

Additional Protocols to the Geneva Conventions of 1949

International humanitarian law is the set of rules which, in time of war, protect those who are not, or no longer, taking an active part in hostilities, and limit the choice of methods and means of warfare. It applies both in situations of international and non-international armed conflict. The main instruments of international humanitarian law are the **Geneva Conventions of 12 August 1949 for the protection of war victims**. These treaties, which are universally accepted, protect the wounded, the sick, the shipwrecked, prisoners of war and civilians who find themselves in enemy hands. They also protect medical duties, medical personnel, medical units and facilities, and the means of medical transport. However, the Conventions leave gaps in important areas, such as the conduct of combatants and protection of civilians from the effects of hostilities. To remedy these shortcomings, two Protocols were adopted in 1977. They supplement, but do not replace, the Geneva Conventions of 1949. They are:

- ***Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I);***
- ***Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).***

What is the purpose of Protocol I?

Protocol I applies to international armed conflicts, imposing constraints on the way in which military operations may be conducted. The obligations laid down in this instrument do not impose an intolerable burden on those in charge of military operations since they do not affect the right of each State to defend itself by any legitimate means.

This treaty came into being because new methods of combat had been developed and the rules applicable to the conduct of hostilities had become outdated. Civilians are now entitled to protection from the effects of war.

Protocol I provides a reminder that the right of the parties to conflict to choose **methods and means of warfare** is not unlimited and that it is prohibited to employ weapons, projectiles, material or tactics of a

nature to cause superfluous injury or unnecessary suffering (Art. 35).

What new provisions does Protocol I contain?

Protocol I extends the Geneva Conventions' definition of international armed conflict to include wars of national liberation (Art. 1) and specifies what constitutes a legitimate target of military attack. Specifically, Protocol I:

- a) **prohibits** indiscriminate attacks and attacks or reprisals directed against:
 - the civilian population and individual civilians (Art. 48 and 51);
 - civilian objects (Art. 48 and 52);

- objects indispensable to the survival of the civilian population (Art. 54);
- cultural objects and places of worship (Art. 53);
- works and installations containing dangerous forces (Art. 56);
- the natural environment (Art. 55);

- b) **extends** the protection accorded under the Geneva Conventions to all medical personnel, units and means of transport, both civilian and military (Art. 8-31);
- c) **lays down** an obligation to search for missing persons (Art. 33);
- d) **strengthens** the provisions concerning relief for the civilian population (Art. 68-71);

e) **protects** the activities of civil defence organizations (Art. 61-67);

f) **specifies** measures that must be taken by the States to facilitate the implementation of humanitarian law (Art. 80-91).

Most attacks or other acts carried out in violation of point a) above are, subject to certain provisos, considered grave breaches of humanitarian law and classified as **war crimes**.

Article 90 of Protocol I provides for the establishment of an **International Fact-Finding Commission** to investigate alleged grave breaches or other serious violations of the Conventions and of Protocol I. All States Parties to Protocol I may accept the competence of this Commission.

What is the purpose of Protocol II?

Most conflicts since the Second World War have been non-international. The only provision in the Geneva Conventions of 1949 which is applicable in this type of conflict is Article 3 common to all four Conventions. Although it sets out basic principles for protecting people in wartime, Article 3 is not enough to solve the serious problems of humanitarian concern that arise in internal conflicts.

The purpose of Protocol II is hence to ensure the application to internal conflicts of the main rules of the law of war. It nevertheless in no way restricts the rights of the States or the means available to them to maintain or restore law and order; nor can it be used to justify foreign intervention (Art. 3 of Protocol II).

Compliance with the provisions of Protocol II does not, therefore, imply

recognition of any particular status for armed rebels.

What new provisions does Protocol II contain?

Unlike Article 3 common to the four Conventions, which fails to set criteria for the definition of internal conflict to which it applies, Protocol II describes its own field of application in considerable detail, excluding such low-intensity conflicts as internal tensions and rioting.

The situations covered by Protocol II are non-international conflicts that take place on the territory of a State between the armed forces of that State and rebel armed forces that are under responsible command and control part of the national territory.

Common Article 3 planted the seed of humanitarian considerations in law relating to civil war. Protocol II takes this modest beginning much further. Specifically, Protocol II:

- a) **strengthens** the fundamental guarantees enjoyed by all persons not, or no longer, taking part in the hostilities (Art. 4);
- b) **lays down** rights for persons deprived of their freedom and provides judicial guarantees for those prosecuted in connection with an armed conflict (Art. 5-6);
- c) **prohibits** attacks on:
 - the civilian population and individual civilians (Art. 13);
 - objects indispensable to the survival of the civilian population (Art. 14);

- works and installations containing dangerous forces (Art. 15);

- cultural objects and places of worship (Art. 16);

d) **regulates** the forced movement of civilians (Art. 17);

e) **protects** the wounded, sick and shipwrecked (Art. 7);

f) **protects** religious personnel and all medical personnel, units and means of transport (Art. 9-11);

g) **limits** the use of the red cross and red crescent emblems to those persons and objects duly authorized to display it.

Why adhere to the Additional Protocols?

Additional Protocols I and II of 1977 are binding on a large number of States, but not all. It is essential that they attain universal recognition, as this is a vital step toward fulfilment by all parties to conflict of the obligations laid down in the Protocols.

Only when all States have pledged compliance with all the instruments that make up international humanitarian law will it be possible to ensure equal protection for all victims of armed conflict.

Through its Advisory Service on international humanitarian law, the ICRC stands ready to provide States interested in ratifying the Additional Protocols with any assistance and information. In particular, the Advisory Service can supply a Protocol Ratification Kit to facilitate the process.

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