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A Good Treaty

Thomas E. McMahon

A GOOD TREATY

by

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INTRODUCTION

I am not a military expert. My army career spanned a total of twenty-two months from the summer of 1967 to the summer of 1969. The day I was given my honorable discharge at an out-processing unit at Ft. Lewis in Seattle was one of the happiest of my life. I left as a Spec 4, one grade above Private First Class. Nor do I know much about the art of diplomacy and its attendant skills of treaty negotiation and interpretation. In fact, ever since a day in the dry season of 1968 when I heard on Armed Forces Radio Saigon that American and Vietnamese diplomats in Paris were arguing, and would continue to do so for days, about the shape of the table at which they would negotiate the end of the Vietnam War, I have never had much regard for the profession. People were dying at a pretty good clip in Southeast Asia in those days. The diplomats finally decided to sit and talk at a round table.

But military experts and diplomats do not fight wars. PFC's and Spec 4's do. And it is war that is the subject of the 1977 Geneva Protocols on the Protection of Victims of Armed Conflicts. I offer my comments on Protocol I, which relates to international armed conflicts, from the point of view of a PFC in the infantry in Vietnam. It is appropriate for a Vietnam Veteran to comment on this Protocol. The sixteen-year American involvement in the conflict in Indochina,[1] its unconventional character, tragic ways and means and still more tragic outcome are the dominant war experience on which the Protocol rests.

Time and space do not permit me to comment on the many worthy provisions within Protocol I, so I have chosen two articles in the Protocol which strike me as important in the light of my experience: I) Article 26 — Medical Aircraft in Contact or Similar Zones, and II) Article 77 — Protection of Children.

I. ARTICLE 26 — MEDICAL AIRCRAFT IN CONTACT OR SIMILAR ZONES

On February 28, 1968, in Binh Chanh District some 15 miles southwest of Saigon, a young GI named Lee Stafford was shot through the chest by one of a small group of Viet Cong guerrillas well concealed in a cluster of nipa palm trees closeby. A call went out for a medical evacuation helicopter to pick

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[1]The first American fatality in the war occurred on July 8, 1959. The last fatalities occurred on May 15, 1975 in connection with the Mayaguez incident. American combat ground forces engaged the enemy over an eight year period, from March, 1965 to January, 1973.

up the seriously wounded soldier. Some thirty minutes elapsed before the medivac helicopter was able to reach the rice paddy where Stafford lay. As the olive-drab helicopter with its red cross on a white background slowly descended to the surface of the paddy water, four GI's leaned into the wind and struggled with the litter with Stafford on it to reach the helicopter. Other GI's fired into the treeline to suppress the Viet Cong's fire. In spite of these efforts, the helicopter pilot was shot through the neck by automatic weapons fire from the treeline. Stafford was loaded aboard and the helicopter lifted away, piloted by the helicopter's other aviator. Both Stafford and the pilot survived. They survived because of the courage and professionalism of American servicemen on the ground and medical personnel on board the helicopter and back at the Third Field Hospital at Long Binh, *not because of the operation of humanitarian law.*

The Viet Cong's actions that day, despite the fact that the medivac helicopter carried only light weapons for defensive purposes, offered no threat to the lives and safety of the Viet Cong in the treeline, and sought only to save the life of a soldier who was clearly out of combat, did not violate the law of war.

The 1949 Geneva Conventions provide protection for medical evacuation aircraft only if the parties to the conflict expressly agree upon such protection. A separate agreement is required for each and every medical evacuation mission.[2] No such agreement was made, nor could it have been made in the Stafford situation. To require, as the First Convention does, that an agreement between adversaries speaking different languages be reached in a matter of minutes, involving detailed information about the aircraft's flight and requiring complex communications up the chain of command on one side and down the chain of command on the other to the unit on the ground which, at least in the Stafford situation, didn't have a radio, is absurd.

An average of 109 medical evacuation missions were flown every twenty-four hours during the Vietnam War. Medivac helicopter losses to hostile fire were 3.3 times as great as all other kinds of helicopter missions during the war.[3] A hit from hostile ground fire was reported every 311 trips, which means that hostile fire was directed at medical evacuation helicopters far more frequently. It was the deterrent or delaying effect this hostile fire had upon rescue operations that lead to the deaths of many American servicemen.

A change is needed. Article 26, Protocol I, characterizes the place where

[2]The First Geneva Convention states: "Medical aircraft, that is to say, aircraft exclusively employed for the removal of wounded and sick and for the transport of medical personnel and equipment, shall not be attacked, but shall be respected by the belligerents, while flying at heights, times and on routes specifically agreed upon between the belligerents concerned. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, August 12, 1949, T.I.A.S. No. 3362 [hereinafter cited as Geneva Convention].

[3]P. DORLAND & J. NANNEY, DUST OFF 117 (1982).

Stafford lay as a "contact zone." It defines a contact zone as "any area on land where the forward elements of opposing forces are in contact with each other, especially where they are exposed to direct fire from the ground."[4] Contact zones are the places where wars are fought. They are the places where soldiers are wounded. They are the places where soldiers die. From the infantryman's point of view, they are the key place where legal protection for medical aircraft is needed.

Contact zones are also a most sensitive area from the adversary's point of view. Fast moving, approaching enemy aircraft can be a harmless medivac helicopter or a lethal helicopter gunship.

Article 26 accommodates these interests. Reflecting the adversary's interest, it continues to require an agreement between the parties to make protection for medical aircraft in contact zones "fully effective." It reinforces this requirement by providing that in the absence of such an agreement, medical aircraft operate at their own risk. But, in the interest of the wounded, dying soldier, Article 26 requires, for the first time, that in the absence of an agreement, medical aircraft in contact zones must nevertheless be respected "after they have been recognized as such."

