

CHAPTER 5

Principles and Sources of the Law of Armed Conflict

5.1 WAR AND THE LAW

Article 2 of the United Nations Charter requires all nations to settle their international disputes by peaceful means and to refrain from the threat or use of force against the territorial integrity or political independence of other nations. The United Nations Charter prohibits the use of force by member nations except as an enforcement action taken by or on behalf of the United Nations (as in the Gulf War) or as a measure of individual or collective self-defense.¹ It is important to distinguish between resort to armed conflict, and the law governing the conduct of armed conflict. Regardless of whether the use of armed force in a particular circumstance is prohibited by the United Nations Charter (and therefore unlawful),² the manner in which the resulting armed conflict is conducted continues to be

¹ United Nations Charter, arts. 2(3), 2(4), 42 & 51-53. These provisions concerning the use of force form the basis of the modern rules governing the resort to armed conflict, or *jus ad bellum*. See paragraph 4.1.1 and notes 7-9 thereunder (pp. 4-2 - 4-6). See also Kellogg-Briand Pact, or the Treaty for the Renunciation of War as an Instrument of National Policy, Paris, 27 August 1928, 46 Stat. 2343, T.S. No. 796, 2 Bevans 732, 94 L.N.T.S. 57.

The relationship concerning resort to war (*jus ad bellum*), relations between combatant nations during war (*jus in bello*), and the law of neutrality in the late 20th Century, is considered in Greenwood, *The Concept of War in Modern International Law*, 36 Int'l & Comp. L.Q. 283 (1987). See also Dinstein, *War, Aggression and Self-Defense* (2d ed. 1994) at 155-61; Green, *The Contemporary Law of Armed Conflict* (1993) at 59-60. *Jus in bello* is discussed further in note 4 (p. 5-2).

² Wars violating these principles are often called "aggressive" or "illegal" wars. Military personnel may not be lawfully punished simply for fighting in an armed conflict, even if their side is clearly the aggressor and has been condemned as such by the United Nations. This rule finds firm support in the Allied war crimes trials that followed World War II. For the crime of planning and waging aggressive war (defined as a crime against peace, see paragraph 6.2.5, note 55 (p. 6-22)), the two post-World War II International Military Tribunals punished only those high ranking civilian and military officials engaged in the formulation of war-making policy. The twelve subsequent Proceedings at Nuremberg rejected all efforts to punish lesser officials for this crime merely because they participated in World War II. See DA Pam 27-161-2, at 221-51.

Because nations have traditionally claimed that their wars are wars of self-defense, the courts of the Western Allies were unwilling to punish officials of the Axis powers for waging aggressive war if the officials were not at the policy-making level of government. One of the American tribunals at Nuremberg stated, "we cannot say that a private citizen shall be placed in the position of being compelled to determine in the heat of war whether his government is right or wrong, or, if it starts right, when it turns wrong." *The I.G. Farben Case*, 8 TWC 1126, 10 LRTWC 39 (1949).

Since armed force can lawfully be used today only in individual or collective self-defense (or as an enforcement action authorized by the United Nations Security Council in accordance with Chapter VII of the U.N. Charter), the unlawful use of armed force constitutes a crime against peace under international law. Crimes against peace are defined in art. 6 of the Charter of the International Military Tribunal at Nuremberg and are discussed in paragraph 6.2.5, note 55 (p. 6-22).

The Charter of the International Military Tribunal convened at Nuremberg in 1945 empowered the Tribunal to try individuals for international crimes, including initiation or waging of a war of aggression as a crime against peace. This was
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regulated by the law of armed conflict.³ (For purposes of this publication, the term "law of armed conflict" is synonymous with "law of war.")⁴

²(...continued)

confirmed as a principle of international law by the U.N. General Assembly in 1946 (Resolution 95(I)) and by the International Law Commission in 1950. In 1974, the U.N. General Assembly adopted by consensus a definition of aggression for use by the Security Council in determining if an act of aggression had been committed:

Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition.

Resolution 3314 (XXIX), 29 U.N. GAOR, Supp. 31, v.1, U.N. Doc. A/9631, at 142 (1974); Dep't St. Bull., 3 Feb. 1975, at 158-60; AFP 110-20, at 5-78 & 5-79.

This statement is amplified by a series of examples of uses of armed force which, unless otherwise justified in international law or determined by the Security Council not to be of sufficient gravity, would permit the Security Council reasonably to consider to qualify as potential acts of aggression. Among these examples are invasion, the use of any weapons by a nation against the territory of another nation, the imposition of a blockade, an attack by the armed forces of one nation upon the armed forces of another nation, or the sending of armed bands, irregulars or mercenaries against another State. (See paragraph 7.7 (p. 7-26) regarding blockade.) Although neither the International Military Tribunal judgment nor U.N. General Assembly Resolutions are primary sources of international law (see Preface, note 4 (p. 3)), they are generally consistent with the current U.S. view of aggression. Dep't St. Bull., 3 Feb. 1975, at 155-58.

³ See paragraph 6.2.5 (war crimes under international law) (p. 6-21).

⁴ Joint Pub. 1-02, at 206. The rules governing the actual conduct of armed conflict are variously known as the *ius in bello*, the law of armed conflict (law of war), or international humanitarian law. See paragraph 6.2.2, note 34 (p. 6-13).

As a matter of international law, application of the law of armed conflict between belligerents does not depend on a declaration or other formal recognition of the existence of a state of "war," but on whether an "armed conflict" exists, and if so, whether the armed conflict is of an "international" or a "noninternational" character. As a matter of national policy, the Armed Forces of the United States are required to comply with the law of armed conflict in the conduct of military operations and related activities in armed conflict "however such conflicts are characterized." DOD Directive 5100.77, Subj: DOD Law of War Program (in draft as of 1 November 1997). See paragraph 5.4.1, note 15 (p. 5-9) regarding the Lieber Code and also paragraph 6.1.2 (p. 6-2).

Although it is frequently difficult to determine when a situation involving violent activity becomes an "armed conflict," there is general agreement that *internal disturbances* and *tensions* are not armed conflicts. Examples of internal disturbances and tensions include:

- riots (i.e., all disturbances which from the start are not directed by a leader and have no concerted intent)
- isolated and sporadic acts of violence (as distinct from military operations carried out by armed forces or organized armed groups)
- other acts of a similar nature (such as mass arrests of persons because of their behavior or political opinion).

GP II, art. 1(2); ICRC, Commentary on the Draft Additional Protocols to the Geneva Conventions of August 12, 1949, at 133 (1973), *quoted in* Bothe, Partsch & Solf 628 n.9. The ICRC Commentary (GP II) (para. 4477, at 1355) distinguishes internal disturbances from internal tensions. "Internal disturbances" occur when the State uses armed force to maintain order. "Internal tensions" refers to those circumstances when force is used as a preventive measure to maintain respect for law and order.

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5.2 GENERAL PRINCIPLES OF THE LAW OF ARMED CONFLICT

The law of armed conflict seeks to prevent unnecessary suffering and destruction by controlling and mitigating the harmful effects of hostilities through minimum standards of protection to be accorded to "combatants" and to "noncombatants" and their property.⁵ (See paragraphs 5.3 and 11.1.) To that end, the law of armed conflict provides that:

⁴(...continued)

"International" armed conflicts include cases of declared war or any other armed conflict between two or more nations even if the state of war is not recognized by one of them. Common article 2. All other armed conflicts are "noninternational armed conflicts," governed at least by common article 3 of the 1949 Geneva Conventions, and by GP II for nations bound by it if the situation meets the criteria set forth in art. 1(1) thereof (*i.e.*, there must be an armed conflict occurring in the territory of the nation bound by GP II between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement GP II). The United States interprets GP II as applying to all conflicts covered by common article 3, and encourages all other nations to do likewise. Letter of Transmittal, Jan. 29, 1987, Senate Treaty Doc. 100-2, at 7. *See* Annex A5-1 (p. 5-17). *See also* International Humanitarian Law and Non-International Armed Conflicts, 1990 Int'l Rev. Red Cross 383-408; Levie, *The Law of Non-International Armed Conflict* (1987). "Armed forces" are discussed in paragraph 5.3, note 11 (p. 5-7). *See* paragraph 5.4.2, note 34 (p. 5-13) regarding the U.S. decision not to seek ratification of GP I.

The spectrum of conflict, reflecting the threshold criteria, is illustrated in Figure A5-1 (p. 5-23). Among recent international armed conflicts are the Iran-Iraq War (1980-1988), the Libya-Chad War (1987-1988), the China-Vietnam Conflict (1979), and the Soviet-Afghanistan War (1979-88). Although some have categorized the latter as an internal conflict in which foreign troops participated, others list it as an international conflict. Reisman & Silk, *Which Law Applies to the Afghan Conflict?*, 82 Am. J. Int'l L. 459, 485-86 (1988) (Soviet invasion resisted by loyal Afghan government troops met the criteria of common article 2(1), and was followed by occupation meeting the criteria of common article 2(2)); Roberts, *What is Military Occupation?*, 55 Brit. Y.B. Int'l L. 249, 278 (1984) (Soviet occupation may well have met the criteria of common article 2(2)). Certainly the Falkland (Malvinas) Islands War between the United Kingdom and Argentina (1982) and the Persian Gulf Conflict of 1990-1991 (Iraqi invasion of Kuwait and the U.N.-authorized coalition response—*e.g.* OPERATION DESERT STORM) constituted international armed conflicts. The U.S. has steadfastly held that the Vietnam War (1961-1975) was an international armed conflict. U.S. Department of State, *The Legality of United States Participation in the Defense of Viet-Nam*, 54 Dep't. of State Bull. 474 (March 28, 1966). For a wide ranging discussion of this issue as it pertains to Vietnam *see* *The Vietnam War and International Law*, Am. Soc. Int'l L., 4 vols. (Falk ed. 1968-76). Among recent non-international armed conflicts are the Nicaraguan Civil War (1979-90), the ongoing Sri Lanka Civil War (1983-present), the Chechnya Separatist Conflict (1991-1997), and the Zaire (now Congo) Civil War (1997).

⁵ As long as war occurs, the law of armed conflict remains an essential body of international law. During such strife, the law of armed conflict provides common ground of rationality between enemies. This body of law corresponds to the mutual interests of belligerents during conflict and constitutes a bridge for a new understanding after the end of the conflict. The law of armed conflict is intended to preclude purposeless, unnecessary destruction of life and property and to ensure that violence is used only to defeat the enemy's military forces. The law of armed conflict inhibits warfare from needlessly affecting persons or things of little military value. By preventing needless cruelty, the bitterness and hatred arising from armed conflict is lessened, and thus it is easier to restore an enduring peace. The legal and military experts who attempted to codify the laws of war more than a hundred years ago reflected this when they declared that the final object of an armed conflict is the "re-establishment of good relations and a more solid and lasting peace between the belligerent States." Final Protocol of the Brussels Conference of 27 August 1874, Schindler & Toman 26. *See also* Green, *Why is There—The Law of War?*, 5 Finn. Y.B. Int'l L. 1994 at 99-148.

