[Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.](http://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?action=openDocument&documentId=D9E6B6264D7723C3C12563CD002D6CE4)

**Commentary - Protection of the civilian population**

[p.613] Article 51 [ Link ] -- Protection of the civilian population

[p.615] General remarks

1923 Article 51 [ Link ] is one of the most important articles in the Protocol. It explicitly confirms the customary rule that innocent civilians must be kept outside hostilities as far as possible and enjoy general protection against danger arising from hostilities. This general rule is accompanied by rules of application.

1924 Committee III of the Diplomatic Conference began examining this article in 1974 and referred it, with the ten amendments which had been submitted, to a Working Group. Committee III adopted the text of this article by consensus. Voting took place in a plenary meeting in 1977 and the article was adopted with 77 votes in favour, 1 against and 16 abstentions. (1)

1925 The delegation which voted against justified its vote by arguing that the article could seriously hinder the conduct of military operations against an invader and compromise the exercise of the right to self-defence recognized in Article 51 of the Charter of the United Nations. According to this delegation, the provisions relating to indiscriminate attacks should not be such as to prevent a State from defending its territory against an invader, even if this were to entail losses in its own population. Several delegations made similar statements. (2)

1926 Such fears do not seem justified. Article 51 of the Charter of the United Nations reads as follows:

"Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security [...]"

1927 However, it seems clear that the right of self-defence does not include the use of measures which would be contrary to international humanitarian law, even in a case where aggression has been established and recognized as such by the Security Council. The Geneva Conventions of 1949 and this Protocol must be applied in accordance with their Article 1 [ Link ] "in all circumstances"; the Preamble of the Protocol reaffirms that their application must be "without any adverse [p.616] distinction based on the nature or origin of the armed conflict or on the causes espoused by or attributed to the Parties to the conflict".

1928 It is true that in the preparatory work and during the discussions in the Diplomatic Conference the possibility was referred to of making a distinction between the rules applicable by an aggressor, on the one hand, and by the victim of the aggression, on the other. (3) However, several delegations opposed this point of view. (4) In any case, the Conference did not adopt this suggestion; on the contrary, in the above-mentioned paragraph of the Preamble of the Protocol it confirmed the equality of the Parties to the conflict with regard to the obligations laid down by humanitarian law. This is wholly reasonable, as the distinction between ' jus ad bellum ' and ' jus in bello ' is fundamental and should always be respected.

1929 Several delegations made spoken or written statements, during the final debate, on the meaning to be given to some of the provisions contained in this article. They will be examined with regard to the paragraphs concerned.

1930 In the draft the ICRC had provided that Article 51 [ Link ] (46 of the draft) would be among the provisions to which no reservations could be made. Finally the Conference deleted all provisions relating to reservations, but in the discussions Article 51 [ Link ] had been included in the list of articles to which reservations were prohibited. (5) In the absence of a specific provision it is therefore general international law that applies, in particular the Vienna Convention on the Law of Treaties (Articles 19-23). It may be recalled that that Convention prohibits reservations which are incompatible with the object and purpose of the treaty. (6)

1931 During the course of the discussions and in the written statements some delegations indicated that in their view reservations to this article would be incompatible with the object and purpose of the treaty. (7) There is no doubt that, as stated above, Article 51 [ Link ] is a key article in the Protocol. It constitutes a reasonable balance which was achieved with difficulty between the divergent views that emerged in the Diplomatic Conference. That is why reservations, even partial ones, could jeopardize this balance and in this way go against the object and purpose of this indispensable provision.

1932 The importance attached by the Diplomatic Conference to this article is corroborated by the fact that violation of several of its provisions is qualified as a grave breach. In fact Article 85 [ Link ] ' (Repression of breaches of this Protocol), ' paragraph 3, qualifies as a grave breach the act of wilfully making the civilian population or individual civilians the object of attack if this causes death or serious injury to body or health.

1933 The same applies for wilful indiscriminate attacks affecting the civilian population or civilian objects (or against installations containing dangerous [p.617] forces in the knowledge that such an attack will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in Article 57 [ Link ] ' (Precautions in attack), ' paragraph 2(a)(iii).

1934 Thus in relation to criminal law the Protocol requires intent and, moreover, with regard to indiscriminate attacks, the element of prior knowledge of the predictable result.