This is an important improvement in the law. Most casualties occur in contact zones, and in most situations, an agreement cannot be reached and communicated to the unit on the ground in time to save the wounded soldier. Therefore, the only practical way to extend effective legal protection to medical aircraft in contact zones is to impose a duty to respect the aircraft on those *in* the contact zone — PFC's, Spec 4's and guerrillas.

Obviously, the degree to which this new legal protection will increase actual protection will hinge on a number of factors, not the least of which is the adversary's respect for or disrespect for the law. Article 83 requires the High Contracting parties to instruct their soldiers in the Conventions and this Protocol. The instruction need not be complicated: "Don't shoot at medivac helicopters. It makes neither moral nor military sense. You'll know them when you see the red cross on the white background."

Articles 85, 86 and 87 require commanders to prevent and suppress breaches. Article 6 of Annex I provides for a distinctive flashing blue light to be used to signal the identity of medical aircraft. All feasible measures should be taken to increase visual identity of medical aircraft.

These matters are important. They will mean the difference between life and death for some of America's sons in the next war.

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[4]Protocols Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977, 16 I.L.M. 1391 [hereinafter cited as Protocol I].

II. ARTICLE 77 — PROTECTION OF CHILDREN

"The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces."[5]

On the evening of September 18, 1984, a warm summer night in Washington, Jeffery Charles Davis walked along the mall in Washington toward the Lincoln Memorial. Davis was a fifteen-year veteran of the District's police force, married, the father of two children and a combat veteran of the Vietnam War. Before reaching the Lincoln Memorial, in a clump of trees about 100 yards from the Vietnam Veterans Memorial where the names of the 58,022 Americans who died in the war are inscribed, Davis took out his .38 caliber service revolver and shot himself through the head.

It is fair to conclude, given the place Davis chose to end his life, that he too was a casualty of the Vietnam War. It was reported that some days before he took his life, he travelled back home to Port Arthur, Texas to visit his parents. He spoke of Vietnam and in particular, of the fact that he had killed a child there, a child he learned too late was unarmed.

The Viet Cong used children as combatants. These are the words of Truong Mealy, a Viet Cong agent in the Mekong Delta between 1954 and 1962: "Children were trained by the Communists to throw grenades, not only for the terror factor, but so the government or American soldiers would have to shoot them. Then the Americans feel very ashamed. And they blame themselves and call their soldiers 'war criminals.' What happens to the psychology of any solider, especially those who are not professionals, when a child throws a grenade and kills your friends once, twice . . . . you start suspecting all kids. It creates a very paranoid mentality for the visiting soldiers. They don't know which children are friendly. They start disliking and hating everybody. You believe that you can't make friends with people in the villages because you think that they are all trying to kill you."

"This is where the Communists are so smart and very successful. Their most powerful weapon is psychological warfare."[6]

The youngest Viet Cong guerrilla we captured was about sixteen. I was shocked when I saw his face. He looked like he belonged in a classroom studying Algebra I. Instead, moments before, he had been an AK-47 carrying killer. America's soldiers weren't much older — forty-four percent of all GI's killed in Vietnam had not reached their twenty-first birthday on the day they died.[7]

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[5] *Id.* at Art. 77, para. 2.

[6] A. SANTOLI, TO BEAR ANY BURDEN, THE VIETNAM WAR AND ITS AFTERMATH IN THE WORD OF AMERICANS AND SOUTHEAST ASIANS 62 (1985).

[7] VIETNAM VETERANS MEMORIAL FUND, VIETNAM VETERANS MEMORIAL DIRECTORY (1982).

The most extreme example of the use of children as combatants in recent memory occurred in Cambodia in 1975. Dith Prann of *Killing Fields* fame alleges that up to half of the rifle-carrying Khmer Rouge soldiers who seized control of Phonm Penh in April of that year were under the age of fifteen. The most recent example occurred in 1984 when Ayatollah Khomeini's Revolutionary Guards recruited thousands of children, many as young as twelve, to fight against the Iraqis.[8] The basij, as these youthful martyrs were known, were promised eternal paradise if they died in the war defending Iran's fundamentalist revolution against the Iraqi infidels. But these teenage martyrs had to go to hell first. Much of the fighting took place in the Hawizeh marshes, swamps fed by the excess waters of the Tigris and Euphrates Rivers. No Garden of Eden for these children. It is mindful of the low shallow sea of the Mekong Delta where we fought years ago. When firefights break out in this terrain, soldiers sometimes drown before they succumb to their wounds. It is brutal and pathetic.

A reading of our nation's military history should temper any self-righteousness we might feel about the use of children as combatants. In our Civil War, both sides made liberal use of males in their early to mid-teens.[9] In our War for Independence, the British redcoats captured a thirteen-year old American freedom fighter in the mountains of North Carolina. His name was Andrew Jackson.[10] Old Hickory would become our nation's seventh President in 1829. But we are not living in the Eighteenth Century, we are nearing the Twenty-first.

Children benefit from the general protections of the Fourth Geneva Convention extended to the civilian population living in countries at war, as well as more specific protections such as the right to care, maintenance and education from an adverse party in control of the children.[11] The 1907 Hague Regulations prohibit the use of children by an adverse party in its military operations; but there is no provision in international humanitarian law protecting children from the excesses of their own governments when they wage war, except for Article 77.[12]

Paragraph 2 of Article 77 is written in a way that makes compliance quite attainable. The minimum age of fifteen is low. And, although there is a clear prohibition against recruitment of children under fifteen years of age, acceptance of volunteers under fifteen would not be a violation provided all feasible measures were taken to shield such children from any direct role in the hos-

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[8]The Wash. Post, March 20, 1984, at 24, col. 4.

[9]E. MURDOCK, ONE MILLION MEN, THE CIVIL WAR DRAFT IN THE NORTH (1971).

