the Reduction and Limitation of Armaments of July 23rd, 1932, and the resolution of the Council of May 14th, 1938.

ANNEX III

Texts emanating from the International Committee of the Red Cross or International Red Cross Conferences concerning the legal protection of the Civilian Population in time of War¹

1. Letter from the International Committee of the Red Cross to the Assembly of the League of Nations, of 23rd, November 1920.

Mr. President and Gentlemen,

As it is the duty of the League of Nations to deal with various questions relating to war, and particularly with the means of rendering it more humane, the International Committee, the central organ of the Red Cross, to whom this task was originally assigned, has the honour to submit to you the following proposals.

The Committee considers it very desirable that war should resume its former character, that is to say, that it should be a struggle between armies and not between entire populations. The civilian population must, as far as possible, remain outside the struggle and its consequences, the fighting must be solely between armed troops, and the inhabitants of the countries involved should suffer as little as possible.

For this purpose it considers that the following measures should be taken :

- (1) Limitation of aerial warfare to exclusively military objectives (such as fights between scouts), and prohibition of the dropping on towns of projectiles which carry death to the peaceable population, and to women and children unconcerned with the war.
- (2) Absolute prohibition of the use of asphyxiating gas, a cruel and barbarous weapon which inflicts terrible suffering upon its victims. As early as 1918 the International Committee protested against the employment of these gases by an appeal to the belligerents, a copy of which is herewith attached.
- (3) The prohibition of the bombardment of open or undefended towns. It will be necessary to define what is meant by open or undefended towns.

¹ Further texts of this description may be found in the Collection previously referred to in Annex II, or the Handbook of the International Red Cross, 10th Edition, Geneva 1953.

- (4) Prohibition of the deportation of the civilian population, upon the necessity of which no further insistence need be laid.

It is certain that if the League of Nations supported these various proposals with the weight of its authority, its decision would secure the execution of these humanitarian measures. For this reason we recommend them to your favourable attention.

We have the honour to remain, Gentlemen, etc.

G. ADOR,

President of the Red Cross Committee

2. *Circular No. 300 of 22nd December 1931, from the International Committee of the Red Cross to National Red Cross Societies, concerning the legal protection of the civilian population from the dangers of aerial and chemical warfare.*

Ladies and Gentleman,

In its 299th Circular, dated September 25 last, the International Committee of the Red Cross requested you to approach the most eminent specialists in international law and aerial warfare of your respective countries, with a view to their taking part in the Conference which it convened in Geneva, on December 1 and the days which followed.

The very special nature of this Conference, and the very short notice at which it was convened—for the reasons explained in our previous circular—might have raised doubts as to the successful issue of the meeting. Nevertheless, twenty one Societies gave a favourable reply to the request sent to them. Several others expressed their full approval of the meeting, while regretting that they were not able to send a representative to Geneva. Several delegates who were to have been present were prevented at the last minute from attending the meeting. But on the whole, the Conference, which was held from December 1 to 5, was a complete success, being attended by sixteen delegates whose competence and authority on the subject are generally recognised.

The following persons took part in the discussions :

.....

The Conference adopted the proposals of the International Committee of the Red Cross in regard to the procedure governing the discussions ; the following subjects were discussed :

- (1) The protection afforded by the international Conventions in force.
- (2) Provisions limiting or prohibiting bombardment.
- (3) The general prohibition of aerial warfare.
- (4) Investigation of infringements ; preventive measures ; supervision ; sanctions.

The discussions emphasized the vast possibilities of science in the development of means of destruction, the horrors of the recent war, the terror of possible future wars, the inadequacy, in several respects, of the Conventions in existence, and the danger of creating a false sense of security.

The Conference has made a summary of the conclusions reached by it in the document which we have the honour to send you herewith. Its report is, as it were, a synthesis of the opinions expressed. With one exception, the wording of the report met with unanimous approval.

In its final conclusions, the report, drafted by jurists, proclaims the necessity of *replacing recourse to war by a procedure for the pacific settlement* of international difficulties.

