

UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: WILLIAM E LANDEAIR
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COMITÉ INTERNATIONAL DE LA CROIX-ROUGE

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MEMORANDUM

ON THE RULES OF INTERNATIONAL HUMANITARIAN LAW TO BE RESPECTED BY
THE STATES INVOLVED IN MILITARY HOSTILITIES

I. PROTECTION OF PERSONS NOT TAKING OR NO LONGER TAKING PART IN
THE HOSTILITIES

Persons not taking or no longer taking part in the hostilities, such as sick, wounded, shipwrecked persons, prisoners of war and civilians, must be respected and protected in all circumstances:

- All sick, wounded and shipwrecked persons must be collected and cared for, without any discrimination and in accordance with the relevant fundamental provisions of international humanitarian law, in particular the First, Second and Fourth Geneva Conventions;
- The sick, the wounded and the dead of the adverse Party must be registered and notified to the ICRC;
- Civilians must be respected and treated humanely; the following in particular are prohibited: attacks on their lives, physical integrity or personal dignity, deportation or forced displacements not justified by imperative reasons of security, hostage-taking, sentences and executions not respecting the rule of law and necessary judicial guarantees; civilians who do take a direct part in hostilities lose their protection against attacks only for the limited time of this direct participation;
- Civilian internees and detainees are entitled to the same fundamental guarantees and must be treated in accordance with the Fourth Geneva Convention; in particular, they must be registered and notified without delay to the ICRC; the ICRC's right of access to them and their right to receive ICRC visits under Article 143 of the Fourth Geneva Convention must be respected and guaranteed;
- Captured combatants must be given prisoner of war status and treated in accordance with the provisions of the Third Geneva Convention; in particular:
 - their capture and detention must be notified without delay to the Party on which they depend and to the ICRC's Central Tracing Agency;
 - they must be held in places where their security is assured and which offer satisfactory material conditions in terms of hygiene, food and quarters;
 - any form of torture and ill-treatment is strictly prohibited;

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- the ICRC's right to visit prisoners of war, under Article 126 of the Third Geneva Convention, must be respected and guaranteed;
 - should any doubt arise as to whether persons, having committed a belligerent act and having fallen into the hands of the enemy, belong to any of the categories entitled to prisoner of war status, such persons shall enjoy the protection of the Third Convention until such time as their status has been determined by a competent tribunal;
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- in the event of death, the place, date and cause of death, the place and date of burial and all necessary information to identify the grave sites must be specified in certificates or lists;
 - Any person captured in relation with the hostilities must be treated with humanity; he must be handed over to a higher military authority and, in particular, may be neither killed nor ill-treated.

II. CONDUCT OF MILITARY OPERATIONS

The Parties to an armed conflict are not entitled to an unlimited choice of methods and means of combat and must therefore observe a number of rules on the conduct of hostilities. These rules are laid down in the Hague Conventions of 1899 and 1907, and have been reaffirmed - and in some cases supplemented - in the 1977 Protocol I Additional to the Geneva Conventions.

The following general rules have become part of customary law and, as such, are recognised as binding on any Party to an armed conflict:

- A clear distinction must be drawn in all circumstances between combatants and civilians on the one hand, and between military objectives and civilian objects on the other;
- It is forbidden to attack civilian persons or objects or to launch attacks of a nature to strike military objectives and civilian persons or objects in an indiscriminate manner. Indiscriminate attacks are those which are not directed at a specific military objective, those which employ a method or means of combat which cannot be directed at a specific military objective and those which employ a method or means of combat the effects of which cannot be limited as required by international humanitarian law;
- Acts and threats of violence aimed at spreading terror among the civilian population are prohibited;
- Attacks on military objectives which may be expected to cause incidental loss of life or injury among the civilian population or damage to civilian objects that would be excessive in relation to the concrete and direct military advantage anticipated are also prohibited;
- All feasible precautions must be taken to avoid, and in any event to minimise, incidental loss of civilian life, injury to civilians and damage to civilian objects;
- Each Party to the conflict must also take feasible precautions to protect the civilian population and civilian objects under its control against the effects of attacks:

