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# The contemporary law of armed conflict

third edition

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## Basic rules of the law of armed conflict<sup>1</sup>

### General applicability of the law

In the light of the preceding chapters it is possible to draw attention to what may be regarded as the basic rules and principles underlying the law of armed conflict on land, at sea or in the air. These rules and principles are applicable regardless of the legality or justness of the conflict, and even if operations are undertaken by way of punitive or police action in the name of the United Nations. Confirmation of this is to be found in the introductory chapter of the US Department of the Air Force *Commander's Handbook on the Law of Armed Conflict*, issued in the name of the Judge Advocate General:<sup>2</sup>

The law of armed conflict applies equally to both sides in all international wars or armed conflicts.<sup>3</sup> This is true even if one side is guilty of waging an illegal or aggressive war. The side that is acting in self-defense against illegal aggression does not, because of that fact, gain any right to violate the laws of armed conflict.<sup>4</sup> Even forces acting under the sanction of the United Nations . . . are required to follow the law of armed conflict in dealing with the enemy. The military personnel of a nation may not be punished simply for fighting in an armed conflict. This is so even if the side they serve is clearly an aggressor and has been condemned for this by the United Nations. . . . Because, as a practical matter, all nations claim that their wars are wars of self-defense, courts . . . [are] unwilling to punish officials for waging aggressive war if they were not at the policy-making level of government.

<sup>1</sup> See UK *Manual*, 2.1–2.8.2, and, generally, Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict*, 2004; Rogers, *Law on the Battlefield*, 2004.

<sup>2</sup> US Department of the Air Force, Pamphlet AFP 110–34, 1980, para. 1–4 (b) (1–3).

<sup>3</sup> It should be noted that, by Protocol I (4) (Schindler and Toman, 711), wars of national liberation are considered to be international armed conflicts governed by the laws of armed conflict.

<sup>4</sup> Any other rule would mean that the aggressor denied the protection of the law would disregard the law as to the adverse party. As a result, the conflict would be conducted without any consideration for restraint based on humanitarian or other principles, which should therefore apply even if one of the combatants disregards them. The Preamble to Protocol I states that application of the Conventions and the Protocol is unaffected by 'the causes espoused by or attributed to' the parties.

According to the UK *Manual of the Law of Armed Conflict*.<sup>5</sup>

At the outset of any consideration of the law of armed conflict, it must be emphasised that the right of the parties to the conflict to choose methods or means of warfare is not unlimited. Despite the codification of much customary law into treaty form during the last hundred years, four fundamental principles still underlie the law of armed conflict. These are military necessity, humanity, distinction and proportionality. . . .

### The Hague Law and the Geneva Law

The main purpose of both the Hague and the Geneva Laws is to minimise the horrors of the conflict to the extent consistent with the economic and effective use of armed force while not inhibiting the military activities of the parties in their endeavour to achieve victory with minimum cost to themselves. To this end, military necessity and *raison de guerre* or *Kriegsraison* must be balanced against overriding principles of a humanitarian character. This means that in no case may the force used exceed at any time the necessities of the situation or be directed towards any other object than the desired coercion of the enemy. In other words, no more force or greater violence should be used to carry out an operation than is absolutely necessary in the particular circumstances. If the application of such force would cause injury to noncombatants or civilians it is disproportionate to the military end to be achieved. The demands of military necessity are limited by legal and moral, as well as military or political, considerations, and it should be remembered that the laws of war have been drawn up with knowledge of the needs and the realities of armed conflict, so that such considerations cannot justify any disregard of the law. Thus during World War II political considerations meant that Britain did not protest at the fact that the Irish Free State remained illuminated at night, serving to assist enemy aircraft in their approach to the English coast, nor did the passage of iron ore across Sweden to Germany lead Britain to deny the continued neutral status of Sweden. Again, during both the Korean and the Vietnamese operations, political considerations imposed restrictions upon the geographic freedom of operations that were considered militarily desirable by the UN and US commands respectively. Similarly, during the Gulf War, Operation 'Desert Storm', Coalition operations were frequently limited by the need to protect historic and religious sites.