Nevertheless, in view of the fact that a war is always possible, the aim of the report is to safeguard the *notion of a civilian population*, which is contested by the modern theories concerning war potential and total war.

It condemns, in the name of international public law, the use of any weapon for the primary purpose of *terrorizing the civilian population*.

After emphasising these essential principles, the Commission seeks for practical solutions and makes several important suggestions which deserve to be taken into consideration.

It recognises *the legal possibility of prohibiting bombing by aircraft*.

It proposes that the Geneva Protocol of 1925, prohibiting all use of toxic and bacteriological weapons should be improved upon and ratified by all States.

It suggests that stocks of toxic materials should be subject of control.

It recommends that, in the event of infringements of existing Conventions, an enquiry be instituted by an impartial body authorised to bring the infringements to the knowledge of the public.

*

In communicating the enclosed report to the National Red Cross Societies, the International Committee does not consider that it has completed its task, and it will continue to work, by all means in its

power, for the fulfilment of the mandate entrusted to it by the last three International Red Cross Conferences ; its conclusions will be submitted to a forthcoming Conference.

It requests the National Societies to examine the report which it has the honour to send them, and to inform it of any suggestions they may wish to make ; it attaches the highest value to the opinions of National Societies on the subject.

The International Committee also requests the Central Committees of the National Societies to draw the attention of their respective Governments to this report, and to consider whether, and to what extent, it can be brought to the knowledge of the public.

May we assure you, Ladies and Gentlemen, of our highest consideration.

For the International Committee
of the Red Cross,
Max HUBER, President

3. *Appeal of the International Committee of the Red Cross of 12th March, 1940, to the High Contracting Parties signatory to the Geneva Convention for the Relief of the Wounded and Sick in Armies in the Field, and to the Fourth Hague Convention of 1907 respecting the Laws and Customs of War on Land (extract).*

.....

For many years, armed conflicts of various kinds have deluged the world with blood. Today these conflicts have developed to an exceptional degree and the peoples of all countries, viewing the experiences gathered in recent conflicts, are anxiously wondering what use will perhaps be made of the formidable means of destruction that have been piled up on all sides.

For this reason, the International Red Cross Committee feels itself bound to draw the attention, in the most pressing fashion, of all States, particularly of the Powers actually engaged in conflicts, to a problem of the deepest gravity : the protection of civilian populations against bombardment from the air.

The duty of the Red Cross is, first and foremost, to bring relief to the victims of warfare, to the sick and wounded and to prisoners of war. In this respect the Geneva Conventions furnish, in the majority of cases, a sound juridical basis, and their humanitarian principles have, as a general rule, been respected even in circumstances

where these Conventions, as such, were not held to be formally applicable by some of the interested Parties.

But the International Committee must, none the less, seize all possible opportunities of eliminating, or reducing the causes which increase still more the number of war victims. For this reason it is the Committee's duty to consider with particular solicitude the lot of those who are incapable of harming the enemy, but are nevertheless exposed to the terrible effects of engines of destruction.

Among these possible victims of military operations, the populations of large centres, towns and villages are far the most important, because of their number. Bombardment by airplane exposes such civilian populations to a formidable danger, scarcely foreseen at the time when the chief Conventions for the regulation of warfare were concluded. Yet the great humanitarian principles of these Conventions and the indestructible spirit that informs them, remain unchanged, and must continue to impress themselves on the conscience of all nations, under the new conditions of warfare. It is in the Fourth Hague Convention of 1907 especially that these principles and this spirit have found their expression. The Hague Convention is based on the general immunity which International Law grants to civilian populations, as distinct from armed forces; it refuses furthermore to belligerents an unlimited right in the choice of means of harming the enemy; it forbids, lastly, the attack or bombardment, by any means whatsoever, of towns, villages, dwellings or buildings which are not defended.

In the absence of any recent Convention formally and specifically regulating aerial warfare, and taking into account the changes that have occurred in the conduct of hostilities, an idea common to all civilized nations has nevertheless made its appearance; military objectives alone can be permissibly attacked. The important declarations made in September 1939 by several belligerent Powers can be quoted in support of this affirmation.