Paragraph 1

1935 This is an introductory paragraph which confirms the principle of the general protection of civilians against dangers arising from military operations. There is no doubt that armed conflicts entail dangers for the civilian population, but these should be reduced to a minimum. Such is the aim of the following paragraphs.

1936 According to dictionaries, the term "military operations", which is also used in several other articles in the Protocol, means all the movements and activities carried out by armed forces related to hostilities. (8) A mixed group of the Diplomatic Conference gave the following definition of the expression "zone of military operations": "in an armed conflict, the territory where the armed forces of the adverse Parties taking a direct or an indirect part in current military operations, are located". (9)

1937 The second sentence refers to the "other applicable rules of international law": (10) apart from some customary rules and, of course, the other relevant provisions of the Protocol, these are mainly the Hague Regulations annexed to Hague Convention IV of 1907 and the fourth Geneva Convention of 1949. In addition, mention could be made of the rules contained in the Geneva Protocol of 1925 for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, as well as the Hague Convention of 1954 for the Protection of Cultural Property. Although they are not aimed directly at the protection of the civilian population, these two treaties can have a positive influence on the fate of the civilian population in time of armed conflict. The Convention concluded in 1980 on the Prohibition or Restrictions on the Use of Certain Conventional Weapons contains corresponding provisions with respect to the civilian population. (11)

[p.618] Paragraph 2

1938 The first sentence gives substance to the principle of general immunity formulated in the preceding paragraph by explicitly prohibiting attacks directed against the civilian population as such, as well as against individual civilians. By using the words "directed" and "as such" it emphasizes that the population must never be used as a target or as a tactical objective.

1939 It should be noted that "attacks" are defined in Article 49 [ Link ] ' (Definition of attacks and scope of application), ' paragraph 1.

1940 In the second sentence the Conference wished to indicate that the prohibition covers acts intended to spread terror; there is no doubt that acts of violence related to a state of war almost always give rise to some degree of terror among the population and sometimes also among the armed forces. It also happens that attacks on armed forces are purposely conducted brutally in order to intimidate the enemy soldiers and persuade them to surrender. This is not the sort of terror envisaged here. (12) This provision is intended to prohibit acts of violence the primary purpose of which is to spread terror among the civilian population without offering substantial military advantage. It is interesting to note that threats of such acts are also prohibited. This calls to mind some of the proclamations made in the past threatening the annihilation of civilian populations.

1941 Finally, it is worthy of note that Article 85 [ Link ] ' (Repression of breaches of this Protocol), ' paragraph 3(a), defines the act of making the civilian population or individual civilians the object of attack as a grave breach, when it results in death or serious injury to body or health.

Paragraph 3

1942 The immunity afforded individual civilians is subject to an overriding condition, namely, on their abstaining from all hostile acts. Hostile acts should be understood to be acts which by their nature and purpose are intended to cause actual harm to the personnel and equipment of the armed forces. Thus a civilian who takes part in armed combat, either individually or as part of a group, thereby becomes a legitimate target, though only for as long as he takes part in hostilities. If the civilian is captured while he is committing hostile acts, the rules governing his fate are laid down in Article 45 ' (Protection of persons who have taken part in hostilities). '

1943 During the course of the discussions several delegations indicated that the expression "hostilities" used in this article included preparations for combat and the return from combat. (13) Similar problems arose in Article 44 [ Link ] ' (Combatants and prisoners of war) ' with regard to the expression "military deployment preceding the launching of an attack". It seems that the word "hostilities" covers not only the time that the civilian actually makes use of a weapon, but also, for example, [p.619] the time that he is carrying it, as well as situations in which he undertakes hostile acts without using a weapon. If a civilian is captured or arrested in such circumstances, he may have recourse to paragraph 1 of Article 45 [ Link ] ' (Protection of persons who have taken part in hostilities) ' and claim prisoner-of-war status; he must be treated as such pending determination of his status by a competent tribunal.