### Humanitarianism

The humanitarian principles that operate during armed conflict are to be found in customs originally based on rules of chivalry as between the feudal orders of

<sup>5</sup> Para. 2.1.

knighthood. They developed at a time when armed service was considered an honourable profession among gentlemen knights. To these must be added principles of ethics and humanity, as well as those postulated in treaties entered into for this purpose. To a great extent these humanitarian principles are now to be found in Article 3 common to the four Geneva Conventions of 1949,<sup>6</sup> and, broadly speaking, they amount to the basic and minimum conditions underlying the rule of law as understood in modern society. Common Article 3 provides that the principles therein contained shall be applied 'without any adverse distinction founded on race, colour, religion or faith, sex, birth, or any other similar criteria', which would include nationality or political ideology. This article operates in non-international conflicts, while the rest of the Conventions together with the provisions of the Hague law govern those of an international character. The principle of non-discrimination is repeated in Protocol I, 1977, which spells out the equality principle in more detail than it appears in Common Article 3. Article 75 provides that:

persons who are in the power of a Party to the conflict and who do not benefit from more favourable treatment under the Conventions or under this Protocol shall be treated humanely in all circumstances and shall enjoy, as a minimum, the protection provided by this Article [which lays down 'fundamental guarantees'] without any adverse distinction based upon race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or any other similar criteria. Each Party shall respect the person, honour, conviction and religious practices of all such persons.

Since this provision refers to 'persons who are in the power of a Party' it is clear that even persons who are nationals of the Power concerned now receive some measure of protection.<sup>7</sup>

Although the Hague Law regulating the actual conduct of war depends on reciprocity, with the Hague Conventions operating, at least formally, only as between parties, the basic principles of humanitarian law are so fundamental that they apply in any conflict even though not all the parties to the conflict are parties to any particular Hague, Geneva or other humanitarian Convention. Whether the Hague and Geneva Conventions are regarded as codificatory of customary or creative of new law, they are not and do not purport to be exhaustive. Moreover, to the extent that a particular treaty does not reproduce or clearly contradict what was formerly accepted as a rule of customary law, that law continues to exist and must be obeyed. This rule is to be found in the Preamble to the Regulations annexed to Hague Convention IV<sup>8</sup> as well as Article I, paragraph 2, of Protocol I, and is frequently referred to as the Martens Clause, preserving to the extent necessary those 'principles of international law [which are] derived from established custom, the principles of humanity and the dictates of the public conscience'.

<sup>6</sup> Schindler and Toman, 459 *et seqq.*

<sup>7</sup> See, e.g., Bothe *et al.*, 455-7.

<sup>8</sup> Schindler and Toman, 55, at 61.

Moreover, the tribunal for the former Yugoslavia has repeatedly held that the principles of humanitarian law to be found in the Conventions have hardened into customary law applicable in all conflicts.

### Restrictions on means and methods

Since the aim of any armed conflict is to achieve victory at the minimum cost, and not normally the destruction of the adverse party as such, the means of conducting the conflict are not unrestricted and must not involve means likely to cause unnecessary suffering, that is to say, suffering or injury over and above that required to disable an enemy combatant or secure the objective of an operation.<sup>9</sup> While it is true that one of the aims of the parties in a non-international conflict is frequently the destruction of individual persons adhering to the opposing party, particularly government dignitaries, in international conflicts it is usually considered improper to seek, for example, the assassination of any individual leader of the adverse party,<sup>10</sup> although he may be made the object of an ambush,<sup>11</sup> and, if captured and circumstances warrant, he may be tried for war crimes.