The statement of a principle is, however, not sufficient in itself, since the notion of "military objectives" remains lacking in precision, and because difficulties arise from the fact that military objectives are sometimes close to harmless inhabited areas, or are more or less mixed up with them.

.....

Under these circumstances, and seeing the fearful menace which threatens all peoples, the International Red Cross Committee, following the wishes expressed on the occasion of several International Red Cross Conferences by the entire body of National Red Cross Societies—Conferences at which Governments were also represented—considers itself bound to refer once more to a matter which it deems

essential, namely the prohibition or limitation of aerial bombardment. The Committee therefore addresses to all Powers a pressing appeal, asking them to examine the possibility of giving civilian populations better security, by fixing at least certain basic conditions regulating the use of aerial weapons.

Under present circumstances, complete and strict regulations, and still more the meeting of a diplomatic Conference, seem to have no practical chance of success. However, bilateral agreements between Powers actually at war may be looked upon as feasible. The International Committee, which earnestly desires the conclusion of such agreements, urges all Powers in the most pressing manner to give favourable consideration to this solution of the matter. In the Committee's view such agreements should envisage the following points, which we consider to be essential :

Confirmation of the general immunity granted by International Law to civilian populations.

Proclamation that military objectives alone are legitimate objects of attack¹, and, more especially prohibition of all attack directed against civilian populations as such (intimidatory bombardments).

Definition of what is meant by "military objective".

Recognition that in any case an act of destruction shall not involve harm to the civilian population disproportionate to the importance of the military objective aimed at by the attack.

The determination of military objectives will moreover have the advantage of allowing States to take practical steps in order to remove harmless populations from the neighbourhood of places which are recognized as military objectives and are thus exposed to bombardment.

* * *

The International Red Cross Committee furthermore considers necessary to foresee some form of procedure applicable in case of alleged or effective violation. The profound emotion which is so justly caused by all cases where inoffensive inhabitants fall victims to the horrors of war, demands immediate establishment on the spot, with all possible objectivity, of the alleged facts. Such establishment is also of undoubted value, if and when a proper enquiry can be instituted under such conditions as may ensure equal respect of right and impartiality.

The International Red Cross Committee moreover holds it to be fundamentally important to stipulate that no reprisals insofar as the

¹ The Draft Convention drawn up by the Juridical Commission which met at The Hague in 1923, and certain studies annexed thereto, might furnish useful suggestions on this point.

Powers may consider reprisals to be legitimate—may be instituted before the interested party has, at the very least, been able to make itself heard, within a given time, through the intermediary of the Power appointed to represent its interests with the enemy, or through any other channel the Powers may choose. Nothing should be neglected which may prevent the belligerent States from embarking on the perilous course of reprisals.

Lastly, the International Committee recalls here a principle which can, on no pretext whatever, be called into question, namely, that persons and things protected by the Geneva Convention can never be the objects of attack, not even on the plea of reprisals.

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4. *Appeal of the International Committee of the Red Cross of 5th April, 1950, concerning atomic weapons and non-directed missiles (Addressed to the High Contracting Parties signatory to the Geneva Conventions for the Protection of the Victims of War).*

Geneva, April 5, 1950.

On August 6, 1945, when the first atomic bomb exploded, the world saw in it at first only a means of ending the War. Soon the destructive capacity of this arm became known, and increasing alarm came with the realisation. Since then, the civilised world has been hoping to see a reaffirmation of the rules of law and their extension to ensure protection against such means of destruction. Not only has this hope been belied, but there is already talk of arms still more destructive. Scientists have it that entire cities can be instantly wiped out and all life annihilated for years over wide areas. Mankind lives in constant fear.

It is the province of Governments to draw up the laws of war. The International Committee of the Red Cross is well aware of this fact, and it realises that the establishment of such laws involves political and military problems which are by their very nature outside its scope. Nevertheless, on the morrow of the formal signature of the four Geneva Conventions for the protection of the victims of war, the Committee feels that its duty is to let Governments know of its anxiety.

