



SUPPLEMENT

VOL. VII

REVUE INTERNATIONALE
DE LA CROIX-ROUGE

ET

BULLETIN INTERNATIONAL
DES SOCIÉTÉS
DE LA CROIX-ROUGE

SUPPLEMENT

Vol. VII, 1954

GENÈVE

1954

REVUE INTERNATIONALE
DE LA CROIX-ROUGE
ET
BULLETIN INTERNATIONAL
DES SOCIÉTÉS
DE LA CROIX-ROUGE

SUPPLEMENT

March 1954

Vol. VII, No. 3

CONTENTS

	Page
International Red Cross	
An Approach to accelerate the Ratification of the Geneva Conventions of 1949 . .	52
René-Jean Wilhelm, <i>Member of the Legal Section of the ICRC</i>	
The Geneva Conventions and War from the Air	55

Published by
Comité international de la Croix-Rouge Genève
Editor: Louis Demolis

INTERNATIONAL RED CROSS

AN APPROACH TO ACCELERATE THE RATIFICATION OF THE GENEVA CONVENTIONS OF 1949

It will be recalled¹ that on October 30, 1953, the International Committee of the Red Cross took advantage of the presence in Geneva of numerous delegates of National Red Cross Societies, who were taking part in the sessions of the Executive Committee of the League, and arranged a meeting at its headquarters, to enable them to make a joint survey of sundry questions of common interest with members of the International Committee.

One of the most important questions discussed was the progress made in regard to the ratification of the 1949 Geneva Conventions by Governments. Those taking part in the meeting were deeply concerned by the fact that a great many States, including the majority of the great Powers, were not bound by these Conventions which are intended to protect the victims of war — especially civilians. Various measures were considered and it was decided that a special message, emanating from the highest Red Cross authorities, should be sent to the National Societies of the countries which were not yet parties to the Conventions of 1949.

The message, in the form of a personal letter signed by the President of the International Committee of the Red Cross and the Chairmen of the League of Red Cross Societies and the Standing Commission of the International Red Cross, was sent on December 28, 1953, to the Presidents of the National Societies of States which had signed the Conventions but had

¹ See *Revue internationale de la Croix-Rouge*, November 1953, page 837 ff.

not yet ratified them. The message, in a slightly different form, was also sent to the Presidents of the National Societies of countries which, not having taken part in the 1949 Diplomatic Conference, had not signed the Conventions and had not yet acceded to them. The letter was sent in all to thirty-nine National Red Cross Societies.

The International Committee of the Red Cross feels that the readers of the *Revue* may be interested to know the contents of the letter :

Geneva, December 28, 1953.

Mr. Chairman,

At the meeting held at the headquarters of the International Committee of the Red Cross on October 30th last during the session of the Executive Committee of the League, many representatives of the National Red Cross Societies expressed their concern at the fact that the new Geneva Conventions, signed in 1949 by sixty-one Powers, are so far legally binding on only thirty-three States, which duly deposited with the Swiss Federal Council in Berne the instruments of ratification of, or accession to, those agreements. The majority of States, including—a disquieting fact—most of the great Powers, are not yet formally bound by the agreements, although these mark a decisive step forward in humanitarian law and are based on principles recognized by all civilised nations.

As the purpose of these Conventions is to ensure that henceforth victims of war, and in particular civilians, shall be spared a recurrence of the indescribable sufferings undergone during the last world war, the unanimous desire arose that an end be put without delay to this paradoxical situation.

Sharing this desire and these anxieties, we feel it our duty to make a joint appeal to you for help, and to invite the National Society of which you are Chairman to intensify its action vis-à-vis the Government of your country, to ensure that it takes the earliest possible steps to deposit its instrument of ratification with the Swiss Government, which is the only way in which a State can become officially Party to the agreements of 12 August 1949.

In case of war or civil war, the Geneva Conventions provide the Red Cross with the most effective basis for its action, which is then so necessary. We know that, realizing this, you have already approached your Government with a view to hastening ratification of the Conventions by your country, and we thank you for your action ; you will, however, we are sure, agree that to reach the final goal it is necessary to persist in such action ceaselessly.

We are therefore sending this letter to the Chairmen of the National Societies of the Red Cross (Red Crescent, and Red Lion and Sun) of all countries which are not yet Parties to the new Geneva Conventions.

Our great desire is to help you in the action you take. We should therefore be grateful if you would kindly let the Interational Committee of the Red Cross know exactly how the matter stands in your country, and the reasons for any possible further delay in the formalities of ratification. When this information is studied together with that sent us by the other Chairmen of National Societies, there will be a clearer indication of the means by which the Red Cross as a whole can best take steps to hasten ratification, and to support what you yourself are doing in this connection.

Whether the difficulties are technical—in which case the solutions adopted by others, of which the International Committee of the Red Cross will hasten to inform you, may be of assistance—, or whether delays are due to other causes, the desire of the Red Cross organizations and of the peoples of the world that there should be universal acceptance of the essential guarantees to which humanity is entitled, makes it our duty to overcome all obstacles by setting in motion the forces of the great Red Cross movement and the spirit of fellowship by which it is inspired.

Thanking you in advance for your response to these two requests, and looking forward to your reply, we take this opportunity of renewing to you, Mr. Chairman, the expression of our high regard.

(signed)

E. Sandstroem
President
of the
League of Red Cross
Societies

(signed)

A. François-Poncet
President
of the
Standing Commission
of the International
Red Cross

(signed)

P. Ruegger
President
of the
International Committee
of the Red Cross

René-Jean WILHELM

*Member of the Legal Section of the
International Committee of the Red Cross.*

*THE GENEVA CONVENTIONS AND WAR
FROM THE AIR*

I

In February 1950 a leading French illustrated weekly, "Radar", devoted a whole page to the dissemination of the new humanitarian Conventions signed at Geneva in 1949. Among other things the page contained illustrations showing the meaning of the four Conventions. In connection with the Fourth Convention (relative to the Protection of Civilian Persons in Time of War) there is a supplementary picture with the caption "Its application", representing a man reading his newspaper peacefully in a little house, the roof of which consists of the text of the Convention, while overhead there is a big bomb which is about to fall on the house and destroy it completely.

That picture appears to us characteristic of a certain conception which prevails with regard to the Fourth Convention, as also in regard to the Third Convention (relative to the Treatment of Prisoners of War). What is the main object of both these Conventions? The protection of civilians or military, not against the inherent effects of the use of arms—that is rather the object of The Hague Conventions—but against arbitrary dangers to which they may be subject at the hands of an enemy Power. The purpose of the Fourth Convention is therefore to ensure humane treatment for all civilians subjected to the rule of an enemy Power, and to preclude for example the horrors of concentration camps and executions of hostages.

In illustration however of the possible application of the Convention the "Radar" journalist did not speak of firing squads, but only of bombing, i.e. of the air arm; and in so doing made himself the interpreter of the principal anxiety which haunts the minds of the populations at the present time. It is in the war from the air, and especially in atomic bombing, that they see the greatest danger they are liable to incur in case of armed conflicts. They are at the same time actuated, by the very general notion—which the title of the Fourth Convention itself encourages—that the protection conferred by that Convention and by the other Geneva Conventions is mainly directed against this danger, which (as we have seen) is not the case.