Acts of a warlike nature must be directed only against military objects and objectives, '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 neutralisation, in the circumstances ruling at the time,<sup>12</sup> offers a definite military advantage'.<sup>13</sup> As a consequence, civilians are exempt from being made the object of attack, although it is not a breach of the law of armed conflict if civilians suffer injury incidental to an attack upon a lawful military objective. Attacks which fail to distinguish between military and civilian personnel or military objectives and civilian objects are forbidden as indiscriminate. It is for this reason that military personnel are required to distinguish themselves from the civilian population, while a home state must mark by the recognised emblems those places which are civilian in character and granted immunity, such as

<sup>9</sup> Bothe *et al.*, 195–7.

<sup>10</sup> This principle was already embodied in the Lieber Code (Schindler and Toman, 3, Art. 148) and is reiterated in US Army Department Field Manual F-27, *The Law of Land Warfare*, 1956, para. 31. The 2004 edition of the UK *Manual*, para. 5.13, states, 'Whether or not the killing of a selected enemy individual is lawful depends on the circumstances of the case. There is no rule dealing specifically with assassination . . .'. However, it should be noted that during the US invasion of Panama, 1989, the President of the United States placed a \$1 million 'bounty' on the head of General Noriega, *The Times* (London), 23 December 1989. Again, during the war against Iraq, ransoms were placed on the heads of Saddam Hussein and a number of his Ministers.

<sup>11</sup> As was the case with Admiral Yamamoto, shot down over the Solomons in April 1943, Toland, *The Rising Sun*, 1970, 441–4.

<sup>12</sup> See, e.g., *Mitchell v. Harmony* (1851) 54 U.S. 115.

<sup>13</sup> Protocol I, Art. 52 (2).

religious or cultural institutions, and to the extent that it is practical the home state should ensure that civilians and civilian objects are kept away from military objectives.

### Identification and proportionality

The principle of identification, that is to say, the definition whether an objective is legitimate or not, depends upon the contribution an attack upon that object will make to ultimate victory or the success of the operation of which the attack is part. If there is any doubt whether objects normally devoted to civilian use, such as a church, school or museum, are being used for their proper purpose or being put to military use, they must be given the benefit of the doubt and not subjected to attack. In deciding whether an objective is or is not a legitimate object of attack the principle of proportionality<sup>14</sup> is of importance. This principle is well established in the customary law of armed conflict and seeks to achieve some measure of reasonable connection between related matters. The very fact that the various conventions pertaining to the law of armed conflict are obligatory and are drawn up in the knowledge that they are to operate during conflict indicates that the draftsmen are aware of the needs of military necessity *vis-à-vis* the limitations imposed. Although the decision as to proportionality tends to be subjective, it must be made in good faith, and may in fact come to be measured and held excessive in a subsequent war crimes trial. In deciding whether the principle of proportionality is being respected, the standard of measurement is always the contribution to the military purpose of the particular action or the operation as a whole, as compared with other consequences of the action, such as the effect upon civilians or civilian objects. It involves weighing the interests arising from the success of the operation on the one hand, against the possible harmful effects upon protected persons or objects, on the other. There must be an acceptable relation between the legitimate destructive effect and undesirable collateral effects. The tendency in Protocol I is to state, for example, that the effect upon civilians shall not be 'excessive', a term which appears to be synonymous with 'disproportionate'.<sup>15</sup> But there is no definition as to what is 'excessive', so that the decision must be made in accordance with reasonable military assessments and expectations, taking into account potential collateral damage caused to civilians, civilian objects and other protected persons or installations. However, while whatever is 'disproportionate' may be considered as 'excessive', it is not necessarily the case that what is 'excessive' is always 'disproportionate'. Thus, during the Falklands War, 1982, while many critics considered the number of casualties resulting from the sinking of the Argentine cruiser *Belgrano* to have

<sup>14</sup> See, e.g., Fenrick, 'The rule of proportionality and Protocol I in conventional warfare', 98 Mil. Law Rev. (1982), 91; see also Bothe *et al.*, 309.

<sup>15</sup> See, Bothe *et al.*, 195–7.

been 'excessive', its sinking was not considered by the British War Cabinet to have been 'disproportionate' to the end achieved,<sup>16</sup> nor did the captain of the *Belgrano* consider it to be so.