1. Only that degree and kind of force, not otherwise prohibited by the law of armed conflict, required for the partial or complete submission of the enemy with a minimum expenditure of time, life, and physical resources may be applied.⁶

⁶ This concept, often referred to as the principle of "necessity" or "military necessity," is designed to limit the application of military force in armed conflict to that which is in fact required to carry out a lawful military purpose. See Bothe, Partsch & Solf at 194-95. Too often, "military necessity" is misunderstood and misapplied to support an application of military force that is unlawful under the misapprehension that the "military necessity" of mission accomplishment justifies that result. *The Hostages Case (United States v. List et al.)*, 11 TWC 1253-54 (1950); McDougal & Feliciano 523-25; AFP 110-31, at 1-5 & 1-6; FM 27-10, at 3 & 4. See also the definition of "military necessity" in de Muliner, Handbook on the Law of War for Armed Forces (1987) at Rule 352. In *The Hostages Case*, the Court explained this principle in the following terms:

Military necessity has been invoked by the defendants as justifying the killing of innocent members of the population and the destruction of villages and towns in the occupied territory. Military necessity permits a belligerent, subject to the laws of war, to apply any amount and kind of force to compel the complete submission of the enemy with the least possible expenditure of time, life, and money. In general, it sanctions measures by an occupant necessary to protect the safety of his forces and to facilitate the success of his operations. It permits the destruction of life of armed enemies and other persons whose destruction is incidentally unavoidable by the armed conflicts of the war; it allows the capturing of armed enemies and others of peculiar danger, but it does not permit the killing of innocent inhabitants for purposes of revenge or the satisfaction of a lust to kill. The destruction of property to be lawful must be imperatively demanded by the necessities of war. Destruction as an end in itself is a violation of international law. There must be some reasonable connection between the destruction of property and the overcoming of the enemy forces. It is lawful to destroy railways, lines of communication, or any other property that might be utilized by the enemy. Private homes and churches even may be destroyed if necessary for military operations. It does not admit the wanton devastation of a district or the willful infliction of suffering upon its inhabitants for the sake of suffering alone.

11 TWC 1253-54, *quoted in* 10 Whiteman 386-87. See also paragraph 6.2.5.5.2 (military necessity) (p. 6-36).

General Eisenhower recognized this distinction in a message on 29 December 1943 from him as Allied Commander in the Mediterranean to "all commanders":

Nothing can stand against the argument of military necessity. That is an accepted principle. But the phrase "military necessity" is sometimes used where it would be more truthful to speak of military convenience or even of personal convenience. I do not want it to cloak slackness or indifference. . . .

Historical Research Center, Maxwell Air Force Base, AL, File 622.610-2, Folder 2, 1944-45, *quoted in* Schaffer, Wings of Judgment: American Bombing in World War II, at 50 (1985) and Hapgood & Richardson, Monte Cassino 158 (1984). See also paragraph 8.5.1.6, note 122 (p. 8-26).

The principle of military necessity may be, and in many instances is, restricted in its application to the conduct of warfare by other customary or conventional rules, *i.e.*, military necessity is not a justification which supersedes all other laws of armed conflict. The minority view that all rules of warfare are subject to, and restricted by, the principle of military necessity has not been accepted by the majority of American and English authorities. Furthermore, this opinion has not been accepted by military tribunals. Indeed, it has been held by military tribunals that the plea of military necessity cannot be considered as a defense for the violation of rules which lay down absolute prohibitions (*e.g.*, the rule prohibiting the killing of prisoners of war) and which provide no exception for those circumstances constituting military necessity. Thus, one United States Military Tribunal, in rejecting the argument that the rules of warfare are always subject to the operation of military necessity, stated:

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2. The employment of any kind or degree of force not required for the purpose of the partial or complete submission of the enemy with a minimum expenditure of time, life, and physical resources, is prohibited.⁷

⁶(...continued)

It is an essence of war that one or the other side must lose and the experienced generals and statesmen knew this when they drafted the rules and customs of land warfare. In short, these rules and customs of warfare are designed specifically for all phases of war. They comprise the law for such emergency. To claim that they can be wantonly -- and at the sole discretion of any one belligerent -- disregarded when he considers his own situation to be critical, means nothing more or less than to abrogate the laws and customs of war entirely.

The Krupp Trial (Trial of Alfred Felix Alwyn Krupp von Bohlen und Halbach and Eleven Others), 10 LRTWC 139 (1949).

However, there are rules of customary and conventional law which normally prohibit certain acts, but which exceptionally allow a belligerent to commit these normally prohibited acts in circumstances of military necessity. In conventional rules, the precise formulation given to this exception varies. Some rules contain the clause that they shall be observed "as far as military necessity (military interests) permits." Examples include GWS, art. 8(3) & GWS-Sea, art. 8(3) (restricting activities of representatives or delegates of Protecting Powers); GWS, art. 33(2), GWS-Sea, art. 28 (use of captured medical supplies); GWS, art. 32(2) (return of neutral persons); GWS, art. 30(1) (return of captured medical and religious personnel); GC, arts. 16(2) (facilitating search for wounded and sick), 55(3) (limiting verification of state of food and medical supplies in occupied territories), 108(2) (limitations on relief shipments); GWS, art. 42(4), GPW, art. 23(4) and GC, art. 18(4) (visibility of distinctive emblems). Other rules permit acts normally forbidden, if "required" or "demanded" by the necessities of war. Examples include HR, art. 23(g), GWS, art. 34(2) & GC, art. 53 (permitting destruction or seizure of property); GPW, art. 126(2) & GC, art. 143(3) (limiting visits of representatives and delegates of Protecting Powers); GC, arts. 49(2) (evacuation of protected persons from occupied territory), 49(5) (detention of protected persons in areas exposed to dangers of war). Rules providing for the exceptional operation of military necessity require a careful consideration of the relevant circumstances to determine whether or not the application of otherwise excessive force is rendered necessary in order to protect the safety of a belligerent's forces or to facilitate the success of its military operations. 10 Whiteman 302 (*citing* NWIP 10-2, sec. 220(b)). *See also* paragraph 6.2.3 (p. 6-16) regarding reprisals.

⁷ *See* FM 27-10, at 3; AFP 110-31, at 1-6. This principle, directed against infliction of unnecessary suffering or superfluous injury, is referred to as the "principle of proportionality" or the "principle of humanity." The opinion is occasionally expressed that the principles of necessity and proportionality contradict each other in the sense that they serve opposing ends. This is not the case. The principle of necessity allows the use of sufficient force to accomplish a lawful purpose during armed conflict. It complements the principle of proportionality which disallows any kind or degree of force not essential for the realization of that lawful purpose. Together, the principles of necessity and proportionality make unlawful any use of force which needlessly or unnecessarily causes or aggravates human suffering or physical destruction. The real difficulty arises not from the actual meaning of the principles, but from their application in practice. 10 Whiteman 302 (*citing* NWIP 10-2, sec. 220 n.9). The rule of proportionality has been articulated in GP I, arts. 51(5)(b) and 57(2)(a)(iii). as prohibiting attacks

[W]hich may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

See Fenrick, *The Rule of Proportionality and Protocol I in Conventional Warfare*, 98 *Mil. Law Rev.* 1982 at 91. The term "concrete and direct", as used in arts. 51 and 57, refers to "the advantage anticipated from the specific military operation of which the attack is a part taken as a whole and not from isolated or particular parts of the operation." Bothe, *Partsch & Solf* 311. *See also* Solf, *Protection of Civilians* 128-35; paragraph 8.1.2.1 and notes 16-20 thereunder (incidental injury and collateral damage) (p. 8-4).

3. Dishonorable (treacherous) means, dishonorable expedients, and dishonorable conduct during armed conflict are forbidden.⁸

The law of armed conflict is not intended to impede the waging of hostilities. Its purpose is to ensure that the violence of hostilities is directed toward the enemy's forces and is not used to cause purposeless, unnecessary human misery and physical destruction. In that sense, the law of armed conflict complements and supports the principles of warfare embodied in the military concepts of objective, mass, economy of force, surprise, and security. Together, the law of armed conflict and the principles of warfare underscore the importance of concentrating forces against critical military targets while avoiding the expenditure of personnel and resources against persons, places, and things that are militarily unimportant.⁹ However, these principles do not prohibit the application of overwhelming force against enemy combatants, units and material.

⁸ See Chapter 12 and Bothe, Partsch & Solf at 201-207 regarding prohibited deceptions or perfidy.

⁹ Although the U.S. Navy has not adopted as doctrine the Principles of War, useful discussions of their application in naval tactics may be found in Hughes, Fleet Tactics 140-45 & 290-97 (1986); Eccles, Military Concepts and Philosophy 108-13 (1965); and Brown, The Principles of War, U.S. Naval Inst. Proc., June 1949, at 621. The Marine Corps, Army and Air Force have adopted variations of the principles of war as service doctrine: U.S. Marine Corps, Marine Rifle Company/Platoon, FMFM 6-4, para. 1403 (1978); U.S. Air Force, Basic Aerospace Doctrine, AFM 1-1, March 1992, vol. II at 9-15; Department of the Army, Operations, FM 100-5, at 2-4 to 2-5 (1993); Armed Forces Staff College, Joint Staff Officer's Guide, Pub 1, para. 101, at p. 1-3 (1993); Joint Pub 3-0, Doctrine for Joint Operations, 1 February 1995 at II-1. The principles of war in any case are not a set of inflexible rules; rather they are "good tools to sharpen the mind," and are essential elements in successful military operations. Eccles 113.

The principle of *the objective* provides that every military undertaking must have an objective, that is, it must be directed toward a clearly defined goal and all activity must contribute to the attainment of that goal. Military objectives necessarily support national objectives--in peace as well as in war--and, more directly, support the national war aims during conflict. The law of armed conflict supports this principle by assisting in defining what is politically and legally obtainable.

The principle of *concentration* or *mass* states that to achieve success in war it is essential to concentrate superior forces at the decisive place and time in the proper direction, and to sustain this superiority at the point of contact as long as it may be required. With the law of armed conflict, this principle serves, in part, to employ the proper economy of force at or in the decisive points and to enable maximum total effective force to be exerted in achieving the objective.

Economy of force means that no more--or less--effort should be devoted to a task than is necessary to achieve the objective. This implies the correct selection and use of weapons and weapon systems, maximum productivity from available weapons platforms, and careful balance in the allocation of tasks. This principle is consistent with the fundamental legal principle of proportionality.

Surprise results from creating unexpected situations or from taking courses of least probable expectation--both considered from the enemy point of view and both designed to exploit the enemy's consequent lack of preparedness. It permits the attaining of maximum effect from a minimum expenditure of effort. The lawfulness of such techniques as deception supports surprise.

Security embraces all measures which must be taken to guard against any form of counter-stroke which the enemy may employ to prevent the attainment of the objective or to obtain its own objective. Security implies the gaining of enemy intelligence. Surveillance and spying are not prohibited by international law including the law of armed conflict.

Other principles of war are: *unity of command* which ensures that all efforts are focused on a common goal or objective; *maneuver* which seeks to place the enemy in a position of disadvantage through the flexible application of combat power; and *offensive* which, contemplates seizing, retaining and exploiting the initiative.