1944 What is the exact meaning of the term "direct" in the expression "take a direct part in hostilities"? A similar expression is already used in paragraph 2 of Article 43 [ Link ] ' (Armed forces). ' In general the immunity afforded civilians is subject to a very stringent condition: that they do not participate directly in hostilities, i.e., that they do not become combatants, on pain of losing their protection. Thus "direct" participation means acts of war which by their nature or purpose are likely to cause actual harm to the personnel and equipment of the enemy armed forces. It is only during such participation that a civilian loses his immunity and becomes a legitimate target. Once he ceases to participate, the civilian regains his right to the protection under this Section, i.e., against the effects of hostilities, and he may no longer be attacked. However, there is nothing to prevent the authorities, capturing him in the act or arresting him at a later stage, from taking repressive or punitive security measures with regard to him in accordance with the provisions of Article 45 [ Link ] ' (Protection of persons who have taken part in hostilities) ' or on the basis of the provisions of the fourth Convention (assigned residence, internment etc.) if his civilian status is recognized. Further it may be noted that members of the armed forces feigning civilian non-combatant status are guilty of perfidy under Article 37 [ Link ] ' (Prohibition of perfidy), ' paragraph 1(c).

1945 There should be a clear distinction between direct participation in hostilities and participation in the war effort. The latter is often required from the population as a whole to various degrees. Without such a distinction the efforts made to reaffirm and develop international humanitarian law could become meaningless. In fact, in modern conflicts, many activities of the nation contribute to the conduct of hostilities, directly or indirectly; even the morale of the population plays a role in this context.

Paragraph 4

1946 This provision is very important; it confirms the unlawful character of certain regrettable practices during the Second World War and subsequent armed conflicts. Far too often the purpose of attacks was to destroy all life in a particular area or to raze a town to the ground without this resulting, in most cases, in any substantial military advantages.

1947 On this subject the general rule was formulated in Article 48 [ Link ] ' (Basic rule): ' belligerents may direct their operations only against military objectives. The first specification is added in paragraph 2 of the present Article 51 [ Link ] : attacks against the civilian population as such and against individual civilians are prohibited.

1948 Up to now the matter is fairly clear in theory, but it is less so in practice. In fact, civilians may be inside or in the immediate proximity of military objectives, whether these consist of persons or objects; moreover, purely civilian objects may in combat conditions become military objectives, thereby endangering the [p.620] persons near them. Paragraphs 4 and 5 attempt to cover such situations. The need to achieve a consensus has led those drafting these provisions to formulate them in a way that is sometimes ambiguous. Several delegates remarked on this when the article was adopted. (14)

1949 At a more general level, other delegations pointed out that, like the whole of the Section, this provision should not be such as to inhibit the capacity for defence of a State which has to counter aggression. Yet it is well-known how difficult it is in armed conflict to determine objectively who is the aggressor. Moreover, it should be recalled that the State which is a victim of aggression is in no way exempted from the obligations incumbent upon it under treaty or customary rules of law.

1950 The provision begins with a general prohibition on indiscriminate attacks, i.e., attacks in which no distinction is made. Some may think that this general rule should have sufficed, but the Conference considered that it should define the three types of attack covered by the general expression "indiscriminate attacks".

' Sub-paragraph (a) '

1951 This refers in the first place to attacks which are not directed at a specific military objective. Article 52 [ Link ] ' (General protection of civilian objects), ' paragraph 2, defines military objectives, as far as objects are concerned, limiting them

"to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage".

Obviously military objectives also include, indeed principally so, the armed forces, their members, installations, equipment and transports.

1952 The military character of an objective can sometimes be recognized visually, but most frequently those who give the order or take the decision to attack will do so on information provided by the competent services of the army. In the majority of cases they will not themselves have the opportunity to check the accuracy of such information; they should at least make sure that the information is precise and recent, and that the precautions and restrictions laid down in Article 57 [ Link ] ' (Precautions in attack) ' are observed. In case of doubt, additional information must be requested.

1953 The armed forces and their installations are objectives that may be attacked wherever they are, except when the attack could incidentally result in loss of human life among the civilian population, injuries to civilians, and damage to civilian objects which would be excessive in relation to the expected direct and specific military advantage. In combat areas (15) it often happens that purely civilian [p.621] buildings or installations are occupied or used by the armed forces and such objectives may be attacked, provided that this does not result in excessive losses among the civilian population. For example, it is clear that if fighting between armed forces takes place in a town which is defended house by house, these buildings -- for which Article 52 [ Link ] ' (General protection of civilian objects), ' paragraph 3, lays down a presumption regarding their civilian use -- will inevitably become military objectives because they offer a definite contribution to the military action. However, this is still subject to the prohibition of an attack causing excessive civilian losses.