The principle of proportionality is best known in its relation to recourse to reprisals, formerly regarded as the last resort of a belligerent subjected to persistent breaches of the law of armed conflict by the adverse party. Reprisals are otherwise illegal measures taken in response to prior illegal measures by the adverse party and which are intended to cause the adverse party to cease its illegal activities and comply with the law. They are not measures taken simply by way of retaliation.<sup>17</sup> While reprisals do not have to correspond in character to the illegal acts which have led to their being undertaken, they must be proportionate to that act.<sup>18</sup>

### Permitted and forbidden activities

Certain types of reprisals are forbidden. Thus prisoners of war may never be made the object of reprisals, even if the original illegal act was directed against prisoners in the wrongdoer's hands. Protocol I forbids attacks by way of reprisal against civilians or the civilian population. It is also forbidden to use civilians to ensure immunity for a military objective. Civilians may not be used as a screen for an

<sup>16</sup> See *The Times* (London), 10, 18, 20 September, 6 December 1984.

<sup>17</sup> However, in *The Zamora* [1916] 2 A.C. 77 the Judicial Committee of the Privy Council held that an 'Order [in Council] authorising reprisals will be conclusive . . . as showing that a case for reprisals exists . . .', at 97. Difficulties may arise since English and French are equally authentic as texts of relevant conventions, and *r  p  raille* is used in French for both 'reprisal' and 'retaliation'.

<sup>18</sup> The leading case on the definition of reprisals is the Portuguese-German arbitration of 1928. In deciding upon the *Naulilaa* claim the arbitrators said, 'The most recent doctrine, especially German doctrine [it was German action which was claimed to have been a reprisal], defines reprisals as . . . acts of self-help by the injured State, acts in retaliation for acts contrary to international law on the part of the offending State, which have remained undressed after a demand for amends. . . . They are limited by considerations of humanity and the rules of good faith applicable in the relations between States. They are illegal unless they are based upon a previous act contrary to international law. They seek to impose on the offending State reparation for the offence, the return to legality and the avoidance of new offences. This definition does not require that the reprisal should be proportionate to the offence. On this point, authors, unanimous until a few years ago, begin to be divided in their opinions. The majority regard a certain proportionality between the offence and the reprisal as a necessary condition for the legitimacy of the latter. Other authors, among them the most modern, no longer require this condition. In so far as international law in the making as a result of the experiences of the last war is concerned, it certainly tends to restrict the notion of legitimate reprisal and to prohibit any excess. . . . Germany admitted the need for proportionality between the reprisal and the offence. Even if it is admitted that international law requires only relative approximation of the reprisal to the offence, reprisals out of all proportion to the act that inspired them ought certainly to be considered excessive and illegal . . .', 2 R.I.A.A. 1019, 1025-6, 1028 (our tr.). The German action was held to have been disproportionate.

attack, nor may they be brought into the vicinity of a military objective so as to ensure that objective is protected from attack. Prophylactic reprisals<sup>19</sup> are likewise forbidden.

Attacks lacking any direct military purpose are forbidden, even though their indirect or ultimate purpose may be to terminate the conflict. Thus acts of terror directed against the civilian population of the adverse party with the purpose of compelling that party to terminate its military activities are forbidden. In fact, Protocol I expressly forbids such acts. However, acts such as intensive bombing raids which involve high civilian casualties are probably not illegal if the main purpose is to minimise the casualties which the bombing nation would suffer if the hostilities were to continue, particularly if the adverse party has been given warning of the likelihood of such raids to enable it to evacuate civilians from the threatened areas.<sup>20</sup>

Since the law of armed conflict rests upon a judicious balance between military operational needs and humanitarianism, and since the purpose of the Geneva Law is the preservation of humanitarianism, accompanied by respect for civilians and the long-term interests of the parties to the conflict by reducing the possibility of sentiments of *revanchisme*, the application of humanitarian principles does not override the needs of practical realism. Idealism and belief in humanitarianism must not result in automatic rejection of military needs or careless accusations of war crimes or crimes against humanity. However, the assessment of military needs must always be made in good faith.