There is therefore no such direct connection as the general public has been led to expect between the new Geneva Conventions and protection against the effects of war from the air. But it is worth while, if only in view of this major anxiety of the populations, to enquire whether, and to what extent, the Conventions in question take war from the air into account. Such an enquiry is the object of the present article.

Let it be said in the first place that at the Diplomatic Conference, which drew up the new Geneva Conventions, one Delegation took the view that the two subjects, atomic war from the air and the protection of the populations, were closely allied, and advocated the passing of a Resolution to the effect that the use of bacteriological, chemical, atomic or other means for the extermination of populations, are incompatible with the elementary principles of international law. The Resolution was rejected by a majority of Delegations on the ground that the question of atomic weapons was already before the United Nations.

At bottom there can be no question that there is some connection between the humanitarian Conventions and the use of weapons for extermination *en masse*. In its Appeal on 5 April 1950 to the States parties to the said Conventions ¹ on the subject

¹ See *Revue internationale de la Croix-Rouge*, April 1950, page 251: English translation in the (English) *Supplement*, Vol. III, No. 4 of April 1950.

of atomic weapons and non-directed missiles the International Committee of the Red Cross rightly pointed out that the use of such weapons and missiles vitiated any attempt to protect non-combatants by forms of law. "Law", it wrote, "written or unwritten, is powerless when confronted with the total destruction the use of this arm implies ¹."

In this article however we shall not deal with the problem of atomic weapons and other non-directed missiles. Not that we have any sort of doubt as to the fundamental incompatibility between these weapons, in any case as they have been employed in wartime, and the principles underlying the laws of war. Nor again that we seek to establish a natural or fundamental difference between the bombing of Hiroshima or Nagasaki and the bombing of certain European cities. But it must be admitted, in view of the circumstances in which the two atomic bombings were committed and the exceptional character attached to them, that they may be said to constitute a problem of their own. It appears to us preferable not to touch on that problem here, and to confine our enquiry to the relations between the Geneva Conventions and the "habitual" forms of war from the air.

Another reason for such limitation of the field of enquiry is this. In a future war the use of atomic weapons, in the form which is at present contemplated, is by no means inevitable, whereas the continuance and intensification of bombing from the air are almost certain developments, judging by the combats, by which (alas!) the world has been involved in bloodshed since 1945. Furthermore recent allusions to the "tactical" poten-

¹ The Appeal also said: "The use of this" (atomic) "arm is less a development of the methods of warfare than the institution of an entirely new conception of war, first exemplified by mass bombardments and later by the employment of rocket bombs. However condemned—and rightly so—by successive treaties, war still presupposed certain restrictive rules; above all did it presuppose discrimination between combatants and non-combatants. With atomic bombs and non-directed missiles, discrimination becomes impossible. Such arms will not spare hospitals, prisoner of war camps and civilians. Their inevitable consequence is extermination, pure and simple. Furthermore, the suffering caused by the atomic bomb is out of proportion to strategic necessity; many of its victims die as a result of burns after weeks of agony, or are stricken for life with painful infirmities. Finally, its effects, immediate and lasting, prevent access to the wounded and their treatment."

tialities of atomic energy suggest that the latter may come to find a place in one form or another in the habitual method of bombing¹, which would bring us back to the permanent and capital problem of war from the air and bombing from the air as already before the last world war and until now.

II

Even if the Geneva Conventions of 1949 has not for their main object the protection of persons against war from the air, they could certainly not pass over its scope and importance. This aspect of warfare is reflected in several of their provisions : sometimes it serves as a basis, sometimes it is merely understood. To make this more apparent, we will make a brief summary of the various provisions.

In the First Convention (Wounded and Sick of Armies in the Field), Article 19 specifies that medical establishments "may in no circumstances be attacked"². This new addition, which further strengthens the terms of the 1929 Convention concerning the respect and protection to which hospitals are entitled, can moreover apply to attack from the air.

This same article has a new second paragraph of which the principal object is to preserve hospital establishments from air attacks, and which reads as follows :

The responsible authorities shall ensure that the said medical establishments and units are, as far as possible, situated in such a manner that attacks against military objectives cannot imperil their safety.

Article 23 gives the High Contracting Parties the possibility of organising hospital zones and localities "to protect the

¹ If however it proved impossible to limit at the same time the radioactive effects, would not such bombing be contrary to the principle of The Hague Regulations of 1907 prohibiting the use of weapons "calculated to cause unnecessary suffering" (Article 23; letter e) ?

² This wording had already been suggested in 1947 by the Conference of Government Experts. See Report on the work of this Conference, page 23.

wounded and sick from the effects of war". The term " effects of war " mainly applies to the effects of war by air. The Draft Agreement annexed to the Convention, which the belligerents can take as a pattern, for the recognition of these zones and localities is still more definite ; according to Article 4 (c) these zones " shall be far removed and free from all military objectives, or large industrial or administrative establishments ". In addition, (d) " they shall not be situated in areas which, according to every probability, may become important for the conduct of the war ".

Article 36 concerning medical aircraft takes into account the effective rapidity of aircraft. In addition to the protection conferred upon such aircraft by the distinctive emblem (a somewhat illusory protection when flying at great speed), it introduces more adequate protection in the shape of an agreement between the two adversaries as to certain times, heights and routes reserved for medical aircraft flights.

Article 37, new as compared to the 1929 text, regulates the case of medical aircraft flying over the territory of neutral countries, such flights being authorised in so far as the neutral countries and the belligerents have made previous agreements on the subject.

In the Second Convention (Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea), Articles 39 and 40 adopt, for application in maritime warfare, the regulations of the First Convention for medical aircraft.

This Convention also seeks to increase the safety of hospital ships, particularly against the dangers of war from the air. For this purpose Article 26 requests belligerents to endeavour to utilise, for the transport of wounded, sick and shipwrecked on the high seas, hospital ships of over 2,000 tons gross, whose dimensions thus make them more clearly visible. Further, Article 43 urges the marking of hospital ships in such a way as to afford the best visibility " from the air " and from the sea.

The Third Convention relative to the Treatment of Prisoners of War also contains a few provisions referring to war from the air. Article 20 concerning the evacuation of prisoners of war

after capture, and Article 48 relative to their subsequent transfers, prescribe the establishing beforehand of a list of prisoners to be evacuated or transferred—an imperative precaution resulting from numerous deaths of prisoners caused by attacks from the air.

Article 23 is entirely devoted to the protection of prisoners of war against the effects of war, and in the first place of attacks from the air. In particular it provides for belligerents to inform each other of the geographical location of prisoner of war camps, and for the latter to be, if military circumstances allow it, indicated by the letters PW or PG “ placed so as to be clearly visible from the air ”, and for the prisoners to be provided (to the same extent as the local civilian population) with “ shelters against air bombardment and other hazards of war ”.