[10]200 YEARS – A BICENTENNIAL HISTORY OF THE UNITED STATES 216 (J. Newman ed. 1973).

[11]Fourth Geneva Convention, Articles 24, 50, 76(5), 94.

[12]For a general discussion of Article 77, see M. BOTHE, K. PARTSCH & W. SOLF, NEW RULES FOR VICTIMS OF ARMED CONFLICTS 473-79 (1982).

tilities.[13]

In light of our sad experience in Vietnam, and the cruel exploitation of children in war that has come to light since Vietnam, I believe that Article 77 offers a compelling reason for the United States to ratify Protocol I. After ratification, American servicemen and women should be instructed that the use of children under the age of fifteen in combat is a violation of international humanitarian law. Nevertheless, if an adversary persists in using children as combatants, American servicemen must take appropriate action. They are not to feel guilty or ashamed for taking such action. The guilt and shame lie with the adversary.

Finally, international humanitarian law has been for too long an obscure and esoteric subject. It need not be. While its language may be complex, its strictures are simple: Don't shoot at medivac helicopters. Don't use children under fifteen in war, etc. It is time that the common people of war, its combatants and those unfortunate civilians who find themselves in places of armed conflict, take up the law. Read it. Understand it. Demand that it be kept current with war's changing technologies, weapons, tactics and practices. And demand that it be observed.

[13]Article 4 of Protocol II (relating to non-international armed conflict) is more restrictive: "Children who have not attained the age of 15 years shall neither be recruited in the armed forces or groups, nor allowed to take part in hostilities." Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, June 10, 1977, 16 I.L.M. 1442 (1977).

APPENDIX

This appendix sets forth relevant provisions of the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I). For the complete text of Protocol I, please refer to 16 I.L.M. 1391.

PROTOCOL I

PART I — GENERAL PROVISIONS

Article 1 — General principles and scope of application

1. The High Contracting Parties undertake to respect and to ensure respect for this Protocol in all circumstances.
2. In cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.
3. This Protocol, which supplements the Geneva Conventions of 12 August 1949 for the protection of war victims, shall apply in the situations referred to in Article 2 common to those Conventions.
4. The situations referred to in the preceding paragraph include armed conflicts in which people are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

Article 2 — Definitions

For the purposes of this Protocol:

(a) "First Convention," "Second Convention," "Third Convention" and "Fourth Convention" mean, respectively, the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949; the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949; the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949; the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949; "the Conventions" means the four Geneva Conventions of 12 August 1949 for the protection of war victims;

(b) "rules of international law applicable in armed conflict" means the rules applicable in armed conflict set forth in international agreements to which the Parties to the conflict are Parties and the generally recognized principles and rules of international law which are applicable to armed conflict;

(c) "Protecting Power" means a neutral or other State not a Party to the conflict which has been designated by a Party to the conflict and accepted by the adverse Party and has agreed to carry out the functions assigned to a Protecting Power under the Conventions and this Protocol;

(d) "substitute" means an organization acting in place of a Protecting Power in accordance with Article 5.

Article 3 — Beginning and end of application

Without prejudice to the provisions which are applicable at all times:

(a) the Conventions and this Protocol shall apply from the beginning of any situation referred to in Article 1 of this Protocol;

(b) the application of the Conventions and of this Protocol shall cease, in the territory of Parties to the conflict, on the general close of military operations and, in the case of occupied territories, on the termination of the occupation, except, in either circumstance, for those persons whose final release, repatriation or re-establishment takes place thereafter. These persons shall continue to benefit from the relevant provisions of the Conventions and of this Protocol until their final release, repatriation or re-establishment.

Article 4 — Legal status of the Parties to the conflict

The application of the Conventions and of this Protocol, as well as the conclusion of the agreements provided for therein, shall not affect the legal status of the Parties to the conflict. Neither the occupation of a territory nor the application of the Conventions and this Protocol shall affect the legal status of the territory in question.

Article 5 — Appointment of Protecting Powers and of their substitute

1. It is the duty of the Parties to a conflict from the beginning of that conflict to secure the supervision and implementation of the Conventions and of this Protocol by the application of the system of Protecting Powers, including *inter alia* the designation and acceptance of those Powers, in accordance with the following paragraphs. Protecting Powers shall have the duty of safeguarding the interests of the Parties to the conflict.

2. From the beginning of a situation referred to in Article 1, each Party to the conflict shall without delay designate a Protecting Power for the purpose of applying the Conventions and this Protocol and shall, likewise without delay and for the same purpose, permit the activities of a Protecting Power which has been accepted by it as such after designation by the adverse Party.

3. If a Protecting Power has not been designated or accepted from the beginning of a situation referred to in Article 1, the International Committee of the Red Cross, without prejudice to the right of any other impartial humanitarian organization to do likewise, shall offer its good offices to the Parties to the conflict with a view to the designation without delay of a Protecting Power to which the Parties to the conflict consent. For that purpose it may, *inter alia,* ask each Party to provide it with a list of at least five States which that Party considers acceptable to act as Protecting Power on its behalf in relation to an adverse Party, and ask each adverse Party to provide a list of at least five States which it would accept as the Protecting Power of the first Party; these lists shall be communicated to the Committee within two weeks after the receipt of the request; it shall compare them and seek the agreement of any proposed State named on both lists.

4. If, despite the foregoing, there is no Protecting Power, the Parties to the conflict shall accept without delay an offer which may be made by the International Committee of the Red Cross or by any other organization which offers all guarantees of impartiality and efficacy, after due consultations with the said Parties and taking into account the result of these consultations, to act as a substitute. The functioning of such a substitute is subject to the consent of the Parties to the conflict; every effort shall be made by the Parties to the conflict to facilitate the operations of the substitute in the performance of its tasks under the Conventions and this Protocol.