Equally, since the law of armed conflict is based on non-discrimination and the absolute character of humanitarian law, with the rights and obligations of all parties the same, it follows that the rights of a state in defence are the same as those of the state in offence. In accordance with customary international law a state defending its territory retained the freedom to take such measures within its territory as it deemed necessary, including, for example, a 'scorched earth' policy or denial of foodstuffs to its own citizens in order to sustain the armed forces. This was true even though such measures might be denied to the adverse party by convention. Today, however, a defending state must recognise the continuing relevance of the law concerning human rights and restrictions upon activities which

<sup>19</sup> The example usually cited is the placing of prominent local persons on the locomotives of trains passing through occupied territory to prevent attacks on the lines of communication, see, e.g., Fauchille, *Traité de droit international public*, vol. II, 1921, s. 1143; see also Greenspan, *The Modern Law of Land Warfare*, 1959, 417. It was also common in the past to situate prisoners of war and civil detainee camps in the vicinity of military objectives to protect the latter from attack, but such practices are now illegal. During the run-up to the Gulf War, Iraq used Coalition nationals as a way to secure immunity for potential military objectives, while in Kosovo it was alleged that Serb forces used ethnic Albanian Kosovans as protective screens for those forces.

<sup>20</sup> This was a practice used by Israel in Lebanon in 2006 in its bombing campaign intended to persuade the Lebanese government to take action to suppress Hezbollah activities directed against Israel.

'may be expected to cause such damage to the natural environment [as might] prejudice the health or survival of the population'.<sup>21</sup> Protocol I recognises that, in defence of the national territory against invasion, the ban on attacking, removing or destroying objects essential to the survival of the civilian population will not operate within territory under the control of the defending state when 'required by imperative military necessity'.<sup>22</sup> But the same power to take destructive action affecting civilians is not permitted in any part of the national territory which is under the occupation of the adverse party, and an Occupying Power is forbidden from acting in this way in the process of retreating from such occupied territory.<sup>23</sup> A further limitation which operates equally as regards both national and enemy territory relates to installations which contain dangerous forces. According to Protocol I these are dams, dykes and nuclear electrical generating stations. These may not be attacked even if they are military objectives, 'if such attack may cause the release of dangerous forces and consequent severe losses among the civilian population'.<sup>24</sup> The immunity from attack ceases only when the installation is used for other than its normal purpose in direct support of military operations and no other means to terminate such support exists. Moreover, such installations may not be made the object of reprisals, and, so as to protect the civilian population as much as possible, if they are attacked 'all practical precautions shall be taken to avoid the release of dangerous forces'. The prohibition is general and relates to both enemy territory and national territory occupied by the adverse party. Although the Protocol does not expressly contain a provision regarding occupied territory in this matter, since an attack is 'an act of violence against the adversary, whether in offence or defence',<sup>25</sup> this is clearly the case. While such installations may not be attacked once they have come under the control of the adverse party, they may be disabled to prevent their falling into its hands, provided that proper precautions are taken to prevent the release of dangerous forces.

For those countries which have not ratified Protocol I, their right to devastate their own territory, whether it is under their own control or that of the adverse party, remains, regardless of the effect it may have upon the civilian population, subject to treaty provisions respecting the human rights of persons within that territory. Moreover, even if it were the case that customary law now forbids actions in conflicts of the kind here outlined, it would be open to a state taking such measures against its own territory in the hands of the adverse party to contend that such action was in conformity with customary law with regard to the inherent right of self-defence, which extends to the preservation of the territorial integrity of the state. However, it has been suggested that the right to take measures during an armed conflict may be limited by virtue of Article 51 of the Charter of the

<sup>21</sup> Protocol I, Art. 55 (1).

<sup>22</sup> Protocol I, Art. 54 (5).