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- It is prohibited to use civilians and combatants *hors de combat* to shield military operations;
 - Works and installations containing dangerous forces and other installations located at or in their vicinity must not be attacked, if such an attack causes the release of dangerous forces and consequent disproportionate collateral losses among the civilian population;
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- Cultural property and places of worship may not be made the object of attack, unless they have become military objectives;
 - It is prohibited to attack or destroy objects indispensable to the survival of the civilian population, such as foodstuffs, crops, livestock and drinking water installations and supplies, or to render them useless with the purpose of denying their sustenance value to the civilian population;
 - Due regard must be had for the general requirement to respect the environment, in particular that of other States and of areas outside national jurisdiction. Destruction of the environment may not be used as a weapon. It is prohibited to seek to inflict widespread, long-term and severe damage on the environment;
 - It is prohibited to have recourse to means and methods of warfare which pointlessly aggravate the suffering of combatants *hors de combat* or which make their death inevitable;
 - It is prohibited to kill, injure or capture an adversary by resort to perfidy. Acts inviting the confidence of an adversary to lead him to believe that he is entitled to, or is obliged to accord, protection under the rules of international law applicable in armed conflict constitute perfidy;
 - Reprisals against protected persons and objects are prohibited;
 - It is prohibited to order that there shall be no survivors and to make persons *hors de combat* the object of attack;
 - The following rules apply to the use of certain weapons in the event of armed conflict:
 - It is prohibited to use asphyxiating, poisonous or other gases and to use chemical or biological weapons (1925 Geneva Protocol);
 - It is prohibited to develop, produce and stockpile bacteriological and toxin weapons (1972 Convention);
 - It is prohibited to use bullets which expand or flatten easily in the human body (1899 Hague Declaration), or certain explosive projectiles (1868 St. Petersburg Declaration);
 - The use of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects is prohibited or restricted.
 - The principles and rules of international humanitarian law - in particular the

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or unnecessary suffering - apply to the use of nuclear weapons. As the International Court of Justice has stated in its Advisory Opinion of 8 July 1996, the use of nuclear weapons would generally be contrary to the principles and rules of international humanitarian law.

III. PREVENTION OF PERSONS BECOMING UNACCOUNTED FOR AND CLARIFICATION OF THE FATE OF THOSE WHO HAVE BECOME UNACCOUNTED FOR

Armed forces and auxiliary personnel must have means of personal identification;

An Information Bureau and a Grave Registration Service must be set up;

Human remains must be properly handled without adverse distinction, including the collection of the human remains and of information on the human remains in order to allow (future) identification;

Inquiries about persons unaccounted for due to the conflict must be responded to. Information on these persons must be transmitted to the appropriate authorities, through the intermediary of the Protecting Powers and likewise of the ICRC Central Tracing Agency.

IV. RESPECT FOR THE RED CROSS AND RED CRESCENT EMBLEMS AND FOR MEDICAL ACTIVITIES

Medical and religious personnel, hospitals, ambulances and other units and means of medical transport must be protected, respected and facilitated. The emblem of the red cross and the emblem of the red crescent, the symbols of that protection, must be respected in all circumstances:

- The freedom of movement necessary for all Red Cross/Red Crescent personnel and medical staff providing assistance for the civilian population and persons *hors de combat* must be ensured and their safety guaranteed;
- Any misuse of the red cross or red crescent emblem is prohibited and must be punished.

The Authorities must ensure that the use of the emblem is made according to the rules of international humanitarian law and take measures to ensure its respect.

V. RELIEF OPERATIONS

The parties to the conflict have the obligation to ensure the supply of items indispensable to the survival of the civilian population of the territory controlled by them and to allow the passage of essential relief supplies intended for the civilian population:

- When the civilian population lacks supplies, relief operations that are exclusively humanitarian and impartial must be authorised, facilitated and respected.

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VI. DISSEMINATION OF INTERNATIONAL HUMANITARIAN LAW

It is extremely important for the combatants involved in the military operations to be aware of their obligations under international humanitarian law. Proper instructions must be issued to this effect. The teaching of the law to the combatants is, moreover, an obligation expressly stipulated by the Geneva Conventions.

VII. ROLE OF THE ICRC

The ICRC, whose primary mandate is to ensure the faithful application of international humanitarian law and to protect and assist victims of armed conflicts, will be for its part ready to perform the tasks entrusted to it by the Geneva Conventions of 12 August 1949 and by the Statutes of the International Red Cross and Red Crescent Movement. As a specifically neutral and independent institution, the ICRC may also act as a neutral intermediary.

Therefore, the ICRC will request the Parties to allow its delegates to have access to all places where protected persons may be and, should the case arise, to be able to visit all prisoners of war and protected internees or detainees in their power.

With the agreement of the Parties concerned, the ICRC will be also prepared to carry out humanitarian activities in order to provide protection and assistance to the victims - whether civilian or not - of the conflict.

In particular, the ICRC will be prepared:

- To deploy its medical teams to assist wounded civilians and combatants.
- To take any action required to ensure the protection of the civilian population and to provide assistance to people affected by the conflict.
- To come to the aid of refugees and internally displaced persons, as far as its means permit.
- To make arrangements for the exchange of family messages.
- To visit persons protected by the Third or the Fourth Geneva Convention deprived of their liberty.

Geneva, 12 March 2003

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