The first paragraph of this Article, which prohibits prisoners being exposed to the fire of the combat zone, or being used to render certain points or areas immune from military operations, is entirely applicable to military air operations, although it dates back to agreements between Germany and the Allies in the 1914-1918 War, which related as then conceived to artillery fire.

The Fourth Convention relative to the Protection of Civilian Persons contains a special chapter entitled “ General Protection of Populations against certain consequences of War ”. Those who drafted the text were fully alive to the effects of war from the air to which three provisions in the chapter refer directly or indirectly.

Article 15 provides for the establishing of safety zones and localities “ to shelter from the effects of war ” the wounded, sick, infirm, expectant mothers and children. According to the specimen Agreement concerning these zones which is annexed to the Convention (on similar lines to the specimen Agreement for Hospital Zones) these safety zones are to be far removed and free from “ all military objectives ”.

Article 18 protects civilian hospitals and in provisions based on those of the First Convention it also provides that “ in view of the dangers to which hospitals may be exposed by being close to military objectives, it is recommended that such hospitals be situated as far as possible from such objectives ”.

Article 22 extends the principles of the two first Geneva Conventions to the medical air transport of civilians.

There will also be found in the Fourth Convention—

Article 28, based on a provision of the Third Convention, which states that “ the presence of a protected person may not be used to render certain points or areas immune from military operations ” ;

Article 49, which allows the Occupying Power to undertake evacuations of populations, if required for their security ;

Article 63, paragraph 3, which provides that in the event of occupation the relief societies and essential public utility services shall continue to function and refers, among these bodies' activities, to “ the organization of rescues ”, which term more particularly applies to assistance in the event of bombardment from the air.

Finally, the regulations for the treatment of internees contain several Articles which grant civilian internees the same security measures against the effects of war from the air as those provided for prisoners of war, whether in respect to the marking and mutual notification of camps (Article 83), air-raid shelters (Article 88), or the establishing of lists of internees in the event of transfers (Article 127).

To close and summarize this survey, it seems possible for these provisions to be roughly divided into two groups. Firstly, there are the few Articles which introduce new regulations for aircraft of such a special type (medical aircraft) that it would be improper to speak of new regulations on war from the air. Secondly, there are the stipulations, far more numerous, of which the essential aim is to protect military or civilian persons referred to in the Convention from the effects of war from the air, either by removing them from areas where these effects are the most severe (hence the Articles on safety zones), or by making such areas more clearly visible to air forces, so that the latter may more easily spare them.

Whereas the Geneva Conventions may be said to have a “ positive ” attitude in regard to dangers, to which individuals may be exposed by the fact that they are in the enemy's power

—they define the exact limits of his power—their attitude in regard to dangers resulting from war in the air would at first sight seem to be rather “negative”. They appear to make no attempt to moderate the conduct of such warfare, accepting it in its present form and merely endeavouring to enable defenceless persons to escape from what it has become, that is to say, a struggle in which no regulations whatever are acknowledged, especially in regard to bombing. This attitude seems to be particularly apparent in the provisions concerning safety zones.

Closer consideration however causes us to modify this first impression. In the provisions we have just surveyed there are two elements which in our opinion distinctly imply a limitation of aerial warfare, particularly in the matter of bombing. We refer to the provisions relating to the protection of military or civilian hospitals (First Convention, Article 19; Fourth Convention, Article 18), and the conception of military objectives which is to be found in the Conventions in several instances. To our knowledge this is the first time that this conception, couched in these terms, has been explicitly embodied—the point is worth noting—in an international Convention in force.

For our enlightenment, let us recall the origin and present meaning of the conception of military objectives by a rapid survey of the history of the principal laws of aerial warfare.

III

At its annual meeting in 1949 the American Society of International Law considered, among other items, the desirability of revising the laws of war. Major Downey of the Department of War, who introduced the discussion and strongly supported the idea of such revision, stated in connection with the question in point: “As you are all probably aware, there are no rules governing aerial warfare.¹” We cannot endorse

¹ See “Proceedings of the American Society of International Law”, 1949, page 107.

this statement. It is however characteristic of current opinion on the subject and, it must be said, of the alarming position which this rapid survey will reveal.

It was the Hague Conference of 1899 which introduced for the first time into international public law a regulation concerning war from the air. It settled the question in trenchant fashion by prohibiting "the launching of projectiles and explosives from balloons, or by other new methods of similar nature". This prohibition was only valid for five years, and at the Second Hague Conference of 1907 several of the Great Powers of that time refused to sign a declaration intended to prolong it. This declaration, with the "clausula si omnes", was not obligatory for either the First or the Second World War. Moreover it needly hardly be pointed out that it was in direct opposition to the actual development in the launching of projectiles by "new methods of a similar nature", developments which had already been foreseen in 1907.

In face of the opposition encountered at the 1907 Conference to the renewal of the above-mentioned declaration, its supporters endeavoured to insert its fundamental elements in Article 25 of the Hague Regulations, which prohibits "the attack or bombardment of towns, villages, dwellings or buildings which are undefended". On their initiative the words "by whatever means" were inserted after "bombardment"; Article 25 thus became a provision for the laws of war on land also applicable to aerial warfare, or more exactly to bombing from the air¹.

At the present day however this regulation is very rarely quoted in connection with bombardment from the air², and the

¹ See in this connection Alex Meyer "Völkerrechtlicher Schutz der friedlichen Personen und Sachen gegen Luftangriffe", Königsberg 1935, pages 132 ff.

The first bombardments from the air in fact only occurred in 1911 during the Italo-Turkish War, as pointed out by J. S. Pictet in his article "La protection juridique de la population civile", *Revue internationale de la Croix-Rouge*, 1939, page 278.

² The Soviet review "Sovietskoye gosudarsto i pravo" (The Soviet State and the Law), 1950, No. 10, page 2, nevertheless refers to it in speaking of the American bombardments in Korea. President Roosevelt's appeal of September 1, 1939, for the mutual imitation of aerial warfare also referred to "civilian population or unfortified cities".

most recent theoretical works on the subject (such as Guggenheim's "Lehrbuch des Völkerrechts")¹ consider it to have fallen into disuse. What is the reason? According to some authors, whose explanation seems to be apposite², this regulation was based on the relatively small artillery range of the period, and on the fact that the bombardment of a locality was for the sole purpose of its *occupation*. As an undefended or "open" town could be taken without firing a shot, it was quite superfluous for the assailant to bombard it, and thus risk the destruction of property which he would anyway seize on the occupation of the town. Hence the prohibition to bombard an undefended town.

When it was extended to bombardment from the air, this regulation had a meaning, so long as it was supposed (as was the case at the time) that air bombing was another way of enabling land forces to capture a locality (occupational or "tactical" bombing). For bombardments of this description, which are still practised, this regulation is still fully valid. But the type of bombardment from the air with which we are now dealing, and which has become the commonest form, is no longer connected with the occupation of the bombed area by the land forces. The assailant's primary object is to destroy particular buildings or plant without seeking to take possession of the locality (destructive or "strategic" bombing). For this type of bombing (independent of land operations) which only developed after the First World War, how can the principle of a "defended town" be applied, since in such case the assailant's target lies in the buildings and plant of military importance in the locality, whether defended or not?