5. In accordance with Article 4, the designation and acceptance of Protecting Powers for the purpose of applying the Conventions and this Protocol shall not affect the legal status of the Parties to the conflict or of any territory, including occupied territory.

6. The maintenance of diplomatic relations between Parties to the conflict or the entrusting of the protection of a Party's interests and those of its nationals to a third State in accordance with the rules of international law relating to diplomatic relations is no obstacle to the designation of Protecting Powers for the purpose of applying the Conventions and this Protocol.

7. Any subsequent mention in this Protocol of a Protecting Power includes also a substitute.

Article 6 — Qualified persons

1. The High Contracting Parties shall, also in peacetime, endeavor, with the assistance of the national Red Cross (Red Crescent, Red Lion and Sun) Societies, to train qualified personnel to facilitate the application of the Conventions and of this Protocol, and in particular the activities of the Protecting Powers.
2. The recruitment and training of such personnel are within domestic jurisdiction.
3. The International Committee of the Red Cross shall hold at the disposal of the High Contracting Parties the lists of persons so trained which the High Contracting Parties may have established and may have transmitted to it for that purpose.
4. The conditions governing the employment of such personnel outside the national territory shall, in each case, be the subject of special agreements between the Parties concerned.

Article 7 — Meetings

The depository of this Protocol shall convene a meeting of the High Contracting Parties, at the request of one or more of the said Parties and upon the approval of the majority of the said Parties, to consider general problems concerning the application of the Conventions and of the Protocol.

SECTION II — MEDICAL TRANSPORTATION

Article 21 — Medical vehicles

Medical vehicles shall be respected and protected in the same way as mobile medical units under the Conventions and this Protocol.

Article 22 — Hospitals ships and coastal rescue craft

1. The provisions of the Conventions relating to:
   (a) vessels described in Articles 22, 24, 25 and 27 of the Second Convention,
   (b) their lifeboats and small craft,
   (c) their personnel and crews, and
   (d) the wounded, sick and shipwrecked on board,

   shall also apply where these vessels carry civilian wounded, sick and shipwrecked who do not belong to any of the categories mentioned in Article 13 of the Second Convention. Such civilians shall not, however, be subjected to surrender to any Party which is not their own, or to capture at sea. If they find themselves in the power of a Par-

ty to the conflict other than their own they shall be covered by the Fourth Convention and by this Protocol.

2. The protection provided by the Conventions to vessels described in Article 25 of the Second Convention shall extend to hospital ships made available for humanitarian purposes to a Party to the conflict:

   (a) by a neutral or other State which is not a Party to that conflict; or

   (b) by an impartial international humanitarian organization,

   provided that, in either case, the requirements set out in that Article are complied with.

3. Small craft described in Article 27 of the Second Convention shall be protected even if the notification envisaged by that Article has not been made. The Parties to the conflict are, nevertheless, invited to inform each other of any details of such craft which will facilitate their identification and recognition.

Article 23 — Other medical ships and craft

1. Medical ships and craft other than those referred to in Article 22 of this Protocol and Article 38 of the Second Convention shall, whether at sea or in other waters, be respected and protected in the same way as mobile medical units under the Conventions and this Protocol. Since this protection can only be effective if they can be identified and recognized as medical ships or craft, such vessels should be marked with the distinctive emblem and as far as possible comply with the second paragraph of Article 43 of the Second Convention.

2. The ships and craft referred to in paragraph 1 shall remain subject to the laws of war. Any warship on the surface able immediately to enforce its command may order them to stop, order them off, or make them take a certain course, and they shall obey every such command. Such ships and craft may not in any other way be diverted from their medical mission so long as they are needed for the wounded, sick and shipwrecked on board.

3. The protection provided in paragraph 1 shall cease only under the conditions set out in Articles 34 and 35 of the Second Convention. A clear refusal to obey a command given in accordance with paragraph 2 shall be an act harmful to the enemy under Article 34 of the Second Convention.

4. A Party to the conflict may notify any adverse Party as far in advance of sailing as possible of the name, description, expected time of sailing, course and estimated speed of the medical ship or craft, particularly in the case of ships of over 2,000 gross tons, and may provide any other

information which would facilitate identification and recognition. The adverse Party shall acknowledge receipt of such information.

5. The provisions of Article 37 of the Second Convention shall apply to medical and religious personnel in such ships and craft.

6. The provisions of the Second Convention shall apply to the wounded, sick and shipwrecked belonging to the categories referred to in Article 13 of the Second Convention and in Article 44 of this Protocol who may be on board such medical ships and craft. Wounded, sick and shipwrecked civilians who do not belong to any of the categories mentioned in Article 13 of the Second Convention shall not be subject, at sea, either to surrender to any Party which is not their own, or to removal from such ships or craft; if they find themselves in the power of a Party to the conflict other than their own, they shall be covered by the Fourth Convention and by this Protocol.

Article 24 — Protection of medical aircraft

Medical aircraft shall be respected and protected, subject to the provisions of this Part.

Article 25 — Medical aircraft in areas not controlled by an adverse Party

In and over land areas physically controlled by friendly forces, or in and over sea areas not physically controlled by an adverse Party, the respect and protection of medical aircraft of a Party to the conflict is not dependent on any agreement with an adverse Party. For greater safety, however, a Party to the conflict operating its medical aircraft in these areas may notify the adverse Party, as provided in Article 29, in particular when such aircraft are making flights bringing them within range of surface-to-air weapons systems of the adverse Party.

Article 26 — Medical aircraft in contact or similar zones

1. In and over those parts of the contact zone which are physically controlled by friendly forces and in and over those areas the physical control of which is not clearly established, protection for medical aircraft can be fully effective only by prior agreement between the competent military authorities of the Parties to the conflict, as provided for in Article 29. Although, in the absence of such an agreement, medical aircraft operate at their own risk, they shall nevertheless be respected after they have been recognized as such.