1954 Outside the combat area the military character of objectives that are to be attacked must be clearly established and verified. Similarly the limits of such objectives must be precisely determined.

1955 The question arose what the situation would be if a belligerent in a combat area wished to prevent the enemy army from establishing itself in a particular area or from passing through that area, for example, by means of barrage fire. There can be little doubt in such a case that the area must be considered as a military objective and treated as such. Yet, during the Diplomatic Conference several delegations insisted on confirming this interpretation in their statements. (16) Of course, such a situation could only concern limited areas and not vast stretches of territory. It applies primarily to narrow passages, bridgeheads or strategic points such as hills or mountain passes.

' Sub-paragraph (b) '

1956 This concerns attacks which employ a method or means of combat which cannot be directed at a specific military objective. (17)

1957 The term "means of combat" or "means of warfare" (cf. Article 35 [ Link ] -- ' Basic rules ') generally refers to the weapons being used, while the expression "methods of combat" generally refers to the way in which such weapons are used.

1958 As regards the weapons, those relevant here are primarily long-range missiles which cannot be aimed exactly at the objective. The V2 rockets used at the end of the Second World War are an example of this. It should be noted that most armies endeavour to use accurate weapons as attacks which do not strike the intended objective result in a loss of time and equipment without giving a corresponding advantage. Thereby the margin of error of missiles is gradually reduced. Here, military interests and humanitarian requirements coincide.

1959 From the point of view of the protection of civilians, the use of land or sea mines raises some problems. There were lengthy discussions in the Ad Hoc Committee on Conventional Weapons of the Conference. The work of this Committee (18) served as a basis for the Conference convened by the United [p.622] Nations in 1979 and 1980. That Conference adopted a Convention (10 October 1980) and three Protocols, one of which was on the prohibition or restrictions on the use of mines, booby-traps and other devices. (19) Briefly, this Protocol requires Parties to take measures to keep adequate records and to give proper warning when minefields are laid, so that the population is not endangered. As regards mine-laying by aircraft or remotely-delivered mines, such operations are prohibited in principle unless such mines are only used in an area that constitutes a military objective or that contains military objectives; even in that situation the location of mines that are laid must be recorded, or the mines must be equipped with a remotely-controlled mechanism to detonate then or must self-destruct when they have lost their military value. (20)

1960 However, the question may arise at what point the use of mines constitutes an attack in the sense of this provision. Is it when the mine is laid, when it is armed, when a person is endangered by it, or when it finally explodes? The participants at the meeting of the International Society of Military Law and the Law of War (Lausanne, 1982) conceded that from the legal point of view the use of mines constituted an attack in the sense of the Protocol when a person was directly endangered by such a mine. (21) It may be considered that mines also come within the scope of sub-paragraph (c) discussed below.

' Sub-paragraph (c) '

1961 This sub-paragraph concerns attacks which employ a method or means of combat the effects of which cannot be limited as required by this Protocol. Like sub-paragraph (b) this provision was not contained in such a precise manner in the ICRC draft; the Working Group of Committee III presented a more elaborate text which was referred back to the Working Group, and finally Committee III adopted an article which contains all the elements of the present article (22) although the wording has been revised and modified reasonably successfully by the Drafting Committee of the Conference.

1962 On this provision the report of Committee III contains the following passage:

"The main problem was that of defining the term ' indiscriminate attacks '. There was general agreement that a proper definition would include the act of not directing an attack at a military objective, the use of means or methods of combat which cannot be directed at a specific military objective, and the use of means or methods of combat the effects of which cannot be limited as required by the Protocol. Many but not all of those who commented were of the view that the definition was not intended to mean that there are means [p.623] or methods of combat whose use would involve an indiscriminate attack in all circumstances. Rather it was intended to take account of the fact that means or methods of combat which can be used perfectly legitimately in some situations could, in other circumstances, have effects that would be contrary to some limitations contained in the Protocol, in which event their use in those circumstances would involve an indiscriminate attack." (23)

1963 However, there are some means of warfare of which the effects cannot be limited in any circumstances. It is different with regard to other means, such as fire (24) or water (25) which, depending on the circumstances of their use, can have either a restricted effect or, on the contrary, be completely out of the control of those using them, causing significant losses among the civilian population and extensive damage to civilian objects. The nature of the means used is not the only criterion: the power of the weapons used can have the same consequences. For example, if a 10 ton bomb is used to destroy a single building, it is inevitable that the effects will be very extensive and will annihilate or damage neighbouring buildings, while a less powerful missile would suffice to destroy the building. There are also methods which by their very nature have an indiscriminate character, such as poisoning wells.