<sup>23</sup> Bothe *et al.*, 342.

<sup>24</sup> Protocol I, Art. 56 (1).

<sup>25</sup> Protocol I, Art. 49.

United Nations, which recognises the right of self-defence only for the purpose of frustrating an armed attack, the argument being that action taken even during conflict must be limited to that required for self-defence alone.<sup>26</sup>

## ICRC statements

The International Committee of the Red Cross has published three statements on the basic rules of the law of armed conflict:

### I *The soldier's rules*<sup>27</sup>

- 1 Be a disciplined soldier. Disobedience of the laws of war dishonours your army and yourself and causes unnecessary suffering; far from weakening the enemy's will to fight, it often strengthens it.
- 2 Fight only enemy combatants and attack only military objectives.
- 3 Destroy no more than your mission requires.
- 4 Do not fight enemies who are 'out of combat' [*hors de combat*] or surrender. Disarm them and hand them over to your superior.
- 5 Collect and care for the wounded and sick, be they friend or foe.
- 6 Treat all civilians and all enemies in your power with humanity.
- 7 Prisoners of war must be treated humanely and are bound to give only information about their identity. No physical or mental torture of prisoners of war is permitted.
- 8 Do not take hostages.
- 9 Abstain from all acts of vengeance.
- 10 Respect all persons and objects bearing the emblem of the Red Cross, Red Crescent, Red Lion and Sun,<sup>28</sup> the white flag of truce or emblems designating cultural property.
- 11 Respect other people's property. Looting is prohibited.
- 12 Endeavour to prevent any breach of the above rules. Report any violation to your superior. Any breach of the law of war is punishable.

### II *Fundamental rules of international humanitarian law applicable to armed conflicts*<sup>29</sup>

- 1 Persons *hors de combat* and those who do not take a direct part in hostilities are entitled to respect for their lives and moral and physical integrity. They shall in all circumstances be protected and treated humanely without any adverse distinctions.

<sup>26</sup> See, e.g., Greenwood, 'The concept of war in modern international law', 36 I.C.L.Q. (1987), 283; 'Self-defence and the conduct of international armed conflict', in Dinstein, ed., *International Law at a Time of Perplexity*, 1989, 273.

<sup>27</sup> *International Review of the Red Cross*, January–February 1978.

<sup>28</sup> The red lion and sun were formerly the emblem used by Iran, but since the Islamic revolution Iran uses the red crescent. The red shield of David is used by Israel and, since the adoption of Protocol III to the 1949 Conventions, is now recognised as a protected emblem.

<sup>29</sup> 1978, Schindler and Toman, 831.

- 2 It is forbidden to kill or injure an enemy who surrenders or is *hors de combat*.
- 3 The wounded and sick shall be collected and cared for by the party to the conflict which has them in its power. Protection also covers medical personnel, establishments, transports and equipment. The emblem of the Red Cross or the Red Crescent is the sign of such protection and must be protected.
- 4 Captured combatants and civilians under the authority of an adverse party are entitled to respect for their lives, dignity, personal rights and convictions. They shall be protected against all acts of violence and reprisals. They shall have the right to correspond with their families and receive relief.
- 5 Everyone shall be entitled to benefit from fundamental judicial guarantees. No one shall be responsible for an act he has not committed. No one shall be subjected to physical and mental torture, corporal punishment or cruel or degrading treatment.
- 6 Parties to a conflict and members of their armed forces do not have an unlimited choice of methods and means of warfare. It is prohibited to employ weapons or methods of warfare of a nature to cause unnecessary losses or excessive suffering.
- 7 Parties to a conflict shall at all times distinguish between the civilian population and combatants in order to spare civilian population and property. Neither the civilian population as such nor civilian persons shall be the object of attack. Attacks shall be directed only against military objectives.