The protection of the human person against mass destruction is intimately bound up with the principle which gave rise to the Red Cross: the individual who takes no part in the fighting, or who is put *hors de combat* must be respected and protected.

The International Committee has not waited until now to take up the question. On September 5, 1945, scarcely a month after the release of the first bomb, it drew the attention of National Red Cross Societies to the grave problem posed by the atomic arm. This step was in itself a logical sequence in the attitude the Committee had taken to the development of modern warfare. From 1918 onwards, it had begun to collect documentation on the protection of civilians against aerial warfare and might be considered in this respect as a pioneer of civilian air-raid precautions. The Committee at the same time endeavoured to secure from the Powers an undertaking to refrain from the bombardment of non-military objectives. A series of proposals was laid before one of the first Assemblies of the League of Nations, with the object of eliminating certain methods of warfare introduced during the first World War. Supported by the conclusions reached by experts and backed by the documentation it had brought together, the Committee later addressed to the Disarmament Conference an appeal for the absolute prohibition of aerial bombardment.

During the second World War, the Committee repeatedly called upon belligerents to restrict bombardment to military objectives only, and to spare the civil population. The most important of these appeals, dated March 12, 1940, recommended that Governments should conclude agreements which would confirm the immunity generally accorded to civilians and prohibit all attacks against them. Similarly, the International Committee on several occasions advocated the creation of safety zones and localities. All these efforts proved fruitless.

The War once over, the International Committee did not relax its efforts. The Preliminary Conference of National Red Cross Societies, which met at Geneva in 1946, adopted a Resolution recommending, inter alia, the prohibition of the use of atomic energy for war purposes. Armed with this text, the International Committee presented a report to the XVIIth International Red Cross Conference (Stockholm, 1948) recalling the above facts, and proposed the confirmation of the 1946 Resolution, after extending it to cover all non-directed weapons. The Conference voted the following Resolution :

“The XVIIth International Red Cross Conference, considering that, during the Second World War, the belligerents respected the prohibition of recourse to asphyxiating, poison and similar gases and to bacteriological warfare, as laid down in the Geneva Protocol of June 17, 1925,

noting that the use of non-directed weapons which cannot be aimed with precision or which devastate large areas indiscriminately, would involve the destruction of persons and the annihilation of the human values which it is the mission of the Red Cross to defend, and that use of these methods would imperil the very future of civilisation,

earnestly requests the Powers solemnly to undertake to prohibit absolutely all recourse to such weapons and to the use of atomic energy or any similar force for purposes of warfare."

Almost at the same moment, the International Congress of Military Medicine and Pharmacy, also meeting at Stockholm, adopted a similar Resolution.

Today, in recalling to Governments the Resolution of the XVIIth Red Cross Conference, the International Committee feels obliged to underline the extreme gravity of the situation. Up to the Second World War it was still to some extent possible to keep pace with the destructive power of armaments. The civilian populations, nominally sheltered by International Law against attack during war, still enjoyed a certain degree of protection, but because of the power of the arms used, were increasingly struck down side by side with combatants. Within the radius affected by the atomic bomb, protection is no longer feasible. The use of this arm is less a development of the methods of warfare than the institution of an entirely new conception of war, first exemplified by mass bombardments and later by the employment of rocket bombs. However condemned—and rightly so—by successive treaties, war still presupposed certain restrictive rules, above all did it presuppose discrimination between combatants and non-combatants. With atomic bombs and non-directed missiles, discrimination becomes impossible. Such arms will not spare hospitals, prisoner of war camps and civilians. Their inevitable consequence is extermination, pure and simple. Furthermore, the suffering caused by the atomic bomb is out of proportion to strategic necessity; many of its victims die as a result of burns after weeks of agony, or are stricken for life with painful infirmities. Finally, its effects, immediate and lasting, prevent access to the wounded and their treatment.