1964 Several delegations considered that it was necessary to confirm the views expressed by the Rapporteur (26) in their explanations of vote. According to these delegations the provision does not mean that there are means of combat of which the use would constitute an indiscriminate attack in all circumstances.

1965 This point was discussed above; it is true that in most cases the indiscriminate character of an attack does not depend on the nature of the weapons concerned, but on the way in which they are used. However, as stated above, there are some weapons which by their very nature have an indiscriminate effect. The example of bacteriological means of warfare is an obvious illustration of this point. There are also other weapons which have similar indiscriminate effects, such as poisoning sources of drinking water. Of course, bacteriological means of warfare have been prohibited since 1925, and the use of poison was prohibited in 1899 by the Hague Regulations.

1966 Nevertheless, States in making such statements were more concerned with nuclear weapons. A thorough analysis of the connection between the Protocol and the use that may be made of nuclear weapons is included in the introduction to this Section, and we refer the reader to that text. (27)

Paragraph 5

1967 The attacks which form the subject of this paragraph fall under the general prohibition of indiscriminate attacks laid down at the beginning of paragraph 4. Two types of attack in particular are envisaged here.

[p.624] 1968 The ' first type ' includes area bombardment, sometimes known as carpet bombing or saturation bombing. It is characteristic of such bombing that it destroys all life in a specific area and razes to the ground all buildings situated there. There were many examples of such bombing during the Second World War, and also during some more recent conflicts. Such types of attack have given rise to strong public criticism in many countries, and it is understandable that the drafters of the Protocol wished to mention it specifically, even though such attacks already fall under the general prohibition contained in paragraph 4. According to the report of Committee III, the expression "bombardment by any method or means" means all attacks by fire-arms or projectiles (except for direct fire by small arms) and the use of any type of projectile. (28)

1969 This paragraph was adopted with some difficulty; the expression "clearly separated and distinct" in particular led to lengthy discussions. In their first report the Working Group had given Committee III a choice between various proposals: "widely separated", "distinct"; or alternatively the introduction of a final phrase, "unless the objectives are too close together to be capable of being attacked separately". (29)

1970 Rather than going on to vote on these various proposals, Committee III decided to refer the subject back to the Working Group and requested it to try and come up with an expression that might meet with general approval. The Group presented the Committee with a new draft which had been accepted by consensus within the Group. (30) Committee III adopted this proposal without further discussion and it forms the present text of paragraph 5.

1971 It will be noted that the Conference adopted a wording very similar to that which the ICRC had proposed, namely, "at some distance from each other". It was decided not to add the phrase cited above, no doubt through fear of encouraging area bombardment, for in such a case the attacking forces could use their own judgment, taking into account the weapons available and the circumstances, as to whether the individual objectives were too close together to be attacked separately.

1972 Having said that, the interpretation of the words "clearly separated and distinct" leaves some degree of latitude to those mounting an attack; in case of doubt they can refer to sub-paragraph (b) and assess whether the attack is of a nature to cause losses and damage which would be excessive in relation to the military advantage anticipated.

1973 The question may also arise whether the prohibition formulated here is not already covered by paragraph 4(a), which prohibits attacks not directed at a specific military objective. In fact, areas of land between military objectives are not themselves military objectives. It must be accepted that in open areas which are sparsely populated, such as forests, attacks may be mounted against the whole of the area if it has been established that enemy armed forces are present. On the other hand, in a town, village or any other area where there is a similar [p.625] concentration of civilian persons and objects, the military objectives in that area may only be attacked separately without leading to civilian losses outside the military objectives themselves. This also applies for temporary concentrations of civilians, such as refugee camps.

1974 As stated above, the size of the area over which military objectives are spread and the distance separating them are relatively subjective notions. In case of doubt, the general rule of respect for the civilian population must always be observed.

1975 When the distance separating two military objectives is sufficient for them to be attacked separately, taking into account the means available, the rule should be fully applied. However, even if the distance is insufficient, excessive losses that might result from the attack should be taken into account.