5.3 COMBATANTS AND NONCOMBATANTS

The law of armed conflict is based largely on the distinction to be made between combatants and noncombatants. In accordance with this distinction, the population of a nation engaged in armed conflict is divided into two general classes: armed forces (combatants) and the civilian populace (noncombatants). Each class has specific rights and obligations in time of armed conflict, and no single individual can be simultaneously a combatant and a noncombatant.¹⁰

The term "combatant" embraces those persons who have the right under international law to participate directly in armed conflict during hostilities. Combatants, therefore, include all members of the regularly organized armed forces of a party to the conflict (except medical personnel, chaplains, civil defense personnel, and members of the armed forces who have acquired civil defense status), as well as irregular forces who are under responsible command and subject to internal military discipline, carry their arms openly, and otherwise distinguish themselves clearly from the civilian population.¹¹

Conversely, the term "noncombatant" is primarily applied to those individuals who do not form a part of the armed forces and who otherwise refrain from the commission or direct support of hostile acts. In this context, noncombatants and, generally, the civilian population, are synonymous. The term noncombatants may, however, also embrace certain categories of persons who, although members of or accompanying the armed forces, enjoy special protected status, such as medical officers, corpsmen, chaplains, technical (i.e., contractor) representatives, and civilian war correspondents. (See Chapter 11.) The term is also applied

¹⁰ 10 Whiteman 135 (citing NWIP 10-2, para. 221a). Chapter 11 discusses noncombatants in detail. See HR, art. 3(2); GP I, art. 43(2).

¹¹ The "armed forces" of a Party to an armed conflict include all organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party. Such armed forces shall be subject to an internal disciplinary system which, *inter alia*, shall enforce compliance with the rules of international law applicable in armed conflict. GP I, art. 43(1). Other requirements for combatant status are discussed in paragraph 11.7 (p. 11-9), especially notes 52 & 53 and accompanying text. See also de Preux, Synopsis VII: Combatant and prisoner-of-war status, 1989 Int'l Rev. Red Cross 43.

Persons acting on their own in fighting a private war, including gangs of terrorists acting on their own behalf and not linked to an entity subject to international law, are not lawful combatants. See paragraph 12.7.1 (p. 12-8), and Baxter, So-Called Unprivileged Belligerency: Spies, Guerrillas and Saboteurs, 28 Brit. Y.B. Int'l L. 323 (1951), regarding illegal combatants.

On identification of combatants and noncombatants, see de Preux, Synopsis IV: Identification--Fundamental Principle, 1985 Int'l Rev. Red Cross 364. For a discussion of the obligation of members of an irregular force to carry their arms openly and otherwise distinguish themselves from the civilian population, see paragraph 11.7 and note 53 thereunder (p. 11-12). On respect for persons protected by the Geneva Conventions, see Green, Contemporary Law of Armed Conflict, 1993, chaps. 10 & 11; de Preux, Synopsis IX: Respect for the Human Being in the Geneva Conventions, 1989 Int'l Rev. Red Cross 217.

to armed forces personnel who are unable to engage in combat because of wounds, sickness, shipwreck, or capture.¹²

Under the law of armed conflict, noncombatants must be safeguarded against injury not incidental to military operations directed against combatant forces and other military objectives. In particular, it is forbidden to make noncombatants the object of attack.¹³

Because only combatants may lawfully participate directly in armed combat, noncombatants that do so are acting unlawfully and are considered illegal combatants. See paragraphs 11.5 (Medical Personnel and Chaplains) and 12.7.1 (Illegal Combatants).

5.4 SOURCES OF THE LAW OF ARMED CONFLICT

As is the case with international law generally, the principal sources of the law of armed conflict are custom, as reflected in the practice of nations, and international agreements.¹⁴

5.4.1 Customary Law. The customary international law of armed conflict derives from the practice of military and naval forces in the field, at sea, and in the air during hostilities. When such a practice attains a degree of regularity and is accompanied by the general conviction among nations that behavior in conformity with that practice is obligatory, it can be said to have become a rule of customary law binding upon all nations. It is frequently difficult to determine the precise point in time at which a usage or practice of warfare evolves into a customary rule of law. In a period marked by rapid developments in technology, coupled with the broadening of the spectrum of conflict to encompass insurgencies and state-sponsored terrorism, it is not surprising that nations often disagree as to the precise content of an accepted practice of armed conflict and to its status as a rule of law. This lack of precision in the definition and interpretation of rules of customary law has been a principal motivation behind efforts to codify the law of armed conflict through written

¹² 10 Whiteman 135, *citing* NWIP 10-2, para. 221a n.12; Kalshoven, *Noncombatant Persons*, in Robertson, at 304-24; Green, note 11, at chap. 12. *See* paragraph 11.1 (p. 11-1).

¹³ 10 Whiteman 135, *citing* NWIP 10-2, para. 221b; Kalshoven, *Noncombatant Persons*, in Robertson, at 306-07. *See* paragraph 11.2 (protected status) (p. 11-1). For a discussion of GP I arts. 48 & 51, *see* Bothe, Partsch & Solf at 280-86 & 296-318.

¹⁴ *See* Preface (p. 3). Evidence of the law of armed conflict may also be found in national military manuals, judicial decisions, the writings of publicists, and the work of various international bodies. Documents on the Laws of War 6-9 (Roberts & Guelff eds., 2d ed. 1989). With regard to the importance of national military manuals as evidence of the law of armed conflict, *see* Reisman & Lietzau, *Moving International Law from Theory to Practice: the Role of Military Manuals in Effectuating the Law of Armed Conflict*, in Robertson, at 7-9; Green, paragraph 5.3, note 11 (p. 5-7), at chap. 2. For a listing of military manuals *see* Fleck at app. 3.

agreements (treaties and conventions.)¹⁵ However, the inherent flexibility of law built on

¹⁵ The roots of the present law of armed conflict may be traced back to practices of belligerents which arose, and grew gradually, during the latter part of the Middle Ages, primarily as a result of the influences of Christianity and chivalry. See Draper, *The Interaction of Christianity and Chivalry in the Historical Development of the Law of War*, 1965, 5 Int'l Rev. Red Cross 3; Meron, *Henry's Wars and Shakespeare's Laws* (1993); Meron, *Shakespeare's Henry the Fifth and the Law of War*, 86 Am. J. Int'l L. 1 (1992); *The Laws of War: Constraints on Warfare in the Western World* (Howard, Andreopoulos & Shulman eds. 1994) at 27-39. Unlike the savage cruelty of former times, belligerents gradually adopted the view that the realization of the objectives of war was in no way limited by consideration shown to the wounded, to prisoners, and to private individuals who did not take part in the fighting. Progress continued during the seventeenth and eighteenth centuries. Hugo Grotius codified the first rules of warfare in his *De Jure Belli ac Pacis* in 1642. These rules were widely adopted by nations, partly for ethical reasons, and partly because the remnants of chivalry were still influential among aristocratic officers.

The most important developments in the laws of armed conflict took place in the period after 1850. The French Revolution and Napoleonic Wars first introduced the concept of the citizen army. While during the 17th and 18th centuries the means of destruction were limited by the absence of industrial might and combatants were limited to a small group of professional soldiers, the distinction between combatants and noncombatants becoming blurred as armed forces began to rely upon the direct support of those who remained at home. Limitations on the means of destruction were also in transition, as by the middle of the 19th century the effect of the industrial revolution was beginning to be felt on the battlefield. A combination of the increased killing power of artillery, the inadequacy of field medical treatment and the outmoded infantry tactics resulted in unprecedented battlefield losses. The public reaction to the particularly harsh experiences of the Crimean War (1854-56) and the United States' Civil War, renewed the impetus for the imposition of limits on war and demonstrated the need for more precise written rules of the law of armed conflict to replace the vague customary rules. The horrors of the Battle of Solferino in northern Italy in 1859 resulted in the formation of the Red Cross movement in 1863. Dunant, *The Battle of Solferino* (1861). (See paragraph 6.2.2 (p. 6-12) for a description of the ICRC and its activities.) It was in this light that the first conventions to aid the sick and wounded were concluded at Geneva in 1864. (See Pictet, *The First Geneva Convention*, 1989 Int'l Rev. Red Cross 277.) In the United States, President Lincoln commissioned Dr. Francis Lieber, then a professor at Columbia College, New York City, to draft a code for the use of the Union Army during the Civil War. His code was revised by a board of Army officers, and promulgated by President Lincoln as General Orders No. 100, on 24 April 1863, as the Instructions for the Government of Armies of the United States in the Field. (See Baxter, *The First Modern Codification of the Law of War*, 3 Int'l Rev. Red Cross 1963 at 171; Solf, *Protection of Civilians* 121; Hoffman, *The Customary Law of Non-International Armed Conflict: Evidence from the United States Civil War*, 1990 Int'l Rev. Red Cross 322.) The Lieber Code strongly influenced the further codification of the law of armed conflict and the adoption of similar regulations by many nations, including the Oxford Manual of 1880; Declaration of Brussels of 1874; and the United States Naval War Code of 1900, and had a great influence on the drafters of Hague Convention No. II (1899), replaced by Hague Convention IV (1907) regarding the Laws and Customs of War on Land. The 1907 Hague Regulations annexed to Hague IV have been supplemented by the 1949 Geneva Convention Relative to Protection of Civilians in Time of War, the 1949 Convention Relative to the Treatment of Prisoners of War, the 1977 Protocols Additional to the 1949 Geneva Conventions, and the 1980 Conventional Weapons Convention, as amended. The principles of customary international law codified in such treaties are identified in the relevant notes to the text.

In the past half century there has been a marked tendency to include among the sources of the rules of warfare certain principles of law adopted by many nations in their domestic legislation. The Statute of the International Court of Justice includes within the sources of international law which it shall apply, "the general principles of law recognized by civilized nations." Statute of the I.C.J., art. 38, para. 1.c. In the judgment rendered in *The Hostages Case*, the United States Military Tribunal stated:

The tendency has been to apply the term "customs and practices accepted by civilized nations generally," as it is used in international law, to the laws of war only. But the principle has no such restricted meaning. It applies as well to fundamental principles of justice which have been accepted and adopted by civilized nations generally. In determining whether such a fundamental rule of justice is entitled to be declared a principle of international law, an examination of the municipal laws of states in the family of nations will reveal the answer. If it is found to have been accepted generally as a fundamental rule of justice by most

(continued...)

custom and the fact that it reflects the actual--albeit constantly evolving--practice of nations, underscore the continuing importance of customary international law in the development of the law of armed conflict.¹⁶

5.4.2 International Agreements. International agreements, whether denominated as treaties, conventions, or protocols, have played a major role in the development of the law of armed conflict. Whether codifying existing rules of customary law or creating new rules to govern future practice, international agreements are a source of the law of armed conflict. Rules of law established through international agreements are ordinarily binding only upon those nations that have ratified or adhered to them. Moreover, rules established through the treaty process are binding only to the extent required by the terms of the treaty itself as limited by the reservations, if any, that have accompanied its ratification or adherence by individual nations.¹⁷ Conversely, to the extent that such rules codify existing customary law or otherwise come, over time, to represent a general consensus among nations of their obligatory nature, they are binding upon party and non-party nations alike.¹⁸

¹⁵(...continued)

nations in their municipal law, its declaration as a rule of international law would seem to be fully justified.

United States v. List et al., 11 TWC 1235 (1950).