In these conditions, the mere assumption that atomic weapons may be used, for whatever reason, is enough to make illusory any attempt to protect non-combatants by legal texts. Law, written or unwritten, is powerless when confronted with the total destruction the use of this arm implies. The International Committee of the Red Cross, which watches particularly over the Conventions that protect the victims of war, must declare that the foundations on which its mission is based will disappear, if deliberate attack on persons whose right to protection is unchallenged is once countenanced.

The International Committee of the Red Cross hereby requests the Governments signatory to the 1949 Geneva Conventions, to take, as a logical complement to the said Conventions—and to the Geneva Protocol of 1925—all steps to reach an agreement on the prohibition of atomic weapons, and in a general way, of all non-directed missiles. The International Committee, once again, must keep itself apart

from all political and military considerations. But if, in a strictly humanitarian capacity, it can aid in solving the problem, it is prepared, in accordance with the principles of the Red Cross, to devote itself to this task.

For the International Committee of the Red Cross

Leopold BOISSIER

Vice-President

Chairman of the Legal Commission

Paul RUEGGER

President

5. *Resolutions of International Red Cross Conferences concerning the use of non-directed weapons.*

The XIVth International Red Cross Conference,

(1) renews the declarations of preceding Conferences relative to chemical and bacteriological warfare, and urges the International Committee of the Red Cross to pursue its efforts towards hastening the ratification of the Geneva Protocol of June 17th, 1925, prohibiting the use of asphyxiating, poisonous or similar gases in warfare by all Powers having signed, or adhered to, the Geneva Convention,

(2) The XIVth International Red Cross Conference, approves of the measures taken by the International Committee of the Red Cross in carrying out the mandate entrusted to it by the XIIIth Conference, and urges it to continue its efforts towards the protection of civilian populations against chemical warfare, in accordance with the Resolution of the International Commission of Experts,

and expresses the hope that the National Red Cross Societies will grant immediate financial support to the International Committee to enable it to carry these efforts to a successful conclusion, particularly in developing an information centre and in organising competitions, with prizes, between scientists and manufacturers ; without such pecuniary support, the future of this work would be seriously compromised,

(3) The XIVth International Red Cross Conference, deems it the bounden duty of the National Red Cross Societies,

to take every useful precaution, in conformity with the appropriate instructions issued by their respective Governments, for the passive defence of the civilian populations against the dangers of warfare, whether chemical alone or combined with other forms of attack,

to instigate, if need be, these governmental instructions,

to apply them within the limits set by the Governments, while using the widest possible initiative in cases where the Governments have specified nothing formal as to the choice of methods,

to keep their respective Governments periodically informed of progress made in this direction,

the Conference hopes further that the Governments will concern themselves with the active defence of large cities against attacks from the air ; such measures would be purely military in character but are vital to the protection of the population.

(4) from a study of the Resolution of the Experts sitting at Brussels and Rome, it is apparent that a war would expose civilian populations to very grave perils and that it might become almost impossible, particularly in the case of large agglomerations, to protect them,

this possibility is the more serious inasmuch as it appears, after consultation with jurists, that the protection of civilians against the effects of warfare is properly guaranteed by no Diplomatic Convention. The Conference deems that it is the duty of the International Committee to study the means whereby this state of affairs might be remedied and made known. (Brussels, 1930, Resolution No. V)

*

The XVth International Red Cross Conference, while noting that since the XIVth Conference the number of Governments which have ratified the Geneva Protocol of June 17th, 1925, concerning the prohibition of the use in war of asphyxiating, poisonous or similar gases, and of bacteriological methods of warfare, has considerably increased,

recommends that the International Committee of the Red Cross continue its endeavours to secure the ratification of the said Protocol or adhesion to the said Protocol by all countries which are parties to the Geneva Conventions,

thanks the International Committee for the initiative which it has taken in order to develop in time of peace and in time of war measures for the protection of the civilian population against poison gas,

expresses the hope that the International Committee will be placed in the position to continue the technical investigation which it has already undertaken in spite of the difficulties of all kinds confronting it,

approves the activity of the Documentation Centre, and invites National Societies to give their financial assistance to the International Committee, in order to contribute to the development of this Centre,

notes the conclusions of the International Commission of Jurists of 1931, and expresses the hope that the studies of this Commission

will be continued with a view to finding means for the legal protection of the civilian population against the dangers of aerial warfare in its various forms. (Tokyo, 1934, Resolution No. XXXVI.)