1976 The ' second type of attack ' envisaged in paragraph 5 includes those which have excessive effects in relation to the concrete and direct military advantage anticipated. Once again there were long discussions in the Diplomatic Conference and it was difficult to come to an agreement. The formula that was adopted is very similar to that proposed by the ICRC. (31) It is based on the wording of Article 57 [ Link ] ' (Precautions in attack) ' relating to precautionary measures. Committee III had suggested either a straightforward reference to Article 57 [ Link ] ' (Precautions in attack) ' or reproducing the formula used in that article. Finally, the Drafting Committee, which was requested to resolve the question, opted for the second solution. Thus reference may be made to Article 57 [ Link ] ' (Precautions in attack) ' for further details.

1977 Paragraphs 4 and 5 were criticized in the Diplomatic Conference and subsequently. The criticism was directed particularly at the imprecise wording and terminology. For example, according to some, the Protocol fails to specify the size of the area over which military objectives may be spread and the distance which must separate them. It was also pointed out that modern electronic means made it possible to locate military objectives, but that they did not provide information on the presence of civilian elements within or in the vicinity of such objectives.

1978 Such criticisms are justified, at least to some extent. Putting these provisions into practice, or, for that matter, any others in Part IV, will require complete good faith on the part of the belligerents, as well as the desire to conform with the general principle of respect for the civilian population.

1979 Comments were also made in various quarters that paragraph 5(b) authorized any type of attack, provided that this did not result in losses or damage which were excessive in relation to the military advantage anticipated. This theory is manifestly incorrect. In order to comply with the conditions, the attack must be directed against a military objective with means which are not disproportionate in relation to the objective, but are suited to destroying only that objective, and the effects of the attacks must be limited in the way required by the Protocol; ' moreover, ' even after those conditions are fulfilled, the incidental civilian losses [p.626] and damages must not be excessive. Of course, the disproportion between losses and damages caused and the military advantages anticipated raises a delicate problem; in some situations there will be no room for doubt, while in other situations there may be reason for hesitation. In such situations the interests of the civilian population should prevail, as stated above.

1980 The idea has also been put forward that even if they are very high, civilian losses and damages may be justified if the military advantage at stake is of great importance. This idea is contrary to the fundamental rules of the Protocol; in particular it conflicts with Article 48 [ Link ] ' (Basic rule) ' and with paragraphs 1 and 2 of the present Article 51 [ Link ] . The Protocol does not provide any justification for attacks which cause extensive civilian losses and damages. Incidental losses and damages should never be extensive.

1981 This clearly shows the importance attached by the drafters of the Protocol to this article; these provisions should therefore lead those responsible for such attacks to take all necessary precautions before making their decision, even in the difficult constraints of battle conditions.

Paragraph 6

1982 This provision is very important. In fact, the belligerents in the Second World War recognized in their public declarations that attacks may be directed only at military objectives, but on the pretext that their own population had been hit by attacks carried out by the adversary, they went so far, by way of reprisals, as to wage war almost indiscriminately, and this resulted in countless civilian victims. (32)

1983 The text is that proposed by the ICRC. During the discussions in the Conference the question of reprisals was examined with regard to several articles and in each of these a clause prohibiting reprisals was included (see also Articles 20 [ Link ] -- ' Prohibition of reprisals; ' 52 [ Link ] , ' General protection of civilian objects; ' 53 [ Link ] -- ' Protection of cultural objects and of places of worship; ' 54 [ Link ] -- ' Protection of objects indispensable to the survival of the civilian population; ' 55 [ Link ] -- ' Protection of the natural environment ' and 56 [ Link ] -- ' Protection of works and installations containing dangerous forces). ' This is why several delegates raised the question during the discussions whether a single general provision might not suffice, while others considered that it was not very realistic to prohibit all reprisals, and that it was better to try and restrain them by laying down specific rules. Finally Committee I was charged with examining the general problem. (33) It decided to leave the specific clauses prohibiting reprisals in the articles where they occured, and not to draft a general prohibition. (34)

1984 The prohibition contained in this article is not subject to any conditions and it therefore has a peremptory character; in particular it leaves out the possibility of derogating from this rule by invoking military necessity. As in the 1949 [p.627] Conventions, this provision confirms the right of an individual not to be punished for acts which he has not himself committed.