With the evolution of the air arm therefore this criterion for the legality of bombardments was gradually abandoned. But the same process of evolution was to give prominence to another conception contained implicitly in the Hague Regulations, and relating to cases where bombing was not considered so much as having for its object the occupation of a bombed

¹ See page 898 of this work.

² Here we have principally followed Alex Meyer's work above-mentioned.

area, but rather as an object in itself—the case namely of bombardment by naval forces. The Ninth Hague Convention of 1907, which is exclusively concerned with this question, duly adopted the previous rule by prohibiting the bombardment by naval forces of undefended ports, towns, villages, dwellings or buildings. But it made an important exception by adding that “ Military works, military or naval establishments, depots of arms or war material, workshops or plant which could be utilised for the needs of the hostile fleet or army, and the ships of war in the harbour, are not, however, included in this prohibition ” (Article 2).

Thus, even for undefended localities, it was lawful for the naval forces to bombard these works and establishments of a military nature or for military use. Destructive bombardment was thus established as an object in itself, in so far as it was limited to the type of objective which in the course of time has finally become known as “ military objectives ”.

At the outbreak of the First World War bombardments from the air were still of a tactical nature ; but little by little they became destructive, and some artillery bombardments were of the same description. After the conflict it was realised that aerial warfare on account of its importance required to have its own regulations. On the initiative of the Disarmament Conference in Washington (1922) a Legal Commission¹ nominated for the study and drafting of regulations for aerial warfare met at The Hague in 1923 and submitted a code entitled “ The Hague Regulations for Aerial Warfare ” which was, unfortunately, never sanctioned by any Government.

This failure may have been caused by the fact that it was premature to attempt to codify the use of an arm whose possibilities had become apparent during the First World War, but which in 1923 had only just started to develop. Moreover, this arm held a prominent place in the Anglo-Saxon States’ defence system and, as the American jurist Royce² so aptly stated

¹ Composed of representatives of the United States of America, the United Kingdom, France, Japan, Italy and the Netherlands.

² See his legal opinion in the work published by the ICRC in 1930 under the title “ La protection des populations civiles contre les bombardements ”, p. 75.

Where the weapon or method of warfare, however, held an important place in the defence scheme of a State or group of States, attempts at its abolition invariable failed.

At all events the Hague Regulations of 1923 represent the most important official effort made so far to provide laws for aerial warfare. In particular their authors tried to define the idea of a military objective, the only conception generally put forward by the belligerents on the approach of and during the Second World War in regard to bombardments. Article 24 of the 1923 Hague Regulations stipulated in the first two paragraphs—

1. An air bombardment is legitimate only when it is directed against a military objective, i.e. an objective whereof the total or partial destruction would constitute an obvious military advantage for the belligerent.

2. Such bombardment is legitimate only when directed exclusively against the following objectives: military forces, military works, military establishments or depots, manufacturing plants constituting important and well-known centres for the production of arms, ammunition or characterised military supplies, lines of communication or of transport which are used for military purposes.

IV

On the outbreak of the Second World War, when the ICRC launched an appeal to belligerents submitting the question of the protection of the civilian population against bombardments, the principles which had inspired the appeal were approved by all. Among these principles, in particular, there appeared the limitation of bombardments to military objectives alone. Several Governments explicitly confirmed that their air forces had received instructions to bombard such objectives only.

But what did the Governments mean by military objectives? Were they adhering to the definition given by the jurists at The Hague in 1923? Can any conclusion be drawn from the

practice followed by them during the Second World War inasmuch as it was characterized by the bombing of entire cities, by the advent of the V 1, the V 2 and finally the atom bomb?

It seems nevertheless that there are certain lessons which can be drawn from their practice, provided we exclude from the start weapons of indiscriminate destruction which, as we have already indicated, we consider to be fundamentally opposed to the general principles of law. If we are dealing with "habitual" bombardments from the air, figuring not as measures of intimidation or reprisal, but as measures for the essential purpose of destroying the enemy's military potential, two aspects of the question are worthy of special attention.

First of all, in the light of experience, the direct or indirect criticism expressed as to the too restricted nature of the 1923 definition of a military objective appears to be justified. The Swiss expert Zublin consulted by the ICRC in 1930¹ considered it necessary to include among military objectives those he described as "mixed objectives", that is to say, objectives intended for non-military purposes but acquiring great importance for armies in the event of war, such as railways, roads, power stations and telegraph or telephone exchanges.

These objectives were in fact frequently attacked, and they are not entirely covered by Article 24 above-mentioned, in particular by the second paragraph. On the whole the enumeration given in this paragraph is concerned mainly with the existing actual and effective military use of an objective which can be bombarded ("important and *well-known* centres"... "*characterised* military supplies"... "lines of communication or of transport which *are used for* military purposes") rather than with the normal "military purposes" of an objective in present conflicts, on which the French expert Sibert consulted by the ICRC² insists. Even if Article 24 is too restrictive on this point, it nevertheless appears to us in spirit (especially when one compares the second paragraph with the first) still to constitute

¹ See the work cited, page 11.

² See the work cited, page 157.

at the present day a sufficiently proven basis, acceptable to all concerned, for the legal definition of a military objective.

The second aspect of the question is as follows. How can the destruction which took place (particularly in Europe) of cities such as Rotterdam, Coventry and Hamburg, be compatible with the conception of military objectives which the principal belligerents supported at the outbreak of the conflict? Can these destructions be explained as acts of reprisal only or had the belligerents given up their conception of a military objective for a new conception?

Very little has been published on this point since 1945. It is therefore all the more interesting to quote at this stage the English jurist Spaight, a specialist on the laws of aerial warfare. In the third edition (published in 1947) of his basic work "Air Power and War Rights" he discussed the development of the air arm during the last war. According to this author the most important change which occurred in the practice of bombardments by the British air forces took place in 1942, at which time these forces made systematic use of what he calls "target-area bombing"—

Circumstances had in fact made impossible to maintain the practice of selecting individual targets for attack. The previous practice was still continued in enemy-occupied countries, where the defences, on the ground and in the air, were not so formidable as they were in the Reich, and the system of camouflage and smoke-screens was less thoroughly organised. In Germany itself, the bombing at target areas became the practice... Target-area bombing, it must be emphasised at the risk of some repetition, was the natural and indeed inevitable reply to the intensification of the defence.

In a more recent work¹ Spaight confirms that the idea of "target-area bombing" is by no means an abandonment, but merely the inevitable development of the conception of military objectives.

Is this new conception justified in law? Spaight attempts to answer this question by stating that—

¹ See the work cited, pages 270 and 273.

² "The Atomic Problem, A New Approach", London 1948, page 15.

... that question will be long debated and opinions may be divided but to the present writer the answer that should be returned seems to be simple. If in no other way than by target-area bombing can a belligerent destroy his enemy's armament centres and interrupt his enemy's process of munitionment, then target-area bombing cannot be considered to be against the principles of the international law. To hold that it does offend against them is to subject bombardment from the air to a stricter test than has been applied in the past to bombardment from land or sea. Military effectiveness has been the test, and by that test target-area bombing passes muster. It could be condemned only if it involved acts repugnant to humanity. It was approved, however, by public opinion generally, in Britain and America. There was no such wide-spread doubt about it as there was about the subsequent resort to atomic bombing which did gravely disturb the public conscience ¹.