¹⁶ The role of customary international law in developing the law of armed conflict is cogently discussed in the introduction to Documents on the Law of War, note 14 (p. 5-8), at 4-6. See Meron, Human Rights and Humanitarian Norms as Customary Law (1989) and Meron, The Geneva Conventions As Customary Law, 81 Am. J. Int'l L. 348 (1987). See also Bruderlein, Custom in International Humanitarian Law, 1991 Int'l Rev. Red Cross 579.

¹⁷ Vienna Convention on the Law of Treaties, art. 21, reprinted in 8 Int'l Leg. Mat'ls 679 (1969). Numerous multilateral agreements contain a provision similar to that contained in article 28 of Hague Convention No. XIII (1907) that "The provisions of the present Convention do not apply except between the Contracting Powers, and only if all the belligerents are parties to the Convention." The effects of this so called "general participation" clause have not been as far-reaching as might be supposed. In World Wars I and II and the Korean War, belligerents frequently affirmed their intention to be bound by agreements containing the general participation clause regardless of whether or not the strict requirements of the clause were actually met. In practice, prize courts during and after WW I disregarded the non-participation of non-naval belligerents. *The Blood* [1922] 1 A.C. 313.

¹⁸ Certain conventions have been generally regarded either as a codification of pre-existing customary law or as having come to represent, through widespread observance, rules of law binding upon all States. Both the International Military Tribunals at Nuremberg and for the Far East treated the general participation clause in Hague Convention No. IV (1907), Respecting the Laws and Customs of War on Land, as irrelevant. They also declared that the general principles laid down in the 1929 Geneva Convention relative to the Treatment of Prisoners of War, which does not contain a general participation clause, were binding on signatories and nonsignatories alike. *Nazi Conspiracy and Aggression: Opinion and Judgment* 83, U.S. Naval War College, International Law Documents 1946-1947, at 281-82 (1948); *IMTFE*, Judgment 28, U.S. Naval War College, International Law Documents 1948-49, at 81 (1950). Art. 2, para. 3, of all four 1949 Geneva Conventions states:

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.

Similar provisions are contained in art. 96 of GP I and art. 7 of the 1980 Conventional Weapons Convention, as amended.

(continued...)

Principal among the international agreements reflecting the development and codification of the law of armed conflict are the Hague Regulations of 1907, the Gas Protocol of 1925, the Geneva Conventions of 1949 for the Protection of War Victims, the 1954 Hague Cultural Property Convention, the Biological Weapons Convention of 1972, and the Conventional Weapons Convention of 1980. Whereas the 1949 Geneva Conventions and the 1977 Protocols Additional thereto address, for the most part, the protection of victims of war, the Hague Regulations, the Geneva Gas Protocol, 1993 Chemical Weapons Convention, Hague Cultural Property Convention, Biological Weapons Convention, and the Conventional Weapons Convention are concerned, primarily, with controlling the means and methods of warfare.¹⁹ The most significant of these agreements (for purposes of this publication) are listed chronologically as follows:

¹⁸(...continued)

This subject is explored in detail in Meron, *The Geneva Conventions as Customary Law*, 81 *Am. J. Int'l L.* 348 (1987); Meron, *Human Rights and Humanitarian Norms as Customary Law* (1989). *Cf.* Solf, *Protection of Civilians* 124, text accompanying nn. 39-41.

For efforts to identify those provisions of GP I which codify existing international law, *see* Penna, *Customary International Law and Protocol I: An Analysis of Some Provisions*, in *Studies and Essays on International Humanitarian Law and Red Cross Principles in Honour of Jean Pictet* 201 (Swinarski ed. 1984); Cassese, *The Geneva Protocols of 1977 on the Humanitarian Law of Armed Conflict and Customary International Law*, 3 *UCLA Pac. Bas. L.J.* 55-118 (1984) (GP I and II); *The Sixth Annual American Red Cross-Washington College of Law Conference on International Humanitarian Law: A Workshop on Customary International Law and the 1977 Protocols Additional to the 1949 Geneva Conventions*, 2 *Am. U.J. Int'l L. & Policy* 422-28 (1987) (remarks of U.S. Department of State Deputy Legal Adviser Matheson); Hogue, *Identifying Customary International Law of War in Protocol I: A Proposed Restatement*, 13 *Loy. L.A. Int'l & Comp. L.J.* 279 (1990).

¹⁹ The major treaties on naval warfare presently in force date back to 1907, before the large scale use of submarines and aircraft in naval operations. The 1936 London Protocol on submarine warfare resulted from attempts by traditionalists to require submarines, which at that time generally attacked while on the surface, to adhere to rules governing methods of attack applicable to surface combatants. *See* Levie, *Submarine Warfare: With Emphasis on the 1936 London Protocol*, in Grunawalt at 41-48. The GWS-Sea, as supplemented by portions of GP I, develops only the rules on the protection of the wounded, sick and shipwrecked at sea. In large measure, the law of naval warfare continues to develop in its traditional manner through the practice of nations ripening into customary (as opposed to treaty) law. A series of meetings of experts, sponsored by the International Institute of Humanitarian Law, San Remo, Italy commencing in 1987, led to the San Remo Manual on International Law Applicable to Armed Conflicts at Sea, June 1994. The Manual and accompanying explanation of its provisions may be found in *San Remo Manual on International Law Applicable to Armed Conflicts at Sea*, Prepared by International Lawyers and Naval Experts Convened by the International Institute of Humanitarian Law (Doswald-Beck ed. 1995). *See* Robertson, *An International Manual for the Law of Armed Conflict at Sea*, *Duke L. Mag.*, Winter 1995, at 14-18.

The military manuals on naval warfare were, until recently, antiquated. *See* U.S. Navy, *Law of Naval Warfare*, NWIP 10-2 (1955) (set out in its entirety in the appendix to Tucker), which was replaced by the Commander's Handbook on the Law of Naval Operations, NWP 9 (1987), NWP 9 Revision A/FMFM 1-10 (1989) (set out in its entirety in the Appendix to Robertson) and this present manual. *See also* chaps. 8-11 of the Royal Australian Navy, *Manual of the Law of the Sea*, ABR 5179 (1983). New manuals on the law of naval warfare have been recently promulgated or are in preparation by a number of other nations, including the United Kingdom, Canada, Germany, Japan, Italy, and Russia.

1. 1907 Hague Convention Respecting the Laws and Customs of War on Land (Hague IV)²⁰
2. 1907 Hague Convention Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land (Hague V)²¹
3. 1907 Hague Convention Relative to the Laying of Automatic Submarine Contact Mines (Hague VIII)²²
4. 1907 Hague Convention Concerning Bombardment by Naval Forces in Time of War (Hague IX)²³
5. 1907 Hague Convention Relative to Certain Restrictions with Regard to the Exercise of the Right of Capture in Naval War (Hague XI)²⁴
6. 1907 Hague Convention Concerning the Rights and Duties of Neutral Powers in Naval War (Hague XIII)²⁵
7. 1925 Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous, or Other Gases, and of Bacteriological Methods of Warfare²⁶
8. 1936 London Protocol in Regard to the Operations of Submarines or Other War Vessels with Respect to Merchant Vessels (Part IV of the 1930 London Naval Treaty)²⁷

²⁰ The general principles of Hague IV reflect customary international law. *See* cases cited in note 18 (p. 5-10), and Self, Protection of Civilians 123 text at n.41. Hague IV is discussed in Chapters 8, 9, 11 & 12 *passim*. *But see* Lowe, The Commander's Handbook on the Law of Naval Operations and the Contemporary Law of the Sea, *in* Robertson, at 130.

²¹ Hague V is discussed in Chapter 7 (The Law of Neutrality).

²² Hague VIII is discussed in paragraphs 9.2 (naval mines) (p. 9-5) and 9.4 (torpedoes) (p. 9-14).

²³ Hague IX is discussed in paragraphs 8.5 (bombardment) (p. 8-23) and 11.9.3 (Hague symbol) (p. 11-18).

²⁴ Hague XI is mentioned in paragraph 8.2.3, notes 72, 74, & 78 (pp. 8-17 & 18).

²⁵ Hague XIII is discussed in Chapter 7.

²⁶ The 1925 Geneva Gas Protocol is discussed in paragraph 10.3 (chemical weapons) (p. 10-8).

²⁷ The 1936 London Protocol is discussed in paragraphs 8.2.2.2 (destruction of enemy merchant vessels) (p. 8-10) and 8.3.1 (submarine warfare) (p. 8-20).

9. 1949 Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*²⁸
10. 1949 Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea*²⁹
11. 1949 Geneva Convention (III) relative to the Treatment of Prisoners of War*³⁰
12. 1949 Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War*³¹
13. 1954 Hague Convention for the Protection of Cultural Property in the event of armed conflict³²
14. 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction³³
15. 1977 Protocol Additional to the Geneva Conventions of 1949 and Relating to the Protection of Victims of International Armed Conflict (Additional Protocol I)*³⁴

²⁸ The 1949 Geneva Wounded and Sick Convention is discussed in paragraph 11.4 (wounded, sick and shipwrecked) (p. 11-4). See Table A5-1 (p. 5-24) for a listing of the nations that are party to the 1949 Geneva Conventions, I, II, III and IV.

²⁹ The 1949 Geneva Wounded, Sick and Shipwrecked Convention is discussed in paragraph 11.4 (wounded, sick and shipwrecked) (p. 11-4).

³⁰ The general principles (but not the details) of the 1929 Geneva Prisoners of War Convention, which are repeated in the 1949 Geneva Prisoners of War Convention, have been held to be declaratory of customary international law. See note 18 (p. 5-10); FM 27-10, para. 6. The 1949 Geneva Prisoners of War Convention is discussed in paragraph 11.7 (prisoners of war) (p. 11-9).

³¹ The 1949 Geneva Civilians Convention is discussed in paragraph 11.8 (interned persons) (p. 11-15).

³² The 1954 Hague Cultural Property Convention and the 1935 Roerich Pact are discussed in paragraph 11.9.2 (other protective symbols) (p. 11-17).

³³ The 1972 Biological Weapons Convention is discussed in paragraph 10.4 (biological weapons) (p. 10-19).

³⁴ The President decided not to submit GP I to the Senate for its advice and consent to ratification. 23 Weekly Comp. Pres. Doc. 91 (29 Jan. 1987), 81 Am. J. Int'l L. 910. France (Schindler & Toman 709) and Israel have also indicated their intention not to ratify GP I. The U.S. position on GP I is set forth in Senate Treaty Doc. No. 100-2, reprinted in 26 Int'l Leg. Mat'ls 561 (1987) and Annex A5-1 (p. 5-17). Other sources opposing U.S. ratification include Roberts, The New Rules for Waging War: The Case Against Ratification of Additional Protocol I, 26 Va. J. Int'l L. 109 (1985); Feith, Law in the Service of Terror--The Strange Case of the Additional Protocol, 1 The National Interest, Fall 1985, at 36; Sofaer, Terrorism and the Law, 64 Foreign Affairs, Summer 1986, at 901; Feith, Moving Humanitarian Law Backwards, 19 Akron L. Rev. 531 (1986); The Sixth Annual American Red Cross-Washington College of Law Conference on International (continued...)