2. "Contact zone" means any area on land where the forward elements of opposing forces are in contact with each other, especially where they are exposed to direct fire from the ground.

Article 27 — Medical aircraft in areas controlled by an adverse Party

1. The medical aircraft of a Party to the conflict shall continue to be protected while flying over land or sea areas physically controlled by an adverse Party, provided that prior agreement to such flights has been obtained from the competent authority of that adverse Party.

2. A medical aircraft which flies over an area physically controlled by an adverse Party without, or in deviation from the terms of, an agreement provided for in paragraph 1, either through navigational error or because of an emergency affecting the safety of the flight, shall make every effort to identify itself and to inform the adverse Party of the circumstances. As soon as such medical aircraft has been recognized by the adverse Party, that Party shall make all reasonable efforts to give the order to land or to alight on water, referred to in Article 30, paragraph 1, or to take other measures to safeguard its own interests, and, in either case, to allow the aircraft time for compliance, before resorting to an attack against the aircraft.

Article 28 — Restrictions on operations of medical aircraft

1. The Parties to the conflict are prohibited from using their medical aircraft to attempt to acquire any military advantage over an adverse Party. The presence of medical aircraft shall not be used in an attempt to render military objectives immune from attack.

2. Medical aircraft shall not be used to collect or transmit intelligence data and shall not carry any equipment intended for such purposes. They are prohibited from carrying any persons or cargo not included within the definition in Article 8, sub-paragraph (*f*). The carrying on board of the personal effects of the occupants or of equipment intended solely to facilitate navigation, communication or identification shall not be considered as prohibited.

3. Medical aircraft shall not carry any armament except small arms and ammunition taken from the wounded, sick and shipwrecked on board and not yet handed to the proper service, and such light individual weapons as may be necessary to enable the medical personnel on board to defend themselves and the wounded, sick and shipwrecked in their charge.

4. While carrying out the flights referred to in Articles 26 and 27, medical aircraft shall not, except by prior agreement with the adverse Party, be used to search for the wounded, sick and shipwrecked.

Article 29 — Notifications and agreements concerning medical aircraft

1. Notification under Article 25, or requests for prior agreement under

Articles 26, 27, 28 (paragraph 4), or 31 shall state the proposed number of medical aircraft, their flight plans and means of identification, and shall be understood to mean that every flight will be carried out in compliance with Article 28.

2. A Party which receives a notification given under Article 25 shall at once acknowledge receipt of such notification.

3. A Party which receives a request for prior agreement under Articles 26, 27, 28 (paragraph 4), or 31 shall, as rapidly as possible, notify the requesting Party:
   (a) that the request is agreed to;
   (b) that the request is denied; or
   (c) of reasonable alternative proposals to the request. It may also propose a prohibition or restriction of other flights in the area during the time involved. If the Party which submitted the request accepts the alternative proposals, it shall notify the other Party of such acceptance.

4. The Parties shall take the necessary measures to ensure that notifications and agreements can be made rapidly.

5. The Parties shall also take the necessary measures to disseminate rapidly the substance of any such notifications and agreements to the military units concerned and shall instruct those units regarding the means of identification that will be used by the medical aircraft in question.

Article 30 — Landing and inspection of medical aircraft

1. Medical aircraft flying over areas which are physically controlled by an adverse Party, or over areas the physical control of which is not clearly established, may be ordered to land or to alight on water, as appropriate, to permit inspection in accordance with the following paragraphs. Medical aircraft shall obey any such order.

2. If such an aircraft lands or alights on water, whether ordered to do so or for other reasons, it may be subjected to inspection solely to determine the matters referred to in paragraphs 3 and 4. Any such inspection shall be commenced without delay and shall be conducted expeditiously. The inspecting Party shall not require the wounded and sick to be removed from the aircraft unless their removal is essential for the inspection. That Party shall in any event ensure that the condition of the wounded and sick is not adversely affected by the inspection or by the removal.

3. If the inspection disclosed that the aircraft:
   (a) is a medical aircraft within the meaning of Article 8, sub-paragraph (*j*),

(b) is not in violation of the conditions prescribed in Article 28, and

(c) has not flown without or in breach of a prior agreement where such agreement is required,

the aircraft and those of its occupants who belong to the adverse Party or to a neutral or other State not a Party to the conflict shall be authorized to continue the flight without delay.

4. If the inspection discloses that the aircraft:

(a) is not a medical aircraft within the meaning of Article 8, subparagraph (*j*),

(b) is in violation of the conditions prescribed in Article 28, or

(c) has flown without or in breach of a prior agreement where such agreement is required,

the aircraft may be seized. Its occupants shall be treated in conformity with the relevant provisions of the Conventions and of this Protocol. Any aircraft seized which had been assigned as a permanent medical aircraft may be used thereafter only as a medical aircraft.

Article 31 — Neutral or other States not Parties to the conflict

1. Except by prior agreement, medical aircraft shall not fly over or land in the territory of a neutral or other State not a Party to the conflict. However, with such an agreement, they shall be respected throughout their flight and also for the duration of any calls in the territory. Nevertheless they shall obey any summons to land or to alight on water, as appropriate.

2. Should a medical aircraft, in the absence of an agreement or in deviation from the terms of an agreement, fly over the territory of a neutral or other State not a Party to the conflict, either through navigational error or because of an emergency affecting the safety of the flight, it shall make every effort to give notice of the flight and to identify itself. As soon as such medical aircraft is recognized, that State shall make all reasonable efforts to give the order to land or to alight on water referred to in Article 30, paragraph 1, or to take other measures to safeguard its own interests, and, in either case, to allow the aircraft time for compliance, before resorting to an attack against the aircraft.