The question also arises as to whether the approval referred to by the author, i.e. the approval of public opinion in the two countries at war, one of which had recently suffered devastation by the air arm, can be regarded as absolute general assent, uninfluenced by circumstances, which alone can initiate and justify a practice.

Be that as it may, military efficacy constitutes, according to Spaight, the standard of legitimacy for target-area bombing. It is legitimate when its military efficacy is beyond doubt. The author reverts in several instances to the decisive factor of bombardment in the defeat of the Third Reich—

Beyond any possibility of doubt, the strategic air offensive was a powerful factor in that victory.²

He also quotes the German Minister Speer who, on being asked—

Do you believe that strategic bombing alone could have brought about the surrender of Germany?

replied " the answer is Yes " ³. In his Introduction he states—

Had the people of Germany been free to decide their own destiny, or the " divine right of the fifty one per cent " been theirs, those

¹ " Air Power and War Rights ", London 1948, page 271.

² See the work cited, page 272.

³ See the work cited, page 280.

terrible raids of 1943-1944 would probably have taken Germany out of the war".¹

In his recent work above-mentioned, "The Atomic Problem", Spaight restates his point of view in regard to target-area bombing. However, perhaps because he has had the opportunity of consulting various English works on bombing published between 1946 and 1948², Spaight is far more reserved as to the use made of target-area bombing—

Precept was unexceptionable but whether practice invariably conformed to it is less certain. What inclines one to feel doubts upon this point is the apologia put forward by the distinguished Commander who was responsible for translating the precept into practice.

Sir Arthur Harris was Air Officer Commanding-in-Chief, Bomber Command, from February 1942 until the war in Europe ended. He held strong views about the way in which air offensive should be conducted. He had no patience with the policy of bombing selected targets such as oil plants or key factories; "panacea targets" he called them. He considered that the most profitable objectives were the great centres of industry and population. By attacks on them, in sufficient strength, he held that Germany's war potential could be destroyed and her resistance brought to an end...

Sir Arthur Harris was evidently in agreement with the policy advocated. He had no doubt that it was the right policy, operationally, and that it was free from ethical and legal objections. In his book, "Bomber Offensive" (pp. 176-7), he deals with the complaint that "bombing is specially wicked because it causes casualties among civilians". That, he says, happens in all wars. Our blockade in the First World War caused nearly 800,000 deaths, and artillery on land had killed its thousands in every war. He even uses the argument that in the old sieges every living being used to be put to the sword in a city that refused to surrender.

"International Law", he says, can always be argued pro and contra, but in this matter of the use of aircraft in war there is, it so happens, no international law at all³.

Spaight finally states: "One cannot escape the conclusion that much of the bombing in Germany in the last two years of the war came perilously close to indiscriminate bombing"

¹ See the work cited, page 37.

² Sir Arthur Harris "Bomber Offensive", London 1947; Liddell Hart "The Revolution in Warfare", London 1946; Lord Tedder "Air Power in War", London 1948.

³ "The Atomic Problem", pages 16 and 17.

The least that can be said after these remarks is that target-area bombing must have particularly good reasons to justify it for its partisans to persist in its defence. As we have seen, Spaight finds such justification in the indubitable military value of this type of bombardment.

But there seem to be a great many reasons to doubt its value after reading the work of Mr. P. M. S. Blackett, "The Military and Political Consequences of Atomic Energy"¹, in which the author analyses with care the practice and the results of bombardments during the Second World War. In the Introduction to this work he states in particular—

Owing to the lively controversy of the years since the first world war as to the relative merits of different methods of using air power, the Allied bombing offensive in the second world war has been far more scientifically documented than most other aspects of the war. Published documents and reports are available from which it is possible to assess with a considerable accuracy the part which long range bombing played in the final defeat of Germany and Japan.

It is a significant fact that the excellent and comprehensive reports of the bombing of Germany and Japan, published by the United States Bombing Survey have had only a limited circulation in America and have neither been reprinted in England nor attracted press attention. This lack of notice, especially in England, is certainly connected with the contents of the reports, which prove the surprising ineffectiveness, as judged by their impact on German moral and industrial production, of the bombing attacks on German cities which constitute such an important part of the British war effort².

Further on we also read—

The results of this bombing offensive, as analysed by the American strategic bombing survey, are summarized in appendix I. The remarkable and unexpected result was the discovery that German total war production continued to increase till the summer of 1944 in spite of the very heavy bombing... The rapid fall of all that production which started in August 1944 (when the Anglo-American armies were already in Paris, and the Russian armies had freed the whole of their homeland and were well into Poland), was due not to the destruction of

¹ "The Military and Political Consequences of Atomic Energy", Turnstile Press, London 1948.

² See the work cited, page 3.

factories or the mobilization of the civilian population, but mainly to the success of the air attacks on the German transport system which impeded the flow of coal, food, etc. and to the shortage of oil ¹.

And further—

The oil and transport offensive achieved very important military results without inflicting much general destruction ; the area bombing of cities gave very small general useful results and inflicted enormous general destruction on Germany. The former offensives demanded precision attacks ; and, as has clearly been shown, these became only possible at a late stage of the war, when the Allies possessed a large degree of air superiority and had advanced bases near the German frontier, to enable radar navigational methods to be more effectively employed and fighter escorts to extend their range farther into enemy country. On the other hand, the area bombing, which was originally adopted just because of the inability to do precision bombing, did little to help win the war and greatly increased our difficulties afterwards ².

Further—

In spite of the great developments of air power, it is clear that Germany's defeat in the second world war, as in the first, was brought about primarily by her huge losses in man-power and material incurred in the land battles, particularly on the Eastern front. A clear indication of this is seen from the figures of the German casualties up to November 1944 in the various theatres of war...³

We see therefore that Blackett's views on the efficacy of strategic bombing, based on careful analysis, are entirely opposed to those of Spaight quoted above. But, if the efficacy of target-area bombing is questionable, how can this bombing still be justified? In quoting an extract from the United States Bombing Survey—

From the appointment early in 1942 of Sir Arthur Harris as Chief of the Bomber Command, the picture changed ; for he regarded area bombing not as a temporary expedient but as the most promising

¹ See the work cited, pages 19-20.

² See the work cited, page 26.

³ See the work cited, page 26.

method of aerial attack. Harris and his staff had a low opinion of economic intelligence and were sceptical of "target systems". They had a strong belief in Germany's powers of industrial recuperation and doubted that her larger potential should be significantly lowered by bombing. At the same time, they had a strong faith in the moral effects of bombing and thought that Germany's will to fight could be strangled by the destruction of German cities ¹.

Blackett makes the following comments—

The analysis of the results of the bombing offensive which are quoted in appendix I show that Harris was correct in assuming that Germany's power of industrial recuperation was likely to be great, but was wrong in supposing that her will to fight would be broken by the destruction of her cities ².