### III *Non-international armed conflicts*

#### A General rules<sup>30</sup>

- 1 The obligation to distinguish between combatants and civilians is a general rule applicable in non-international armed conflicts. It prohibits indiscriminate attacks.
- 2 The prohibition of attacks against the civilian population as such or against individual civilians is a general rule applicable in non-international conflicts. Acts of violence intended primarily to spread terror among the civilian population are also prohibited.
- 3 The prohibition of superfluous injury or unnecessary suffering is a general rule applicable in non-international conflicts. It prohibits, in particular, the use of means of warfare which uselessly aggravate the sufferings of disabled men or render their death inevitable.
- 4 The prohibition to kill, injure or capture an adversary by resort to perfidy is a general rule applicable in non-international armed conflicts; in a non-international armed conflict, acts inviting the confidence of an adversary to lead him to believe that he is entitled to, or is obliged to accord, protection under the rules of international law applicable in non-international armed conflicts, with intent to betray that confidence, shall constitute perfidy.
- 5 The obligation to respect and protect medical and religious personnel and medical units and transports in the conduct of military operations is a general rule applicable in non-international armed conflicts.

<sup>30</sup> Int'l Rev. Red Cross 278 (1989), 404. Though published by the ICRC, these Rules are in a Declaration adopted at the fourteenth Round Table on Humanitarian Law organised by the International Institute of Humanitarian Law, San Remo, in 1989.

- 6 The general rule prohibiting attacks against the civilian population implies, as a corollary, the prohibition of attacks on dwellings and other installations which are used only by the civilian population.
- 7 The general rule prohibiting attacks upon the civilian population implies, as a corollary, the prohibition to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population.
- 8 The general rule to distinguish between combatants and civilians and the prohibition of attacks against the civilian population as such or against individual civilians implies, in order to be effective, that all feasible precautions have to be taken to avoid injury, loss or damage to the civilian population.

#### B Prohibitions and restrictions on the use of certain weapons

- 1 The customary rule prohibiting the use of chemical weapons, such as those containing asphyxiating or vesicant agents, and the use of bacteriological (bacterial) weapons, is applicable in non-international armed conflicts.
- 2 The customary rule prohibiting bullets which expand or flatten easily in the human body, such as Dum Dum bullets, is applicable in non-international armed conflicts.
- 3 The customary rule prohibiting the use of poison as a means of warfare is applicable in non-international armed conflicts.
- 4 In application of the general rules listed in section A above, especially those on the distinction between combatants and civilians and on the immunity of the civilian population, mines, booby-traps and other devices within the meaning of Protocol II to the 1980 Convention on conventional weapons may not be directed against the civilian population as such or against individual civilians, nor used indiscriminately.  
The prohibition of booby-traps listed in Article 6 of the Protocol extends to their use in non-international armed conflicts, in application of the general rules on the distinction between combatants and civilians, the immunity of the civilian population, the prohibition of superfluous injury or unnecessary suffering, and the prohibition of perfidy.  
To ensure the protection of the civilian population referred to in the previous paragraphs, precautions must be taken to protect it from attacks in the form of mines, booby-traps and other devices.
- 5 In application of the general rules listed in section A above, especially those on the distinction between combatants and civilians and on the immunity of the civilian population, incendiary weapons may not be directed against the civilian population as such, against individual civilians or civilian objects, nor used indiscriminately.

A somewhat similar statement is to be found in the US *Operational Handbook*:

#### *Soldiers' rules*

- 1 Soldiers do not harm captured enemy soldiers or civilian detainees, noncombatant civilians, medical personnel or chaplains, enemy soldiers 'out of combat'.
- 2 Soldiers collect and care for enemy wounded and sick.
- 3 Soldiers respect the medical symbol and do not attack medical facilities or medical vehicles
- 4 Soldiers respect protected places.

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- 5 Soldiers do not engage in treacherous acts.
- 6 Soldiers allow their enemy to surrender.
- 7 Soldiers do not steal from their enemy or from civilians.
- 8 Soldiers do not cause unnecessary suffering.
- 9 Soldiers report violations of the Law of War.
- 10 Soldiers obey orders and the Law of War.