3. If a medical aircraft, either by agreement or in the circumstances mentioned in paragraph 2, lands or alights on water in the territory of a neutral or other State not Party to the conflict, whether ordered to do so or for other reasons, the aircraft shall be subject to inspection for the purposes of determining whether it is in fact a medical aircraft. The in-

spection shall be commenced without delay and shall be conducted expeditiously. The inspecting Party shall not require the wounded and sick of the Party operating the aircraft to be removed from it unless their removal is essential for the inspection. The inspecting Party shall in any event ensure that the condition of the wounded and sick is not adversely affected by the inspection or the removal. If the inspection discloses that the aircraft is in fact a medical aircraft, the aircraft with its occupants, other than those who must be detained in accordance with the rules of international law applicable in armed conflict, shall be allowed to resume its flight, and reasonable facilities shall be given for the continuation of the flight. If the inspection discloses that the aircraft is not a medical aircraft, it shall be seized and the occupants treated in accordance with paragraph 4.

4. The wounded, sick and shipwrecked disembarked, otherwise than temporarily, from a medical aircraft with the consent of the local authorities in the territory of a neutral or other State not a Party to the conflict shall, unless agreed otherwise between that State and the Parties to the conflict, be detained by that State where so required by the rules of international law applicable in armed conflict, in such a manner that they cannot again take part in the hostilities. The cost of hospital treatment and internment shall be borne by the State to which those persons belong.

5. Neutral or other States not Parties to the conflict shall apply any conditions and restrictions on the passage of medical aircraft over, or on the landing of medical aircraft in, their territory equally to all Parties to the conflict.

PART III — METHODS AND MEANS OF WARFARE COMBATANT AND PRISONER-OF-WAR STATUS

SECTION I — METHODS AND MEANS OF WARFARE

Article 35 — Basic rules

1. In any armed conflict, the right of the Parties to the conflict to choose methods or means of warfare is not unlimited.

2. It is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering.

3. It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment.

Article 36 — New weapons

In the study, development, acquisition or adoption of a new weapon, means or method of warfare, a High Contracting Party is under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by this Protocol or by any other rule of international law applicable to the High Contracting Party.

Article 37 — Prohibition of perfidy

1. 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, with intent to betray that confidence, shall constitute perfidy. The following acts are examples of perfidy:
   (a) the feigning of an intent to negotiate under a flag of truce or of a surrender;
   (b) the feigning of an incapacitation by wounds or sickness;
   (c) the feigning of civilian, non-combatant status; and
   (d) the feigning of protected status by the use of signs, emblems or uniforms of the United Nations or of neutral or other States not Parties to the conflict.

2. Ruses of war are not prohibited. Such ruses are acts which are intended to mislead an adversary or to induce him to ack recklessly but which infringe no rule of international law applicable in armed conflict and which are not perfidious because they do not invite the confidence of an adversary with respect to protection under that law. The following are examples of such ruses: the use of camouflage, decoys, mock operations and misinformation.

Article 38 — Recognized emblems

1. It is prohibited to make improper use of the distinctive emblem of the red cross, red crescent or red lion and sun or of other emblems, signs or signals provided for by the Conventions or by this Protocol. It is also prohibited to misuse deliberately in an armed conflict other internationally recognized protective emblems, signs or signals, including the flag of truce, and the protective emblem of cultural property.

2. It is prohibited to make use of the distinctive emblem of the United Nations, except as authorized by that Organization.

Article 39 — Emblems of nationality

1. It is prohibited to make use in an armed conflict of the flags or military emblems, insignia or uniforms of neutral or other States not Parties to the conflict.
2. It is prohibited to make use of the flags or military emblems, insignia or uniforms of adverse Parties while engaging in attacks or in order to shield, favour, protect or impede military operations.
3. Nothing in this Article or in Article 37, paragraph 1 (*d*), shall affect the existing generally recognized rules of international law applicable to espionage or to the use of flags in the conduct of armed conflict at sea.

Article 40 — Quarter

It is prohibited to order that there shall be no survivors, to threaten an adversary therewith or to conduct hostilities on this basis.

Article 41 — Safeguard of an enemy hors de combat

1. A person who is recognized or who, in the circumstances, should be recognized to be *hors de combat* shall not be made the object of attack.
2. A person is *hors de combat* if:
   (a) he is in the power of an adverse Party;
   (b) he clearly expresses an intention to surrender; or
   (c) he has been rendered unconscious or is otherwise incapacitated by wounds or sickness, and therefore is incapable of defending himself;

   provided that in any of these cases he abstains from any hostile act and does not attempt to escape.
3. When persons entitled to protection as prisoners of war have fallen into the power of an adverse Party under unusual conditions of combat which prevent their evacuation as provided for in Part III, Section I, of the Third Convention, they shall be released and all feasible precautions shall be taken to ensure their safety.

Article 42 — Occupants of aircraft

1. No person parachuting from an aircraft in distress shall be made the object of attack during his descent.
2. Upon reaching the ground in territory controlled by an adverse Party, a person who has parachuted from an aircraft in distress shall be given an opportunity to surrender before being made the object of attack, unless it is apparent that he is engaging in a hostile act.

3. Airborne troops are not protected by this Article.

SECTION II — COMBATANT AND PRISONER-OF-WAR STATUS

Article 43 — Armed forces

1. The armed forces of a Party to a conflict consist of 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.
2. Members of the armed forces of a Party to a conflict (other than medical personnel and chaplains covered by Article 33 of the Third Convention) are combatants, that is to say, they have the right to participate directly in hostilities.
3. Whenever a Party to a conflict incorporates a paramilitary or armed law enforcement agency into its armed forces it shall so notify the other Parties to the conflict.