In short, the idea behind target-area bombing appears to be the idea of attacks for the essential purpose, not of destroying the enemy's military potential, but of undermining the morale of the population. Is not this an approach to what had been termed "terror-bombing"? In giving his opinion states for the ICRC in 1930 (which at the present day still retains its full value) the American expert Royse stated—

The right of general devastation for political or psychological ends, on the other hand, was not officially claimed by any of the belligerents in the late war. Demoralization of the enemy by means of widespread bombardment was, however, accepted by the military services as part of the functions of the bombardment groups, but technical equipment during the (1914-18) World War had not advanced to the point where sufficient destruction could be carried out by aircraft ³.

The idea of "terror-bombing" for undermining the morale of the enemy is therefore not new. It reveals itself as a measure to which the authorities in war, often under the pressure of public opinion, are inclined to resort.

¹ See the work cited, page 18.

² See the work cited, pages 18-19.

³ "La protection des populations contre les bombardements", page 100.

V

This brief summary of laws and conceptions concerning bombardment from the air has only one object, we repeat—namely to reveal more clearly in what respects certain elements of the new Geneva Conventions (the provisions for the protection of hospitals and the references to the institution of military objectives) point in our opinion to a definite limitation of aerial warfare, and aerial bombardments in particular.

We can now define our attitude in two respects—

(1) We have quoted the Articles of these Conventions for the prohibiting of attacks upon military or civilian hospitals. Here is a further affirmation of the principle of the 1929 Geneva Convention which demands respect and protection of military hospitals, or the principle set forth in Article 27 of the Hague Regulations which prescribed that in sieges and bombardments belligerents should in particular spare, as far as possible, hospitals and places where the sick and wounded are collected. But, in our opinion, the affirmation draws particular strength from the actual terms employed (“hospitals may in no circumstances be attacked”), and especially from the fact that the principle is reaffirmed with a full knowledge of circumstances, that is to say, after taking into account the development of aerial warfare at the present stage.

The said principle, whether in its present form or as set forth in the 1929 text, appears to us fundamentally incompatible with the notion of target-area bombing. Most cities of any size, especially those in Europe, contain civilian hospitals as well as buildings and plant which in the case of war may be considered as military objectives. In order to reach the latter, and to spare the hospitals, a discrimination in the choice of targets is required, whereas target-area bombing is essentially an indiscriminating bombardment of the area in point.

The objection may be raised that there is often no practical difference between the effects of bombing a specific military objective and those of target-area bombing. This may be the case; but the two things are entirely distinct. In the bombing

of military objectives bombs which fall beside the mark do so as the result of involuntary error which is inevitable, but which modern technical methods seem to be reducing, and should endeavour to reduce¹. In target-area bombing, the bombs which fall beside the mark in the area concerned, and perhaps in consequence on civilian hospitals, do so, not as the result of an error of marksmanship, but are intentional. Moreover the location of a military objective is not a subjective element of appreciation on the assailant's part, as would be the case when fixing the limits of the target area.

Our feeling as to the incompatibility of target-area bombing with the principle affirmed by the Articles of the Geneva Conventions relative to hospitals is again confirmed by the final provisions of these Articles.

These provisions recommend that States should, as far as possible, place hospitals at a distance from military objectives on account of the dangers to which they are liable to be exposed in attacks against such objectives. There is therefore no question of removing them from the areas or regions where the objectives may be situated: they are merely to be distant from these objectives. The provision concerning civilian hospitals even makes reference to dangers to which hospitals may be exposed by being close to military objectives, an expression which clearly implies their more or less immediate vicinity. Thus a hospital at an adequate distance from a military objective, but nevertheless fairly near to an area containing industrial establishments (which may be considered as military objectives in a war) would be in entire conformity with the recommendation.

While it is true that the Geneva Conventions do not define the conception of a military objective, it may be said that the authors of the Conventions intended to give the expression the

¹ In the work mentioned Blackett points out (page 25) that the accuracy of bombing in Germany and especially night-bombing, during the years 1943 and 1944, gradually improved thanks to technical reasons, in particular: development of navigation methods (radio, radar, etc.), improvement in bomb-sights, better technical training, adjustment in methods of ground-lighting by flares and, after the liberation of France, the setting-up of radio-guidance stations.

exact sense in which it is generally understood, and in which we have used it in these pages—namely a point whose limits have been precisely and objectively determined in view of its actual or possible military nature, and not as a more or less extensive area subjectively estimated by the assailant. The purpose of the occasional references to this conception (as in the case of the hospitals or safety zones above-mentioned) was to provide additional protection for the persons referred to in the Conventions. The conception should not therefore be understood in a sense which would make such protection inadequate or even fallacious.

On the other hand, it might be contended that the recommendation to place hospitals at a distance is liable to weaken the principle of the respect due to every hospital. Not at all. In the first place the contention concerns a recommendation which, however useful it may be, is not an obligation¹. It is also attenuated by the words "as far as possible". In every city certain hospitals, or at least first-aid centres, must of necessity be maintained within the area itself, in the interest of both the patients and of those caring for them, whether the cities are of an industrial or a residential character.

In brief, by whatever name it may be covered, the destruction of a marked hospital during an air raid owing to the lack of precaution (for it could hardly be imagined that it could be deliberate) appears to be fundamentally contrary to the standards of the Geneva Conventions; and all the more so, if the hospital is at an adequate distance from any military objective, even if, in order to fulfil its purpose more efficiently, it is situated in the centre of the town. Take for example a city, where the hospital is situated at 600 metres distance from a bridge across a river, which circumstances during a conflict may cause to become a military objective. A bombardment, which for the more effective destruction of the bridge extended over an area so wide as to allow of projectiles hitting the hospital would

¹ The authors of the provision concerned purposely avoided giving it an imperative character, in order not to entail the displacement outside the towns of hospitals at present within the areas. See Final Record of the Conference, II-A, pages 632 and 818/819.

obviously be contrary not only to the spirit, but also to the letter of the Fourth Convention.

(2) It naturally follows that the principle of hospitals not being the object of attack is even less compatible with the type of bombing which, under the name of target-area bombing or any other extension of the idea of military objectives, is in reality only terror-bombing. The latter is the very type of indiscriminate bombing, which can cause direct harm to just those persons for whom the Geneva Conventions require protection and respect in all circumstances; and that provision is valid for all attacks to which they may be subjected, including those from the air.

It is true that the Conventions demand respect and protection in favour of certain categories of civilian or military persons only, and not for the whole of the population. With regard to bombing intended to harm the population itself, the Hague Rules of 1923 above-mentioned, or the Monaco Draft of 1934 were more explicit. The Hague Rules stipulated in Article 22: "Any air bombardment for the purpose of terrorizing the civil population or destroying or damaging private property without military character or injuring non-combatants is forbidden".

In the same manner the Monaco Draft provided that "The civil population shall be left out of any form of hostilities" (Chap. IV, Art. 1, par. 1) and further on "The civil population is in no case a military objective" (Chap. IV, Art. 4, par. 2).