*

The XVIIth International Red Cross Conference, considering that during the Second World War the belligerents respected the prohibition of recourse to asphyxiating, poison and similar gases and to bacteriological warfare, as laid down in the Geneva Protocol of June 17, 1925,

noting that the use of non-directed weapons which cannot be aimed with precision, or which devastate large areas indiscriminately, would involve the destruction of persons and the annihilation of the human values which it is the mission of the Red Cross to defend, and that the use of these methods would imperil the very future of civilisation,

earnestly requests the Powers solemnly to undertake to prohibit absolutely all recourse to such weapons and to the use of atomic energy or any similar force for purposes of warfare. (Stockholm, 1948, Resolution No. XXIV.)

*

The Board of Governors, considering the resolution passed in its present session exhorting the Powers to renounce the use of atomic weapons, chemical and bacteriological warfare,

Considering the fact that the role of the Red Cross is to protect civil populations from the devastating and indiscriminating effects of such warfare,

Requests the International Committee of the Red Cross to make a thorough examination of the subject and propose at the next International Conference of the Red Cross the necessary additions to the Conventions in force in order to protect civilian populations efficiently from the dangers of atomic, chemical and bacteriological warfare (XXIIIrd Session—Oslo, May 1954).

ANNEX IV

British Directive of October 29, 1942, on the subject of Air Warfare

On several occasions the Commentary quotes the instructions given by the British Government in October 1942 to its air forces operating in the European theatre of war. A useful purpose, from the legal point of view, is served by reproducing the whole of a passage referring to those instructions from W. F. Craven's book, "The Army Air Forces in World War II", for which the complete reference is given in the bibliography that follows.

After alluding to the difficulties raised by the bombing of objectives situated in the occupied countries of Western Europe, the book goes on to say (vol. II, p. 240) :

"It was in an effort to bring up to date a code of rules for operations in this delicate but unavoidable situation that the Air Ministry, to whom the responsibility for such political matters was customarily left, issued the directive of 29 October. Bombardment was to be confined to military objectives. The intentional bombardment of civilian populations, as such, was forbidden. It must be possible to identify the objective. The attack must be made with reasonable care to avoid undue loss of civilian life in the vicinity of the target, and if any doubt existed as to the possibility of accurate bombing or if a large error would involve the risk of serious damage to a populated area no attack was to be made. The provisions of Red Cross conventions were, of course, to be observed. Military objectives were defined broadly to include any sort of industrial, power, or transportation facility essential to military activity. The only other important restrictions were against attacks on passenger trains during daylight hours and on power stations in Holland, the destruction of which would cause extensive flooding of the land by putting out of action electrically driven pumps. Special consideration was to be given to the Channel Islands, should attacks on enemy installations there become necessary. In conclusion, the directive stressed that none of the foregoing rules should apply in the conduct of air warfare against German, Italian, or Japanese territory, except that the provisions of Red Cross Conventions were still to be observed, for "consequent upon the enemy's adoption of a campaign of unrestricted air warfare, the Cabinet have authorized a bombing policy which includes the attack on enemy morale..."

ANNEX V

Bibliography on Air Warfare

This is a *summary* bibliography, and therefore incomplete. In general it only includes surveys published after the Second World War; for earlier publications, reference may be made to the bibliographical indications given in the works of Spaight: "Air Power and War Rights", or, especially, on legal questions, A. Meyer: "Völkerrechtlicher Schutz der friedlichen Personen und Sachen gegen Luftangriffe", Königsberg 1935.

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Printed in Switzerland

PB-7765-25-SB
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