Article 44 — Combatants and prisoners of war

1. Any combatant, as defined in Article 43, who falls into the power of an adverse Party shall be a prisoner of war.
2. While all combatants are obliged to comply with the rules of international law applicable in armed conflict, violations of these rules shall not deprive a combatant of his right to be a combatant or, if he falls into the power of an adverse Party, of his right to be a prisoner of war, except as provided in paragraphs 3 and 4.
3. In order to promote the protection of the civilian population from the effects of hostilities, combatants are obliged to distinguish themselves from the civilian population while they are engaged in an attack or in a military operation preparatory to an attack. Recognizing, however, that there are situations in armed conflicts where, owing to the nature of the hostilities an armed combatant cannot so distinguish himself, he shall retain his status as a combatant, provided that, in such situations, he carries his arms openly:
   (a) during each military engagement, and
   (b) during such time as he is visible to the adversary while he is engaged in a military deployment preceding the launching of an attack in which he is to participate.

Acts which comply with the requirements of this paragraph shall not be considered as perfidious within the meaning of Article 37,

paragraph 1 (*c*).

4. A combatant who falls into the power of an adverse Party while failing to meet the requirements set forth in the second sentence of paragraph 3 shall forfeit his right to be a prisoner of war, but he shall, nevertheless, be given protections equivalent in all respects to those accorded to prisoners of war by the Third Convention and by this Protocol. This protection includes protections equivalent to those accorded to prisoners of war by the Third Convention in the case where such a person is tried and punished for any offenses he has committed.

5. Any combatant who falls into the power of an adverse Party while not engaged in an attack or in a military operation preparatory to an attack shall not forfeit his rights to be a combatant and a prisoner of war by virtue of his prior activities.

6. This Article is without prejudice to the right of any person to be a prisoner of war pursuant to Article 4 of the Third Convention.

7. This Article is not intended to change the generally accepted practice of States with respect to the wearing of the uniform by combatants assigned to the regular, uniformed armed units of a Party to the conflict.

8. In addition to the categories of persons mentioned in Article 13 of the First and Second Conventions, all members of the armed forces of a Party to the conflict, as defined in Article 43 of this Protocol, shall be entitled to protection under those Conventions if they are wounded or sick or, in the case of the Second Convention, shipwrecked at sea or in other waters.

Article 45 — Protection of persons who have taken part in hostilities

1. A person who takes part in hostilities and falls into the power of an adverse Party shall be presumed to be a prisoner of war, and therefore shall be protected by the Third Convention, if he claims the status of prisoner of war, or if he appears to be entitled to such status, or if the Party on which he depends claims such status on his behalf by notification to the detaining Power or to the Protecting Power. Should any doubt arise as to whether any such person is entitled to the status of prisoner of war, he shall continue to have such status and, therefore, to be protected by the Third Convention and this Protocol until such time as his status has been determined by a competent tribunal.

2. If a person who has fallen into the power of an adverse Party is not held as a prisoner of war and is to be tried by that Party for an offense arising out of the hostilities, he shall have the right to assert his entitlement to prisoner-of-war status before a judicial tribunal and to have that question adjudicated. Whenever possible under the applicable pro-

cedure, this adjudication shall occur before the trial for the offense. The representatives of the Protecting Power shall be entitled to attend the proceedings in which that question is adjudicated, unless, exceptionally, the proceedings are held *in camera* in the interest of State security. In such a case the detaining Power shall advise the Protecting Power accordingly.

3. Any person who has taken part in hostilities, who is not entitled to prisoner-of-war status and who does not benefit from more favourable treatment in accordance with the Fourth Convention shall have the right at all times to the protection of Article 75 of this Protocol. In occupied territory, any such person, unless he is held as a spy, shall also be entitled, notwithstanding Article 5 of the Fourth Convention, to his rights of communication under that Convention.

Article 46 — Spies

1. Notwithstanding any other provision of the Conventions or of this Protocol, any member of the armed forces of a Party to the conflict who falls into the power of an adverse Party while engaging in espionage shall not have the right to the status of prisoner of war and may be treated as a spy.

2. A member of the armed forces of a Party to the conflict who, on behalf of that Party and in territory controlled by an adverse Party, gathers or attempts to gather information shall not be considered as engaging in espionage if, while so acting, he is in the uniform of his armed forces.

3. A member of the armed forces of a Party to the conflict who is a resident of territory occupied by an adverse Party and who, on behalf of the Party on which he depends, gathers or attempts to gather information of military value within that territory shall not be considered as engaging in espionage unless he does so through an act of false pretenses or deliberately in a clandestine manner. Moreover, such a resident shall not lose his right to the status of prisoner of war and may not be treated as a spy unless he is captured while engaging in espionage.

4. A member of the armed forces of a Party to the conflict who is not a resident of territory occupied by an adverse Party and who has engaged in espionage in that territory shall not lose his right to the status of prisoner of war and may not be treated as a spy unless he is captured before he has rejoined the armed forces to which he belongs.

Article 47 — Mercenaries

1. A mercenary shall not have the right to be a combatant or a prisoner of war.

2. A mercenary is any person who:
   (a) is specially recruited locally or abroad in order to fight in an armed conflict;
   (b) does, in fact, take a direct part in the hostilities;
   (c) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party;
   (d) is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict;
   (e) is not a member of the armed forces of a Party to the conflict; and
   (f) has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.

PART IV — CIVILIAN POPULATION

SECTION I — GENERAL PROTECTION AGAINST EFFECTS OF HOSTILITIES

CHAPTER I — BASIC RULE AND FIELD OF APPLICATION

Article 48 — Basic rule

In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.