Though such prohibition is not explicitly stated in the new Geneva Conventions, it is permissible to affirm that it is in entire conformity with their spirit. Further, it may logically be deduced from Article 3 concerning civil war, which is common to all the Conventions. In particular this article prohibits inhuman treatment, violence to life and personal dignity of "persons taking no active part in hostilities". It therefore also concerns the civilian population in so far as the latter commit no hostile acts. As the Contracting Parties have recognised the principle of the inviolability of peaceful populations in the event of civil war, in which case they have merely

shouldered minimum and essential duties, there is all the more reason to consider that they admit this principle for cases where they are bound by far more extensive commitments, that is to say in conflicts of an international nature.

We believe we have thus shown that the Geneva Conventions by no means disregard aerial warfare, and contain passages which clearly show that they do not accept such warfare, and bombing from the air in particular, being carried out without regard to the conception of military objectives *stricto sensu* and the respect to which peaceful populations are entitled. But, as we have already pointed out, their main object is not the protection of war victims or the population in general against the effects of the air arm, so that the prohibitions they contain in this respect are on that account set forth with less precision than in other fields, and also with less force than they should be, or might be desired under present-day conditions to be.

VI

This gives rise to another inevitable question. Is it not necessary, has not the time come, to proclaim forcibly and without ambiguity in a formal international act the prohibitions above referred to? In short, is it not time to endeavour to attach regulations and limits to aerial warfare, particularly as regards bombing from the air, in order to replace the clauses of 1907, which are today so generally unknown?

In the previous pages we recalled the suggestion made in 1949 to the American Society of International Law to revise the laws of war, including those for aerial warfare. This proposal nevertheless met with violent opposition from such an eminent jurist as Professor Fenwick who stated in particular in his objections—

Our distinguished military guest here did not tell us whether we are to continue to bomb cities from altitudes which make it perfectly impossible to distinguish between combatants and noncombatants.¹

¹ "Proceedings of the American Society of International Law" 1949, page 109.

Dr. Kulski, who also participated in the discussion, added—

One should make the distinction between such rules of warfare which cannot be observed in any total war... and other rules of warfare which one may reasonably expect to be observed even in a total war, because they do not contradict the nature of a total war... such as those concerning the treatment of prisoners of war or hostages.

... For instance, there is no hope of enforcing during a total war any rules which would pretend to prevent an indiscriminate aerial bombardment.

... Therefore, any suggestion to regulate the use of mass destruction weapons and to transform a total war into a medieval tournament is not very realistic ¹.

These objections, and those of Dr. Kulski especially, seem characteristic to us of a certain attitude which exists, according to which the laws of war can only be valid where they do not prevent belligerents from conducting military operations by all means they may think proper. This attitude would appear *prima facie* to be sufficiently serious and prevalent for us to endeavour to show that it is unfounded.

In reality the regulations which Dr. Kulski considers to be compatible with total warfare, the regulations we call "humanitarian", also constitute—there can be no mistake on this point—definite limitations on the operations of war. These limitations are not in general an acute problem for belligerents though they may become so in certain circumstances, but they have none the less to continue to be observed.

Take the case of regulations for the protection of prisoners of war quoted by Dr. Kulski. The obligation not to kill an enemy who surrenders, to treat him with the greatest possible humanity, to evacuate him from the combat area, etc., may raise very delicate problems in mobile operations carried out by small detachments, or when troops fall into the adversary's power in great numbers. The combatant may then be tempted to depart from these regulations, and will only be prevented from so doing—for there will be no control from the outside until later—by the respect he has personally acquired for these regulations, even in the most difficult circumstances.

¹ See the work cited above, pages 124, 125.

The case of hostages, to which Dr. Kulski also referred, is still more conclusive. The taking and killing of a great number of hostages, for the purpose of terrorization, has been one of the means employed by certain belligerents for occupying enemy territory with the smallest possible number of troops. The taking of hostages being henceforth prohibited by the Geneva Conventions, the Occupant will be obliged, for efficient occupation of the territory, to employ a greater number of troops who might be of greater utility to him on other fronts. The new prohibition will therefore constitute a definite obstruction to his plans.

Nevertheless, even as limitations to warfare and the so-called total warfare in particular, these humanitarian regulations are unanimously accepted for two main reasons. Firstly they correspond to the highest aspirations of civilized mankind's conscience at the present time. They have received "social sanction", the notion to which particular prominence was given by the jurist Royse who stated in his opinion for the ICRC mentioned above—

The difficulty or uncertainty of anticipatory regulations, however, can hardly condemn all regulation. Some restrictive force runs continuously through all time, in spite of changes in means and methods of warfare. This is the force of social sanction, a force made up of the *mores* of a period and crystallized into a world opinion. Social sanction defines and limits violence and remains the only provision for enforcing observance of the minimum standards of a society or civilization...

In conclusion it may be repeated that nations will employ an effective weapon to its utmost extent, checked only by social sanction as manifested in the accepted minimum standards of the time ¹.

Secondly, these regulations are accepted because the military utility of the practices they prohibit—which at a certain moment can be very great—has shown itself in the course of time to be of doubtful issue, equally onerous for the victor and the vanquished and especially opposed to the maintenance of human civilization. The English military expert Liddell Hart in his recent work "The Revolution in Warfare" laid stress on the

¹ "La protection des populations civiles contre les bombardements", pages 114/15.

need for limitations in the conduct of war following the dictates of reason and the desire for mutual security. "For only manners in the deeper sense—of mutual restraint for mutual security—can control the risk that outbursts of temper with political and social issues may lead to mutual destruction in the atomic age".

It will now be seen that the pretension to limit the regulations for the conduct of hostilities to minor issues "compatible with total warfare" will not bear examination, for it takes no account of the vital forces of these regulations. There is presumably no inherent impossibility in these regulations, which show humanity's spontaneous reaction to its own destruction, being extended to the field of aerial warfare.

A mere interdiction of bombing, however desirable it may be, seems nowadays too difficult to be reached. Therefore it is rather a question of finding out definite regulations to fill the present void, and to prevent in war from the air, and bombing from the air in particular, attacks and destruction which are not only repugnant to the world conscience at the present day, but ultimately are seen to be without military utility. Why should terrorization by the taking of hostages appear to be a crime against humanity, and bombing from the air for the same purpose of terrorization, although far more injurious, not be thus considered?

VII

But, some doubt may be voiced as to whether conditions for such regulations really exist. In our opinion they exist, even if dormant rather than manifest.

With regard to the argument as to the ultimate military inutility of certain methods of bombing from the air, which constitutes one of the conditions, we have quoted above at some length from Blackett's findings on the 1939-45 conflict. These findings should be brought to the knowledge not only of military circles, but also of the general public. The Korean conflict is still too recent for definitive conclusions to be drawn; but in

view of the piling up of destruction there, the extent of which has been pointed out by various Press Correspondents, the question may some day be asked whether such destruction was in all cases inevitable for military purposes ¹.