16. 1977 Protocol Additional to the Geneva Conventions of 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts (Additional Protocol II)*³⁵

³⁴(...continued)

Humanitarian Law: A Workshop on Customary International Law and the 1977 Protocols Additional to the 1949 Geneva Conventions, 2 Am. U.J. Int'l L. & Policy 460 (1987) (remarks of U.S. Department of State Legal Adviser Sofaer); Sofaer, The Rationale for the United States Decision, 82 Am. J. Int'l L. 784 (1988); Parks, Air War and the Law of War, 32 A.F.L. Rev. 1, 89-225 (1990). *Contra*, Aldrich, Progressive Development of the Law of War: A Reply to Criticisms of the 1977 Geneva Protocol I, 26 Va. J. Int'l L. 693 (1986); Solf, Protection of Civilians Against the Effects of Hostilities Under Customary International Law and Under Protocol I, 1 Am. Univ. J. Int'l L. & Policy 117 (1986); Solf, A Response to Douglas J. Feith's Law in the Service of Terror--The Strange Case of the Additional Protocol, 20 Akron L. Rev. 261 (1986); Gasser, Prohibition of Terrorist Acts in International Humanitarian Law, 26 Int'l Rev. Red Cross 200, 210-212 (Jul.-Aug. 1986); Gasser, An Appeal for Ratification by the United States, 81 Am. J. Int'l L. 912 (1987); Gasser, Letter to the Editor in Chief, 83 Am. J. Int'l L. 345 (1989); Bagley, 11 Loy. L.A. Int'l & Comp. L.J. 439 (1989); Aldrich, Prospects for United States Ratification of Additional Protocol I to the 1949 Geneva Conventions, 85 Am. J. Int'l L. 1 (1991). *See also* Levie, The 1977 Protocol I and the United States, 38 St. Louis U. Law J. 469 (1994), *reprinted in* Schmitt & Green at chap. XVII.

As of 15 October 1997, 147 nations were party to GP I, including NATO members Belgium, Canada, Denmark, Germany, Greece, Iceland, Italy, Luxembourg, Netherlands, Norway and Spain; the Republic of Korea; Australia; New Zealand; Russia and the former Warsaw Pact nations; Austria, Finland, Sweden and Switzerland (each of which has proclaimed itself as neutral under the doctrine of permanent neutrality); as well as China, Cuba, DPRK and Libya. GP I is in force as between those nations party to it. *See* the complete listing at Table A5-1 (p. 5-24).

The *travaux préparatoires* of GP I are organized by article and published *in* Levie, Protection of War Victims: Protocol I to the 1949 Geneva Conventions (4 vols. 1979-81 and Supp.). *See also* Bothe, Partsch & Solf at 1-603, and ICRC, Commentary (GP I) 19-1304.

It is important that U.S. military operational lawyers are aware that U.S. coalition partners in a future conflict will likely be party to GP I and bound by its terms. *See also* Matheson, note 18 (p. 5-11) and Annex A5-1 (final paragraph of p. 5-21).

³⁵ The President submitted GP II to the Senate for its advice and consent to ratification on 29 January 1987. Sen. Treaty Doc. 100-2, 23 Weekly Comp. Pres. Doc. 91; 26 Int'l Leg. Mat'ls 561 (1987), Annex A5-1 (p. 5-17). The proposed statements of understanding and reservations to GP II are analyzed *in* Smith, New Protections for Victims of International [*sic*] Armed Conflicts: The Proposed Ratification of Protocol II by the United States, 120 Mil. L. Rev. 59 (1988).

As of 15 October 1997, the 140 parties to GP II included NATO allies Belgium, Canada, Denmark, France, Germany, Iceland, Italy, Netherlands, Norway and Spain; El Salvador, the Philippines and New Zealand; the neutral countries (Austria, Finland, Sweden and Switzerland); and Russia and the former Warsaw Pact nations. GP II is in force as between those nations party to it. *See* the complete listing at Table A5-1 (p. 5-24). Haiti has announced its intention to ratify GP II upon passage of implementing legislation. Israel and South Africa have indicated they do not intend to ratify GP II.

The *travaux préparatoires* of GP II are organized by article and published *in* The Law of Non-International Armed Conflict: Protocol II to the 1949 Geneva Conventions (Levie ed. 1987). *See also* Bothe, Partsch & Solf 604-705, and ICRC, Commentary (GP II) 1305-1509.

The Statute of the *Ad Hoc* Tribunal for the Former Yugoslavia, U.N. Doc. S/25704 (1993); 32 Int'l Leg. Mat'ls 1192 (1993) made no specific reference to either GP I or GP II, but provided jurisdiction over breaches of the Geneva Conventions, which together with the Protocols, had been ratified by Yugoslavia and succeeded to by Bosnia, Croatia and Serbia. The Statute of the Tribunal for Rwanda, U.N.S.C. Res. 955 (1994); 33 Int'l Leg. Mat'ls 1598 (1994), expressly conferred jurisdiction to the Tribunal over violations of common article 3 and of GP II.

17. 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects*³⁶

18. 1993 Convention on the Prohibition of Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction.³⁷

An asterisk (*) indicates that signature or ratification of the United States was subject to one or more reservations or understandings. The United States is a party to, and bound by, all of the foregoing conventions and protocols, except numbers 13, 15, 16 and 18. The United States has decided not to ratify number 15 (Additional Protocol I).³⁸ The United States has ratified number 17, Protocols I and II, but has not ratified Protocol III.

³⁶ The 1980 Conventional Weapons Convention, *reprinted in* 19 Int'l Leg. Mat'ls 1524 (1980); AFP 110-20 at 3-177, is discussed in paragraphs 9.1.1 (undetectable fragments) (p. 9-2), 9.3 (land mines) (p. 9-11), 9.6 (booby traps and other delayed action devices) (p. 9-15), 9.7 (incendiary weapons) (p. 9-15) and 9.8 (directed energy devices) (p. 9-16). The Convention originally included three separate protocols, *e.g.*, Protocol on Non-Detectable Fragments (Protocol I); Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II); and Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III). The United States became party to the Convention and Protocols I and II on 24 September 1995, but declined to ratify Protocol III at that time. At the First Review Conference (September 1995-May 1996), Protocol II was substantially amended and a new Protocol on Blinding Laser Weapons (Protocol IV) was adopted. On 5 January 1997, President Clinton submitted the amended Protocol II, the original Protocol III (with a reservation), and new Protocol IV to the Senate for its advice and consent to their ratification. *See* notes 36, 44 & 45 accompanying paragraphs 9.3 (land mines) (p. 9-12), 9.7 (incendiary weapons) (p. 9-15) and 9.8 (directed energy devices) (p. 9-17). *See also* Nash, *Contemporary Practice of the United States Relating to International Law*, 91 Am. J. Int'l L. 325 (1997). As of 15 October 1997, 71 nations, including the U.S., U.K., Germany, Italy, Denmark, France, Netherlands, Norway, Australia, Japan, China, Russia and other ex-Warsaw Pact nations, and the neutral nations, have ratified the Conventional Weapons Convention (and two or more of its four protocols), and it is in force as between those nations with respect to commonly ratified protocols. (For a current listing of parties to the Convention and its Protocols *see* www.icrc.ch/icrcnews).

The *travaux préparatoires* of the "umbrella" treaty and Protocol I (non-detectable fragments) are set forth in Roach, *Certain Conventional Weapons Convention: Arms Control or Humanitarian Law?*, 105 Mil. L. Rev. 1; of Protocol II (land mines) in Carnahan, *The Law of Land Mine Warfare: Protocol II to the United Nations Convention on Certain Conventional Weapons*, *id.* at 73; and of Protocol III (incendiary weapons) in Parks, *The Protocol on Incendiary Weapons*, 30 Int'l Rev. Red Cross 535 (Nov.-Dec. 1990). *See also* Fenrick, *The Law of Armed Conflict: The CUSHIE Weapons Treaty*, 11 Can. Def. Q., Summer 1981, at 25; Fenrick, *New Developments in the Law Concerning the Use of Conventional Weapons in Armed Conflict*, 19 Can. Y.B. Int'l L. 229 (1981); Schmidt, *The Conventional Weapons Convention: Implication for the American Soldier*, 24 A.F.L. Rev. 279 (1984); Rogers, *A Commentary on the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices*, 26 Mil. L. & L. of War Rev. 185 (1987); and Symposium, *Tenth Anniversary of the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons*, 30 Int'l Rev. Red Cross 469-577 (Nov.-Dec. 1990).

³⁷ The 1993 Chemical Weapons Convention has since been ratified by the U.S. (24 April 1997). The Convention is discussed in paragraph 10.3.1.2 (p. 10-13).

³⁸ Six of the 1907 Hague Conventions entered into force for the U.S. in 1909, while the four Geneva Conventions of August 12, 1949 entered into force for the United States in 1956. The Administration is reconsidering whether to submit the 1954 Hague Cultural Property Convention to the Senate for its advice and consent to ratification.

5.5 RULES OF ENGAGEMENT³⁹

During wartime or other periods of armed conflict, U.S. rules of engagement reaffirm the right and responsibility of the operational commander generally to seek out, engage, and destroy enemy forces consistent with national objectives, strategy, and the law of armed conflict.⁴⁰

³⁹ See Preface (p. 2) and paragraph 4.3.2.2 (p. 4-14).

⁴⁰ Accordingly, wartime rules of engagement may include restrictions on weapons and targets, and provide guidelines to ensure the greatest possible protection for noncombatants consistent with military necessity. Roach, Rules of Engagement, Nav. War Coll. Rev., Jan.-Feb. 1983, at 49; Phillips, ROE: A Primer, Army Lawyer, July 1993 at 21-23; Grunawalt, The JCS Standing Rules of Engagement: A Judge Advocate's Primer, 42 Air Force Law Rev. 245 (1997).

ANNEX A5-1

LETTER OF TRANSMITTAL AND LETTER OF SUBMITTAL RELATING TO PROTOCOL II ADDITIONAL TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949.

LETTER OF TRANSMITTAL

The White House, *January 29, 1987.*

To the Senate of the United States

I transmit herewith, for the advice and consent of the Senate to ratification, Protocol II Additional to the Geneva Conventions of 12 August 1949, concluded at Geneva on June 10, 1977. I also enclose for the information of the Senate the report of the Department of State on the Protocol.

The United States has traditionally been in the forefront of efforts to codify and improve the international rules of humanitarian law in armed conflict, with the objective of giving the greatest possible protection to victims of such conflicts, consistent with legitimate military requirements. The agreement that I am transmitting today is, with certain exceptions, a positive step toward this goal. Its ratification by the United States will assist us in continuing to exercise leadership in the international community in these matters.

The Protocol is described in detail in the attached report of the Department of State. Protocol II to the 1949 Geneva Conventions is essentially an expansion of the fundamental humanitarian provisions contained in the 1949 Geneva Conventions with respect to non-international armed conflicts, including humane treatment and basic due process for detained persons, protection of the wounded, sick and medical units, and protection of noncombatants from attack and deliberate starvation. If these fundamental rules were observed, many of the worst human tragedies of current internal armed conflicts could be avoided. In particular, among other things, the mass murder of civilians is made illegal, even if such killings would not amount to genocide because they lacked racial or religious motives. Several Senators asked me to keep this objective in mind when adopting the Genocide Convention. I remember my commitment to them. This Protocol makes clear that any deliberate killing of a noncombatant in the course of a non-international armed conflict is a violation of the laws of war and a crime against humanity, and is therefore also punishable as murder.