1985 This prohibition of attacks by way of reprisals and other prohibitions of the same type contained in the Protocol and in the Conventions have considerably reduced the scope for reprisals in time of war. At most, such measures could now be envisaged in the choice of weapons and in methods of combat used against military objectives.

Paragraph 7

1986 This provision affords measures of protection to the whole of the civilian population and all civilians, thus extending to them measures which already exist for two categories of persons: prisoners of war and civilians protected by the fourth Convention. In fact, according to Article 23 [ Link ] of the Third Convention, prisoners of war may not be used to render certain points or areas immune from military operations.

1987 As regards persons protected by the fourth Convention, Article 28 [ Link ] of the latter provides that they may not be used to render certain points or areas immune from military operations. Article 19 [ Link ] of the first Convention and Article 12 [ Link ] of the present Protocol ' (Protection of medical units) ' contain a similar rule with regard to medical units. For its part, Article 58 [ Link ] of the Protocol ' (Precautions against the effects of attack) ' also deals with measures to be taken to remove the population from the vicinity of military objectives, and we refer the reader to the commentary thereon.

1988 This paragraph develops and clarifies these various rules. The term "movements" in particular is a new one; this is intended to cover cases where the civilian population moves of its own accord. The second sentence concerns cases where the movement of the population takes place in accordance with instructions from the competent authorities, and is particularly concerned with movements ordered by an Occupying Power, although it certainly also applies to transfers of prisoners of war, and civilian enemy subjects ordered by the authorities of a belligerent Power to move within its own territory.

Paragraph 8

1989 The ICRC had proposed in its draft the following provision which related to the provision contained in paragraph 7:

"If a Party to the conflict, in violation of the foregoing provision, uses civilians with the aim of shielding military objectives from attack, the other Party to the conflict shall take the precautionary measures provided for in Article 50." (35)

[p.628] 1990 It is fairly clear from the deliberations and the report of Committee III (36) that the prohibitions referred to in paragraph 8 are those contained in paragraph 7. Military objectives are defined as far as objects are concerned in Article 52 [ Link ] ' (General protection of civilian objects), ' paragraph 2. Thus, even if civilians were intentionally brought or kept in the vicinity of military objectives, the attacker should take the measures provided for in Article 57 [ Link ] ' (Precautions in attack), ' especially those set out in paragraph 2 (a)(ii) and (iii) and (c). It is clear that in such cases a warning to the population is particularly appropriate as civilians are themselves rarely capable of assessing the danger in which they are placed.

1991 This provision is concerned with the situation in which other provisions of the Protocol are not complied with. It is an attempt to safeguard the population even when the appropriate authorities do not take the required measures of protection with regard to them.

1992 Article 60 of the Vienna Convention on the Law of Treaties provides that a material breach of a multilateral treaty entitles a Party especially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State. Without even going into the question whether non-compliance with paragraph 7 constitutes a material breach of the Protocol, it is pleasing to note the tenor of the last paragraph of the same Article 60:

"5. Paragraphs 1 to 3 do not apply to provisions relating to the protection of the human person contained in treaties of a humanitarian character, in particular to provisions prohibiting any form of reprisals against persons protected by such treaties." (37)

1993 Thus, in the case of this Protocol, it is compulsory to apply it, even if another Party has committed a violation. It should be noted that provisions protecting the human person now bear the stamp of customary law.

' C.P./J.P. '

NOTES

(1) [(1) p.615] O.R. VI, pp. 165-166, CDDH/SR.41, para. 118;

(2) [(2) p.615] Ibid., p. 162. One delegation emphasized that the Charter of the United Nations recognizes the right of individual or collective self-defence in the case of armed attack and that international 1aw cannot restrict the legitimate right of a victim of aggression and occupation to defend itself (ibid., p. 196, Annex (Romania));

(3) [(3) p.616] See, for example, O.R. V, pp. 119-121, CDDH/SR.12, paras. 13-21, and O.R. VI, p. 196, CDDH/SR.41, Annex (Romania);

(4) [(4) p.616] See, for example, O.R. V, pp. 109-110, CDDH/SR.11, paras. 44-50; pp. 137-138, CDDH/SR.13, paras.51-57;

(5) [(5) p.616] O.R. X, p. 251, CDDH/405/Rev.1;