The argument as to this inutility and the need for the limitation as a pledge of mutual security will in our opinion be further strengthened by a new element. The numerous trials which have taken place since 1945 for violations of the laws of war have firmly established the notion of war crimes in international public law, whether the notion is welcome or not. We know that at Nuremburg the prosecution thought it preferable not to include acts of aerial warfare in the charges brought against the accused. This discretion will perhaps not always be observed by belligerents. During the last world conflict the Japanese Government at the time had already gone so far as to enact a law prescribing the death penalty for those responsible for bombing non-military objectives, and in conformity with this law they sentenced several American aviators to death ².

The course of future conflicts might therefore be marked by convictions for violations of the regulations of aerial warfare. But—without considering here other dangers which such forms of procedure might cause to the individual—would not the lack of precision or even (according to some) the lack of regulations on aerial warfare be likely to expose airmen to quite iniquitous or abusive judgments? The interest which the States have in the security of members of their air forces, impels them accordingly to try to avoid judgments of this description by laying down as accurately as possible the regulations, upon which the

¹ In his analysis of the results of the American air offensive entitled "Operation Strangle" ("Tribune de Lausanne", January 1, 1952) the military expert C. Rougeron stated, as a special point, that confidence in a practically exclusive development of the air arm overlooks in fact two coefficients of limitation of its power which are not peculiar to it—the saturation of the objectives and rapid adaptation to the new means of destruction.

² See "Law Reports of Trials of War Criminals" by the United States War Crimes Commission, Volume V, page 3. The Japanese judges were in turn sentenced in 1946 for not having held regular trials of the aviators in question; but no study was made of the principle of the sentence passed by them.

trials of aviators, if any, should be based, i.e. regulations for aerial warfare.

What of the other condition, of still greater importance, that is to say, the "social sanction" referred to by Royse? Has it already sufficient force? This does not appear to be the case. Public opinion, attracted by so many objects, and more particularly concerned with the question of the atomic arm or with peace, has so far only had occasion to give sporadic or occasional proof of its fundamental dislike of certain methods of war from the air.

In Europe, which has so greatly suffered from this type of warfare, there is no doubt of this sentiment. This has been proved in many instances. We will merely refer here to a remark of General Guderian quoted in a French newspaper¹. He says that it is essential to have close strategic collaboration between the air force and land forces, even though war from the air, as we have known it, seems sordid and gives much food for thought. Objectives assigned for long-range bombing should be designated exclusively with regard to military exigencies, while taking into account humanitarian considerations, which have been conspicuously neglected for the last half century.

In the United States feeling of this description cannot draw its substance from the actual experience of devastation caused by bombing. It can however find it in the American people's generous impulse to sympathy with the misfortunes of other nations. We see one aspect of this generous attitude in the appeal of the jurists who have already solicited the setting up of certain regulations for aerial warfare. At the annual meeting of the American Society of International Law in 1949, to which we referred above, Major Downey finished his opening speech by this revealing remark—

The person who first drafts an acceptable code of rules for use in aerial warfare will receive the thanks of the peoples of all nations and he will become the Francis Lieber of the 20th century.

A distinguished jurist, Joseph Kunz, published in the American Journal of International Law in 1951 a particularly

¹ "Le Monde", September 7, 1951.

warm-hearted, well-founded and convincing plea in favour of the revision of the laws of war.

It seems to us that the regulating of war from the air would meet the wishes of the peoples of Asia no less than the peoples of Europe. Proof of this can be found in the declarations of the Delegates of India and Nationalist China to the United Nations Security Council, when the latter was considering the Soviet resolution concerning bombing in Korea¹.

Our conclusion is self-evident. It is this. Similar opinions to those quoted should be made known as soon as possible and with increasing force, and should in short build up the "social sanction" to which we have referred, in order to make it obligatory for Governments to place aerial warfare under a minimum of essential regulations.

We have been informed that in certain areas, and in towns where industry is by no means predominant², plans are already under consideration for evacuating a large proportion of the population to areas far out in the country in the event of a conflict, in order to give them greater safety against bombing from the air³.

Are not these plans premature? If for instance "terror bombing", whether camouflaged or open, is not definitely

¹ "United Nations Bulletin" of October 15, 1950. The (Nationalist) representative for China stated, in particular—

"Some of the modern implements of war, including bombing from the air, undoubtedly had the tendency to encroach upon the principle of humanity and undermine the foundation on which the laws of war had been developed... His Government would therefore welcome any move which honestly aimed at checking that tendency... Some might think that no restriction should be placed upon the activities of its (United Nations) armed forces. Such a view, if ever entertained, should not be countenanced. Even an individual criminal had certain rights as a human being that should be respected."

² In this connection we refer for instance to the plan for the town of Lausanne mentioned in the "Tribune de Genève" of February 7, 1951.

³ We have seen that the Geneva Conventions affirm the notion of safety zones. But the protection offered to the population in these zones is not only due to their being distant from city areas, but rather to their being recognized, and as such respected, by the belligerents concerned. This aspect of the question cannot be too greatly emphasized, for recognition can practically be given only in the event of war; and it is by no means certain that safety zones set up in peace-time will be finally recognised by the belligerents, if hostilities occur.

prohibited, there can be no assurance that these areas will not serve as the best target for the assailant who seeks to undermine the enemy's morale through attacks on the population.

Is it, we ask, appropriate or indeed worthy for men of the XXth Century to coldly contemplate exposing all they most cherish to bombing from the air—their homes and their cities, so varied in aspect and in past history—without making every possible effort to obtain the unanimous agreement of all and sundry for the necessity of confining this devastating scourge within impassable bounds? ¹

* * *

Before concluding this study, we should wish to give forcible expression to a sentiment, which will probably be shared by our readers and which they will excuse us for not having mentioned until now, as we wished to avoid breaking the thread of our study, and in particular to present the theories and opinions upon bombing from the air to which we have alluded, with all necessary objectivity.

There is certainly no branch of warfare which shows, even in the mere study of the means of regulating its course, such a measure of inhumanity in present conflict as that of the air arm. There is no other type of war which gives rise to such an ardent desire for the abolition of great armed conflicts for all eternity. Although our study of the question is not directly related to the realisation of this ideal, it nevertheless proceeds

¹ Major Downey, quoted above, also stated that the three principles laid down by Neville Chamberlain in 1938 could serve as a guide: "The first principle is that it is against international law to bomb civilians as such and to make deliberate attacks on the civilian population. The second principle is that targets which are aimed at from the air must be legitimate military objectives capable of being identified. The third principle is that reasonable care must be exercised in attacking these military objectives so that by carelessness a civilian population in the neighbourhood is not bombed" (p. 108).

from this desire. Other writers ¹ in considering the question in this *Revue* made it definitely clear that regulations for more humane conflicts do not by any means constitute an acceptance of war, but are a first step towards the founding of a lasting peace within the international community. The limits we should like to see applied to a branch of war which at present seems to be limitless, would also aim at facilitating the establishment of peace. This profound belief has guided us throughout our work.

¹ See "L'œuvre de la Croix-Rouge nuit-elle aux efforts tendant à proscrire la guerre?", J. S. Pictet, *Revue internationale de la Croix-Rouge*, March 1951.