While I recommend that the Senate grant advice and consent to this agreement, I have at the same time concluded that the United States cannot ratify a second agreement on the law of armed conflict negotiated during the same period. I am referring to Protocol I additional to the 1949 Geneva Conventions, which would revise the rules applicable to international armed conflicts. Like all other efforts associated with the International Committee of the Red Cross, this agreement has certain meritorious elements. But Protocol I is fundamentally and irreconcilably flawed. It contains provisions that would undermine humanitarian law and endanger civilians in war. One of its provisions, for example, would

automatically treat as an international conflict any so-called "war of national liberation." Whether such wars are international or non-international should turn exclusively on objective reality, not on one's view of the moral qualities of each conflict. To rest on such subjective distinctions based on a war's alleged purposes would politicize humanitarian law and eliminate the distinction between international and non-international conflicts. It would give special status to "wars of national liberation," an ill-defined concept expressed in vague, subjective, politicized terminology. Another provision would grant combatant status to irregular forces even if they do not satisfy the traditional requirements to distinguish themselves from the civilian population and otherwise comply with the laws of war. This would endanger civilians among whom terrorists and other irregulars attempt to conceal themselves. These problems are so fundamental in character that they cannot be remedied through reservations, and I therefore have decided not to submit the Protocol to the Senate in any form, and I would invite an expression of the sense of the Senate that it shares this view. Finally, the Joint Chiefs of Staff have also concluded that a number of the provisions of the Protocol are militarily unacceptable.

It is unfortunate that Protocol I must be rejected. We would have preferred to ratify such a convention, which as I said contains certain sound elements. But we cannot allow other nations of the world, however numerous, to impose upon us and our allies and friends an unacceptable and thoroughly distasteful price for joining a convention drawn to advance the laws of war. In fact, we must not, and need not, give recognition and protection to terrorist groups as a price for progress in humanitarian law.

The time has come for us to devise a solution for this problem, with which the United States is from time to time confronted. In this case, for example, we can reject Protocol I as a reference for humanitarian law, and at the same time devise an alternative reference for the positive provisions of Protocol I that could be of real humanitarian benefit if generally observed by parties to international armed conflicts. We are therefore in the process of consulting with our allies to develop appropriate methods for incorporating these positive provisions into the rules that govern our military operations, and as customary international law. I will advise the Senate of the results of this initiative as soon as it is possible to do so.

I believe that these actions are a significant step in defense of traditional humanitarian law and in opposition to the intense efforts of terrorist organizations and their supporters to promote the legitimacy of their aims and practices. The repudiation of Protocol I is one additional step, at the ideological level so important to terrorist organizations, to deny these groups legitimacy as international actors.

Therefore, I request that the Senate act promptly to give advice and consent to the ratification of the agreement I am transmitting today, subject to the understandings and reservations that are described more fully in the attached report. I would also invite an expression of the sense of the Senate that it shares the view that the United States should not ratify Protocol I, thereby reaffirming its support for traditional humanitarian law, and its opposition to the politicization of the law by groups that employ terrorist practices.

RONALD REAGAN

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, December 13, 1986.

THE PRESIDENT
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to transmission to the Senate for its advice and consent to ratification, Protocol II Additional to the Geneva Conventions of 12 August 1949, concluded at Geneva on June 10, 1977.

PROTOCOL II

Protocol II to the 1949 Geneva Conventions was negotiated by diplomatic conference convened by the Swiss Government in Geneva, which met in four annual sessions from 1974-77. This Protocol was designed to expand and refine the basic humanitarian provisions contained in Article 3 common to the four 1949 Geneva Conventions with respect to non-international conflicts. While the Protocol does not (and should not) attempt to apply to such conflicts all the protections prescribed by the Conventions for international armed conflicts, such as prisoner-of-war treatment for captured combatants, it does attempt to guarantee that certain fundamental protections be observed, including: (1) humane treatment for detained persons, such as protection from violence, torture, and collective punishment; (2) protection from intentional attack, hostage-taking and acts of terrorism of persons who take no part in hostilities, (3) special protection for children to provide for their safety and education and to preclude their participation in hostilities, (4) fundamental due process for persons against whom sentences are to be passed or penalties executed; (5) protection and appropriate care for the sick and wounded, and medical units which assist them; and (6) protection of the civilian population from military attack, acts of terror, deliberate starvation, and attacks against installations containing dangerous forces. In each case, Protocol II expands and makes more specific the basic guarantees of common Article 3 of the 1949 Conventions. Its specific provisions are described in greater detail in the attached section-by-section analysis.

The final text of Protocol II did not meet all the desires of the United States and other western delegations. In particular, the Protocol only applies to internal conflicts in which dissident armed groups are under responsible command and exercise control over such a part of the national territory as to carry out sustained and concerted military operations. This is a narrower scope than we would have desired, and has the effect of excluding many internal conflicts in which dissident armed groups occupy no significant territory but conduct sporadic guerrilla operations over a wide area. We are therefore recommending that U.S. ratification be subject to an understanding declaring that the United States will apply the Protocol to all

conflicts covered by Article 3 common to the 1949 Conventions (and only such conflicts), which will include all non-international armed conflicts as traditionally defined (but not internal disturbances, riots and sporadic acts of violence). This understanding will also have the effect of treating as non-international these so-called "wars of national liberation" described in Article 1(4) of Protocol I which fail to meet the traditional test of an international conflict.

Certain other reservations or understandings are also necessary to protect U.S. military requirements. Specifically, as described in greater detail in the attached annex, a reservation to Article 10 is required to preclude the possibility that it might affect the administration of discipline of U.S. military personnel under The Uniform Code of Military Justice, under the guise of protecting persons purporting to act in accordance with "medical ethics." However, this is obviously not intended in any way to suggest that the United States would deliberately deny medical treatment to any person in need of it for political reasons or require U.S. medical personnel to perform procedures that are unethical or not medically indicated.

Also, we recommend an understanding with respect to Article 16 to confirm that the special protection granted by that article is required only for a limited class of objects that, because of their recognized importance, constitute a part of the cultural or spiritual heritage of peoples, and that such objects will lose their protection if they are used in support of the military effort. This understanding is generally shared by our allies, and we expect it to appear in the ratification documents of many of them.

Finally, we recommend an understanding to deal with any situation in which the United States may be providing assistance to a country which has not ratified Protocol II and would therefore feel under no obligation to comply with its terms in the conduct of its own operations. Our recommended understanding would make clear that our obligations under the Protocol would not exceed those of the State being assisted. The United States would of course comply with the applicable provisions of the Protocol with respect to all operations conducted by its own armed forces.

With the above caveats, the obligations contained in Protocol II are no more than a restatement of the rules of conduct with which U.S. military forces would almost certainly comply as a matter of national policy, constitutional and legal protections, and common decency. These obligations are not uniformly observed by other States, however, and their universal observance would mitigate many of the worst human tragedies of the type that have occurred in internal conflicts of the present and recent past. I therefore strongly recommend that the United States ratify Protocol II and urge all other States to do likewise. With our support, I expect that in due course the Protocol will be ratified by the great majority of our friends, as well as a substantial preponderance of other States.

The Departments of State, Defense, and Justice have also conducted a thorough review of a second law-of-war agreement negotiated during the same period—Protocol I Additional to the Geneva Conventions of 12 August 1949. This Protocol was the main object of the work of the 1973-77 Geneva diplomatic conference, and represented an attempt to revise and update in a comprehensive manner the 1949 Geneva Conventions on the protection of war

victims, the 1907 Hague Conventions on means and methods of warfare, and customary international law on the same subjects.

Our extensive interagency review of the Protocol has, however, led us to conclude that Protocol I suffers from fundamental shortcomings that cannot be remedied through reservations or understandings. We therefore must recommend that Protocol I not be forwarded to the Senate. The following is a brief summary of the reasons for our conclusion.

In key respects Protocol I would undermine humanitarian law and endanger civilians in war. Certain provisions such as Article 1(4), which gives special status to "armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination," would inject subjective and politically controversial standards into the issue of the applicability of humanitarian law. Protocol I also elevates the international legal status of self-described "national liberation" groups that make a practice of terrorism. This would undermine the principle that the rights and duties of international law attach principally to entities that have those elements of sovereignty that allow them to be held accountable for their actions, and the resources to fulfill their obligations.

Equally troubling is the easily inferred political and philosophical intent of Protocol I, which aims to encourage and give legal sanction not only to "national liberation" movements in general, but in particular to the inhumane tactics of many of them. Article 44(3), in a single subordinate clause, sweeps away years of law by "recognizing" that an armed irregular "cannot" always distinguish himself from non-combatants; it would grant combatant status to such an irregular anyway. As the essence of terrorist criminality is the obliteration of the distinction between combatants and non-combatants, it would be hard to square ratification of this Protocol with the United States' announced policy of combatting terrorism.

The Joint Chiefs of Staff have conducted a detailed review of the Protocol, and have concluded that it is militarily unacceptable for many reasons. Among these are that the Protocol grants guerrillas a legal status that often is superior to that accorded to regular forces. It also unreasonably restricts attacks against certain objects that traditionally have been considered legitimate military targets. It fails to improve substantially the compliance and verification mechanisms of the 1949 Geneva Conventions and eliminates an important sanction against violations of those Conventions. Weighing all aspects of the Protocol, the Joint Chiefs of Staff found it to be too ambiguous and complicated to use as a practical guide for military operations, and recommended against ratification by the United States.

We recognize that certain provision of Protocol I reflect customary international law, and others appear to be positive new developments. We therefore intend to consult with our allies to develop appropriate methods for incorporating these provisions into rules that govern our military operations, with the intention that they shall in time win recognition as customary international law separate from their presence in Protocol I. This measure would constitute an appropriate remedy for attempts by nations to impose unacceptable conditions on the acceptance of improvements in international humanitarian law. I will report the results of this effort to you as soon as possible, so that the Senate may be advised of our progress in this respect.

CONCLUSION

I believe that U.S. ratification of the agreement which I am submitting to you for transmission to the Senate, Protocol II to the 1949 Geneva Conventions, will advance the development of reasonable standards of international humanitarian law that are consistent with essential military requirements. The same is not true with respect to Protocol I to the 1949 Geneva Conventions, and this agreement should not be transmitted to the Senate for advice and consent to ratification. We will attempt in our consultations with allies and through other means, however, to press forward with the improvement of the rules of international humanitarian law in international armed conflict, without accepting as the price for such improvements a debasement of our values and of humanitarian law itself.

The effort to politicize humanitarian law in support of terrorist organizations have been a sorry development. Our action in rejecting Protocol I should be recognized as a reaffirmation of individual rights in international law and a repudiation of the collectivist apology for attacks on non-combatants.

Taken as a whole, these actions will demonstrate that the United States strongly supports humanitarian principles, is eager to improve on existing international law consistent with those principles, and will reject revisions of international law that undermine those principles. The Departments of State and Justice support these recommendations.

Respectfully submitted.