(6) [(6) p.616] Cf. introduction to Part VI, infra, p. 1061;

(7) [(7) p.616] O.R. VI, p. 167, CDDH/SR.41, paras. 135-137; p. 187, ibid., Annex (GDR); pp. 192-193 (Mexico);

(8) [(8) p.617] Cf. the definitions given supra, commentary Art. 48, note 13, p. 600;

(9) [(9) p.617] O.R. XV, p. 338, CDDH/II/266-CDDH/III/255, Annex A;

(10) [(10) p.617] We also refer to the commentary Art. 49, para. 4, supra, p. 606, and Art. 2, sub-para. (b), supra, p. 60;

(11) [(11) p.617] Convention of 10 October 1980 on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects.
- Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II), Art. 3, paras. 2, 3(c) and 4; Art. 4, para. 2; Art. 5, para. 2; Art. 7, para. 3(a)(i).
- Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III), Art. 2. For participation in this Convention, cf. infra, p. 1549;

(12) [(12) p.618] O.R. XV, p. 274, CDDH/215/Rev.1, para. 51;

(13) [(13) p.618] Ibid., p. 330, CDDH /III/224;

(14) [(14) p.620] See, for example, O.R. VI, pp. 164-165, CDDH/SR.41, para. 122;

(15) [(15) p.620] The Mixed Group defined this concept as follows: "In an armed conflict, that area where the armed forces of the adverse Parties actually engaged in combat, and those directly supporting them, are located". O.R. XV, p. 338, CDDH/II/266-CDDH/III/255, Annex A;

(16) [(16) p.621] See commentary Art. 52, para. 2, infra, p. 635;

(17) [(17) p.621] A note on the drafting of the French text: the use of the pronoun "on" is unusual in French legal draftsmanship as it is rather indeterminate. This is avoided in the English wording where the word "attacks" is the subject of the sentence;

(18) [(18) p.621] See O.R. XVI;

(19) [(19) p.622] Cf. supra, note 11;

(20) [(20) p.622] Art. 5 of the above-mentioned Protocol II. Also see Y. Sandoz, "A New Step Forward in International Law -- Prohibition and Restrictions on the Use of Certain Conventional Weapons", ' IRRC, ' January-February 1981, p. 3 (offprint available with the text of the Final Act of the said United Nations Conference, originally published ibid., pp. 41-55);

(21) [(21) p.622] See "Forces armées et développement du droit de la guerre", op.cit., p. 303;

(22) [(22) p.622] O.R. XV pp. 304-305, CDDH/215/Rev.1, Annex;

(23) [(23) p.623] Ibid., p. 274, para. 55;

(24) [(24) p.623] Cf. the Protocol II referred to supra, note 11;

(25) [(25) p.623] On this subject reference may be made to Article 56 of this Protocol;

(26) [(26) p.623] See O.R. VI, pp. 168-172, CDDH/SR.41;

(27) [(27) p.623] See supra, p. 589;

(28) [(28) p.624] Cf. O.R. XV, p. 275, CDDH/215/Rev.1, para. 56;

(29) [(29) p.624] Ibid, p. 329, CDDH/III/224;

(30) [(30) p.624] O.R. XIV, p. 30, CDDH/III/SR.31, para. 5;

(31) [(31) p.625] "to launch attacks which may be expected to entail incidental losses among the civilian population and cause the destruction of civilian objects to an extent disproportionate to the direct and substantial military advantage anticipated" (draft, Art. 46, para. 3 (b));

(32) [(32) p.626] Cf. G. Best, ' Humanity in Warfare, ' London, 1980, pp. 273-277;

(33) [(33) p.626] O.R. XIV, p. 414, CDDH/III/SR.38, para. 65; O.R. V, p. 375, CDDH/SR.31, paras. 20-23; O.R. X, pp. 184-185, CDDH/405/Rev.1, paras. 21-30;

(34) [(34) p.626] On the general question of reprisals, cf. infra, p. 981, introduction to Part V, Section II;

(35) [(35) p.627] Now Art. 57 of the Protocol;

(36) [(36) p.628] O.R. XV, p. 275, CDDH/215/Rev.1, para. 59;

(37) [(37) p.628] For more details, see commentary Art. 1, para. 1, supra p. 34, and the introduction to Part V, Section II (section concerning reprisals), infra, p. 981;