Article 49 — Definition of attacks and scope of application

1. "Attacks" means acts of violence against the adversary, whether in offense or defense.
2. The provisions of this Protocol with respect to attacks apply to all attacks in whatever territory conducted, including the national territory belonging to a Party to the conflict but under the control of an adverse Party.
3. The provisions of this Section apply to any land, air or sea warfare which may affect the civilian population, individual civilians or civilian objects on land. They further apply to all attacks from the sea or from the air against objectives on land but do not otherwise affect the rules of international law applicable in armed conflict at sea or in the air.
4. The provisions of this Section are additional to the rules concerning

humanitarian protection contained in the Fourth Convention, particularly in Part II thereof, and in other international agreements binding upon the High Contracting Parties, as well as to other rules of international law relating to the protection of civilians and civilian objects on land, at sea or in the air against the effects of hostilities.

CHAPTER II — CIVILIANS AND CIVILIAN POPULATION

Article 50 — Definition of civilians and civilian population

1. A civilian is any person who does not belong to one of the categories of persons referred to in Article 4A (1), (2), (3) and (6) of the Third Convention and in Article 43 of this Protocol. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian.
2. The civilian population comprises all persons who are civilians.
3. The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character.

Article 51 — Protection of the civilian population

1. The civilian population and individual civilians shall enjoy general protection against dangers arising from military operations. To give effect to this protection, the following rules, which are additional to other applicable rules of international law, shall be observed in all circumstances.
2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.
3. Civilians shall enjoy the protection afforded by this Section, unless and for such time as they take a direct part in hostilities.
4. Indiscriminate attacks are prohibited. Indiscriminate attacks are:
   (a) those which are not directed at a specific military objective;
   (b) those which employ a method or means of combat which cannot be directed at a specific military objective; or
   (c) those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol;

   and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.
5. Among others, the following types of attacks are to be considered as indiscriminate:

(a) an attack by bombardment by any methods or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects; and

(b) an attack which 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.

6. Attacks against the civilian population or civilians by way of reprisals are prohibited.

7. The presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favor or impede military operations. The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations.

8. Any violation of these prohibitions shall not release the Parties to the conflict from their legal obligations with respect to the civilian population and civilians, including the obligation to take the precautionary measures provided for in Article 57.

CHAPTER III — CIVILIAN OBJECTS

Article 52 — General protection of civilian objects

1. Civilian objects shall not be the object of attack or of reprisals. Civilian objects are all objects which are not military objectives as defined in paragraph 2.

2. Attacks shall be limited strictly to military objectives. In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

3. In case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used.

Article 53 — Protection of cultural objects and of places of worship

Without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, and of other relevant international instruments, it is prohibited:

(a) to commit any acts of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples;

(b) to use such objects in support of the military effort;

(c) to make such objects the object of reprisals.

Article 54 — Protection of objects indispensable to the survival of the civilian population

1. Starvation of civilians as a method of warfare is prohibited.

2. It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive.

3. The prohibitions in paragraph 2 shall not apply to such of the objects covered by it as are used by an adverse Party:

   (a) as sustenance solely for the members of its armed forces; or

   (b) if not as sustenance, then in direct support of military action, provided, however, that in no event shall actions against these objects be taken which may be expected to leave the civilian population with such inadequate food or water as to cause its starvation or force its movement.

4. These objects shall not be made the object of reprisals.

5. In recognition of the vital requirements of any Party to the conflict in the defense of its national territory against invasion, derogation from the prohibitions contained in paragraph 2 may be made by a Party to the conflict within such territory under its own control where requried by imperative military necessity.

Article 55 — Protection of the natural environment

1. Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection in-

cludes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population.

2. Attacks against the natural environment by way of reprisals are prohibited.

Article 56 — Protection of works and installations containing dangerous forces

1. Works or installations containing dangerous forces, namely dams, dykes and nuclear electrical generating stations, shall not be made the object of attack, even where these objects are military objectives, if such attack may cause the release of dangerous forces and consequent severe losses among the civilian population. Other military objectives located at or in the vicinity of these works or installations shall not be made the object of attack if such attack may cause the release of dangerous forces from the works or installations and consequent severe losses among the civilian population.

2. The special protection against attack provided by paragraph 1 shall cease:
   (a) for a dam or a dyke only if it is used for other than its normal function and in regular, significant and direct support of military operations and if such attack is the only feasible way to terminate such support;
   (b) for a nuclear electrical generating station only if it provides electric power in regular, significant and direct support of military operations and if such attack is the only feasible way to terminate such support;
   (c) for other military objectives located at or in the vicinity of these works or installations only if they are used in regular, significant and direct support of military operations and if such attack is the only feasible way to terminate such support.

3. In all cases, the civilian population and individual civilians shall remain entitled to all the protection accorded them by international law, including the protection of the precautionary measures provided for in Article 57. If the protection ceases and any of the works, installations or military objectives mentioned in paragraph 1 is attacked, all practical precautions shall be taken to avoid the release of the dangerous forces.

4. It is prohibited to make any of the works, installations or military objectives mentioned in paragraph 1 the object of reprisals.

5. The Parties to the conflict shall endeavor to avoid locating any military objectives in the vicinity of the works or installations mentioned in paragraph 1. Nevertheless, installations erected for the sole purpose of defending the protected works or installations from attack are permissible and shall not themselves be made the object of attack, provided that they are not used in hostilities except for defensive actions necessary to respond to attacks against the protected works or installations and that their armament is limited to weapons capable only of repelling hostile action against the protected works or installations.
6. The High Contracting Parties and the Parties to the conflict are urged to conclude further agreements among themselves to provide additional protection for objects containing dangerous forces.
7. In order to facilitate the identification of the objects protected by this article, the Parties to the conflict may mark them with a special sign consisting of a group of three bright orange circles placed on the same axis, as specified in Article 16 of Annex I to this Protocol. The absence of such marking in no way relieves any Party to the conflict of its obligations under this Article.