GEORGE P. SHULTZ

Attachments:

- 1—Detailed Analysis of Provisions
- 2—Recommended Understanding and Reservations

SPECTRUM OF CONFLICT

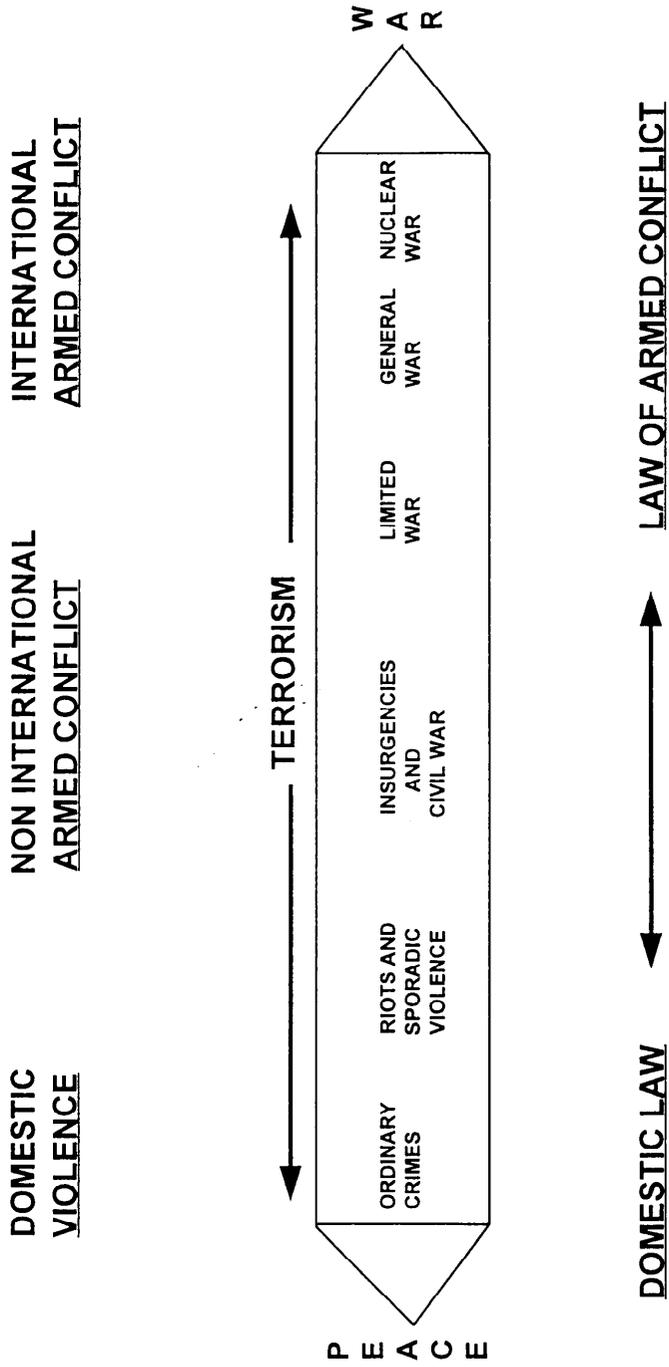


FIGURE A5-1

TABLE A5-1

STATES PARTY TO THE GENEVA CONVENTIONS AND THEIR ADDITIONAL PROTOCOLS

The following tables show which States were party to the Geneva Conventions of 1949 and to the two Additional Protocols of 1977, as of 15 October 1997. They also indicate which States had made the optional declaration under Article 90 of 1977 Protocol I, recognizing the competence of the International Fact-Finding Commission. The names of the countries given in the tables may differ from their official names.

The dates indicated are those on which the Swiss Federal Department of Foreign Affairs received the official instrument from the State that was ratifying, acceding to or succeeding to the Conventions and Protocols or accepting the competence of the International Fact-Finding Commission. Apart from the exceptions mentioned in the footnotes at the end of the tables, for all States the entry into force of the Conventions and of the Protocols occurs six months after the date given in the present document; for States which have made a declaration of succession, entry into force takes place retroactively, on the day of their accession to independence.

Abbreviations

Ratification (R): a treaty is generally open for signature for a certain time following the conference which has adopted it. However, a signature is not binding on a State unless it has been endorsed by ratification. The time limits having elapsed, the Conventions and the Protocols are no longer open for signature. The States which have not signed them may at any time accede or, where appropriate, succeed to them.

Accession (A): instead of signing and then ratifying a treaty, a State may become party to it by the single act called accession.

Declaration of Succession (S): a newly independent State may declare that it will abide by a treaty which was applicable to it prior to its independence. A State may also declare that it will provisionally abide by such treaties during the time it deems necessary to examine their texts carefully and to decide on accession or succession to some or all of them (declaration of provisional application). At present no State is bound by such a declaration.

Reservation/Declaration (R/D): a unilateral statement, however phrased or named, made by a State when ratifying, acceding or succeeding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State (provided that such reservations are not incompatible with the object and purpose of the treaty).

Declaration provided for under Article 90 of Protocol I (D 90): prior acceptance of the competence of the International Fact-Finding Commission.

AS OF 15 OCTOBER 1997

- States party to the 1949 Geneva Conventions: 188
- States party to the 1977 Additional Protocol I: 147
- States having made the declaration under Article 90 of Protocol I: 50
- States party to the 1977 Additional Protocol II: 140

TABLE A5-1

COUNTRY	GENEVA CONVENTIONS		PROTOCOL I			PROTOCOL II				
	R/A/S	R/D	R/A/S	R/D	D90	R/A/S	R/D			
Afghanistan	26.09.1956	R								
Albania	27.05.1957	R	X	16.07.1993	A		16.07.1993	A		
Algeria	20.06.1960	A		16.08.1989	A	X	16.08.1989	A		
Andorra	17.09.1993	A								
Angola	20.09.1984	A	X	20.09.1984	A	X				
Antigua and Barbuda	06.10.1986	S		06.10.1986	A		06.10.1986	A		
Argentina	18.09.1956	R		26.11.1986	A	X	11.10.1996	26.11.1986	A	X
Armenia	07.06.1993	A		07.06.1993	A			07.06.1993	A	
Australia	14.10.1958	R	X	21.06.1991	R	X	23.09.1992	21.06.1991	R	
Austria	27.08.1953	R		13.08.1982	R	X	13.08.1982	13.08.1982	R	X
Azerbaijan	01.06.1993	A								
Bahamas	11.07.1975	S		10.04.1980	A			10.04.1980	A	
Bahrain	30.11.1971	A		30.10.1986	A			30.10.1986	A	
Bangladesh	04.04.1972	S		08.09.1980	A			08.09.1980	A	
Barbados	10.09.1968	S	X	19.02.1990	A			19.02.1990	A	
Belarus	03.08.1954	R	X	23.10.1989	R		23.10.1989	23.10.1989	R	
Belgium	03.09.1952	R		20.05.1986	R	X	27.03.1987	20.05.1986	R	
Belize	29.06.1984	A		29.06.1984	A			29.06.1984	A	
Benin	14.12.1961	S		28.05.1986	A			28.05.1986	A	
Bhutan	10.01.1991	A								
Bolivia	10.12.1976	R		08.12.1983	A		10.08.1992	08.12.1983	A	
Bosnia-Herzegovina	31.12.1976	S		31.12.1992	S		31.12.1992	31.12.1992	S	
Botswana	29.03.1968	A		23.05.1979	A			23.05.1979	A	
Brazil	29.06.1957	R		05.05.1992	A		23.11.1993	05.05.1992	A	
Brunei Darussalam	14.10.1991	A		14.10.1991	A			14.10.1991	A	
Bulgaria	22.07.1954	R		26.09.1989	R		09.05.1994	26.09.1989	R	
Burkina Faso	07.11.1961	S		20.10.1987	R			20.10.1987	R	
Burundi	27.12.1971	S		10.06.1993	A			10.06.1993	A	
Cambodia	08.12.1958	A								
Cameroon	16.09.1963	S		16.03.1984	A			16.03.1984	A	
Canada	14.05.1965	R		20.11.1990	R	X	20.11.1990	20.11.1990	R	X
Cape Verde	11.05.1984	A		16.03.1995	A		16.03.1995	16.03.1995	A	
Central African Republic	01.08.1966	S		17.07.1984	A			17.07.1984	A	
Chad	05.08.1970	A		17.01.1997	A			17.01.1997	A	
Chile	12.10.1950	R		24.04.1991	R		24.04.1991	24.04.1991	R	
China	28.12.1956	R	X	14.09.1983	A	X		14.09.1983	A	
Colombia	08.11.1961	R		01.09.1993	A		17.04.1996	14.08.1995	A	
Comoros	21.11.1985	A		21.11.1985	A			21.11.1985	A	
Congo	04.02.1967	S		10.11.1983	A			10.11.1983	A	
Costa Rica	15.10.1969	A		15.12.1983	A			15.12.1983	A	
Côte d'Ivoire	28.12.1961	S		20.09.1989	R			20.09.1989	R	
Croatia	11.05.1992	S		11.05.1992	S		11.05.1992	11.05.1992	S	
Cuba	15.04.1954	R		25.11.1982	A					
Cyprus	23.05.1962	A		01.06.1979	R			18.03.1996	A	
Czech Republic	05.02.1993	S	X	05.02.1993	S		02.05.1995	05.02.1993	S	
Denmark	27.06.1951	R		17.06.1982	R	X	17.06.1982	17.06.1982	R	
Djibouti	06.03.1978 ¹	S		08.04.1991	A			08.04.1991	A	
Dominica	28.09.1981	S		25.04.1996	A			25.04.1996	A	
Dominican Republic	22.01.1958	A		26.05.1994	A			26.05.1994	A	
Ecuador	11.08.1954	R		10.04.1979	R			10.04.1979	R	
Egypt	10.11.1952	R		09.10.1992	R	X		09.10.1992	R	X
El Salvador	17.06.1953	R		23.11.1978	R			23.11.1978	R	
Equatorial Guinea	24.07.1986	A		24.07.1986	A			24.07.1986	A	

TABLE A5-1

COUNTRY	GENEVA CONVENTIONS		PROTOCOL I			PROTOCOL II		
	R/A/S	R/D	R/A/S	R/D	D90	R/A/S	R/D	
Estonia	18.01.1993	A	18.01.1993	A		18.01.1993	A	
Ethiopia	02.10.1969	R	08.04.1994	A		08.04.1994	A	
Fiji	09.08.1971	S						
Finland	22.02.1955	R	07.08.1980	R	X	07.08.1980	R	
France	28.06.1951	R				24.02.1984 ²	A	
Gabon	26.02.1965	S	08.04.1980	A		08.04.1980	A	
Gambia	20.10.1966	S	12.01.1989	A		12.01.1989	A	
Georgia	14.09.1993	A	14.09.1993	A		14.09.1993	A	
Germany	03.09.1954	A	X	14.02.1991	R	X	14.02.1991	R
Ghana	02.08.1958	A		28.02.1978 ³	R		28.02.1978 ⁴	R
Greece	05.06.1956	R		31.03.1989	R		15.02.1993	A
Grenada	13.04.1981	S						
Guatemala	14.05.1952	R		19.10.1987	R		19.10.1987	R
Guinea	11.07.1984	A		11.07.1984	A	20.12.1993	11.07.1984	A
Guinea-Bissau	21.02.1974	A	X	21.10.1986	A		21.10.1986	A
Guyana	22.07.1968	S		18.01.1988	A		18.01.1988	A
Haiti	11.04.1957	A						
Holy See	22.02.1951	R		21.11.1985	R	X	21.11.1985	R
Honduras	31.12.1965	A		16.02.1995	R		16.02.1995	R
Hungary	03.08.1954	R	X	12.04.1989	R		23.09.1991	12.04.1989
Iceland	10.08.1965	A		10.04.1987	R	X	10.04.1987	R
India	09.11.1950	R						
Indonesia	30.09.1958	A						
Iran (Islamic Rep. of)	20.02.1957	R	X					
Iraq	14.02.1956	A						
Ireland	27.09.1962	R						
Israel	06.07.1951	R	X					
Italy	17.12.1951	R		27.02.1986	R	X	27.02.1986	R
Jamaica	20.07.1964	S		29.07.1986	A		29.07.1986	A
Japan	21.04.1953	A						
Jordan	29.05.1951	A		01.05.1979	R		01.05.1979	R
Kazakhstan	05.05.1992	S		05.05.1992	S		05.05.1992	S
Kenya	20.09.1996	A						
Kiribati	05.01.1989	S						
Korea (Dem. People's Rep. of)	27.08.1957	A	X	09.03.1988	A			
Korea (Reublic of)	16.08.1966 ⁵	A	X	15.01.1982	R	X	15.01.1982	R
Kuwait	02.09.1967	A	X	17.01.1985	A		17.01.1985	A
Kyrgyzstan	18.09.1992	S		18.09.1992	S		18.09.1992	S
Lao People's Dem. Rep.	29.10.1956	A		18.11.1980	R		18.11.1980	R
Latvia	24.12.1991	A		24.12.1991	A		24.12.1991	A
Lebanon	10.04.1951	R		23.07.1997	A		23.07.1997	A
Lesotho	20.05.1968	S		20.05.1994	A		20.05.1994	A
Liberia	29.03.1954	A		30.06.1988	A		30.06.1988	A
Libyan Arab Jamahiriya	22.05.1956	A		07.06.1978	A		07.06.1978	A
Liechtenstein	21.09.1950	R		10.08.1989	R	X	10.08.1989	R
Lithuania	03.10.1996	A						
Luxembourg	01.07.1953	R		29.08.1989	R		12.05.1993	29.08.1989
Macedonia	01.09.1993	S	X	01.09.1993	S	X	01.09.1993	S
Madagascar	18.07.1963	S		08.05.1992	R		27.07.1993	08.05.1992
Malawi	05.01.1968	A		07.10.1991	A		07.10.1991	A
Malaysia	24.08.1962	A						
Maldives	18.06.1991	A		03.09.1991	A		03.09.1991	A
Mali	24.05.1965	A		08.02.1989	A		08.02.1989	A
Malta	22.08.1968	S		17.04.1989	A	X	17.04.1989	A

TABLE A5-1

COUNTRY	GENEVA CONVENTIONS		PROTOCOL I			PROTOCOL II				
	R/A/S	R/D	R/A/S	R/D	D90	R/A/S	R/A			
Mauritania	30.10.1962	S	14.03.1980	A		14.03.1980	A			
Mauritius	18.08.1970	S	22.03.1982	A		22.03.1982	A			
Mexico	29.10.1952	R	10.03.1983	A						
Micronesia	19.09.1995	A	19.09.1995	A		19.09.1995	A			
Moldova (Republic of)	24.05.1993	A	24.05.1993	A		24.05.1993	A			
Monaco	05.07.1950	R								
Mongolia	20.12.1958	A	06.12.1995	A	X	06.12.1995	A			
Morocco	26.07.1956	A								
Mozambique	14.03.1983	A	14.03.1983	A						
Myanmar	25.08.1992	A								
Namibia	22.08.1991 ⁶	S	17.06.1994	A		21.07.1994	17.06.1994	A		
Nepal	07.02.1964	A								
Netherlands	03.08.1954	R	26.06.1987	R	X	26.06.1987	26.06.1987	R		
New Zealand	02.05.1959	R	X	08.02.1988	R	X	08.02.1988	08.02.1988	R	
Nicaragua	17.12.1953	R								
Niger	21.04.1964	S	08.06.1979	R			08.06.1979	R		
Nigeria	20.06.1961	S	10.10.1988	A			10.10.1988	A		
Norway	03.08.1951	R	14.12.1981	R		14.12.1981	14.12.1981	R		
Oman	31.01.1974	A	29.03.1984	A	X		29.03.1984	A	X	
Pakistan	12.06.1951	R	X							
Palau	25.06.1996	A	25.06.1996	A			25.06.1996	A		
Panama	10.02.1956	A	18.09.1995	A			18.09.1995	A		
Papua New Guinea	26.05.1976	S								
Paraguay	23.10.1961	R	30.11.1990	A			30.11.1990	A		
Peru	15.02.1956	R	14.07.1989	R			14.07.1989	R		
Philippines	06.10.1952 ⁷	R					11.12.1986	A		
Poland	26.11.1954	R	X	23.10.1991	R	02.10.1992	23.10.1991	R		
Portugal	14.03.1961	R	X	27.05.1992	R	01.07.1994	27.05.1992	R		
Qatar	15.10.1975	A		05.04.1988	A	X	24.09.1991			
Romania	01.06.1954	R	X	21.06.1990	R		13.05.1995	21.06.1990	R	
Russian Federation	10.05.1954	R	X	29.09.1989	R	X	29.09.1989	29.09.1989	R	X
Rwanda	05.05.1964	S		19.11.1984	A		08.07.1993	19.11.1984	A	
Saint Kitts and Nevis	14.02.1986	S		14.02.1986	A			14.02.1986	A	
Saint Lucia	18.09.1981	S		07.10.1982	A			07.10.1982	A	
Saint Vincent & Grenadines	01.04.1981	A		08.04.1983	A			08.04.1983	A	
Samoa	23.08.1984	S		23.08.1984	A			23.08.1984	A	
San Marino	29.08.1953	A		05.04.1994	R			05.04.1994	R	
Sao Tome and Principe	21.05.1976	A		05.07.1996	A			05.07.1996	A	
Saudi Arabia	18.05.1963	A		21.08.1987	A	X				
Senegal	18.05.1963	S		07.05.1985	R			07.05.1985	R	
Seychelles	08.11.1984	A		08.11.1984	A		22.05.1992	08.11.1984	A	
Sierra Leone	10.06.1965	S		21.10.1986	A			21.10.1986	A	
Singapore	27.04.1973	A								
Slovakia	02.04.1993	S	X	02.04.1993	S		13.03.1995	02.04.1993	S	
Slovenia	26.03.1992	S		26.03.1992	S		26.03.1992	26.03.1992	S	
Solomon Islands	06.07.1981	S		19.09.1988	A			19.09.1988	A	
Somalia	12.07.1962	A								
South Africa	31.03.1952	A		21.11.1995	A			21.11.1995	A	
Spain	04.08.1952	R		21.04.1989	R	X	21.04.1989	21.04.1989	R	
Sri Lanka	28.02.1959 ⁸	R								
Sudan	23.09.1957	A								
Suriname	13.10.1976	S	X	16.12.1985	A			16.12.1985	A	
Swaziland	28.06.1973	A		02.11.1995	A			02.11.1995	A	
Sweden	28.12.1953	R		31.08.1979	R	X	31.08.1979	31.08.1979	R	
Switzerland	31.03.1950 ⁹	R		17.02.1982	R	X	17.02.1982	17.02.1982	R	

TABLE A5-1

COUNTRY	GENEVA CONVENTIONS		PROTOCOL I			PROTOCOL II	
	R/A/S	R/D	R/A/S	R/D	D90	R/A/S	R/D
Syrian Arab Republic	02.11.1953	R	14.11.1983	A X			
Tajikistan	13.01.1993	S	13.01.1993	S	10.09.1997	13.01.1993	S
Tanzania (United Rep.of)	12.12.1962	S	15.02.1983	A		15.02.1983	A
Thailand	29.12.1954	A					
The Former Y.R. Macedonia	01.09.1993	S	01.09.1993	S	01.09.1993	01.09.1993	S
Togo	06.01.1962	S	21.06.1984	R	21.11.1991	21.06.1984	R
Tonga	13.04.1978	S					
Trinidad and Tobago	24.09.1963 ¹⁰	A					
Tunisia	04.05.1957	A	09.08.1979	R		09.08.1979	R
Turkey	10.02.1954	R					
Turkmenistan	10.04.1992	S	10.04.1992	S		10.04.1992	S
Tuvalu	19.02.1981	S					
Uganda	18.05.1964	A	13.03.1991	A		13.03.1991	A
Ukraine	03.08.1954	R X	25.01.1990	R	25.01.1990	25.01.1990	R
United Arab Emirates	10.05.1972	A	09.03.1983	A X	06.03.1992	09.03.1983	A X
United Kingdom	23.09.1957	R X					
United States of America	02.08.1955	R X					
Uruguay	05.03.1969	R X	13.12.1985	A	17.07.1990	13.12.1985	A
Uzbekistan	08.10.1993	A	08.10.1993	A		08.10.1993	A
Vanuatu	27.10.1982	A	28.02.1985	A		28.02.1985	A
Venezuela	13.02.1956	R					
Viet Nam	28.06.1957	A X	19.10.1981	R			
Yemen	16.07.1970	A X	17.04.1990	R		17.04.1990	R
Yugoslavia	21.04.1950	R X	11.06.1979	R X		11.06.1979	R
Zambia	19.10.1966	A	04.05.1995	A		04.05.1995	A
Zimbabwe	07.03.1983	A	19.10.1992	A		19.10.1992	A

Palestine

On 21 June 1989, the Swiss Federal Department of Foreign Affairs received a letter from the Permanent Observer of Palestine to the United Nations Office at Geneva informing the Swiss Federal Council "that the Executive Committee of the Palestine Liberation Organization, entrusted with the functions of the Government of the State of Palestine by decision of the Palestine National Council, decided, on 4 May 1989, to adhere to the Four Geneva Conventions of 12 August 1949 and the two Protocols additional thereto".

On 13 September 1989, the Swiss Federal Council informed the States that it was not in a position to decide whether the letter constituted an instrument of accession, "due to the uncertainty within the international community as to the existence or non-existence of a State of Palestine".

¹ Djibouti's declaration of succession in respect of the First Convention was dated 26 January 1978.

² On accession to Protocol II, France made a communication concerning Protocol I.

³ Entry into force on 7 December 1978.

⁴ Entry into force on 7 December 1978.

⁵ Entry into force on 23 September 1977, the Republic of Korea having invoked Art. 62/61/141/157 common to the First, Second, Third and Fourth Conventions respectively (immediate effect).

⁶ An instrument of accession to the Geneva Conventions and their additional Protocols was deposited by the United Nations Council for Namibia on 18 October 1983. In an instrument deposited on 22 August 1991, Namibia declared its succession to the Geneva Conventions, which were previously applicable pursuant to South Africa's accession on 31 March 1952.

⁷ The First Geneva Convention was ratified on 7 March 1951.

⁸ Accession to the Fourth Geneva Convention on 23 February 1959 (Ceylon had signed only the First, Second, and Third Conventions).

⁹ Entry into force on 21 October 1950.

¹⁰ Accession to the First Geneva Convention on 17 May 1963.

Source: International Committee of the Red Cross, 15 October 1997. (A current listing of parties to the Geneva Conventions and to Additional Protocol I and II may be found at www.icrc.ch/icrcnews).