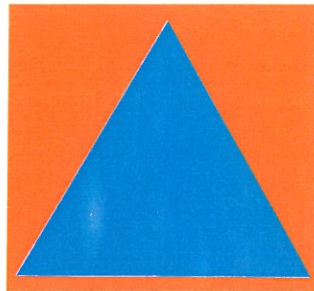


**CIVIL DEFENCE
IN ADDITIONAL PROTOCOL 1
TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949**



*Paper presented by Mr. Bosko Jakovljevic
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A whole chapter in Protocol I is dedicated to civil defence (Chapter VI, Section I of Part IV): containing seven articles, each of them dealing with some question, but all of them make up a whole. This Chapter defines the status of civil defence; it delimits it, prescribes conditions, limits and effects of this status. All these elements taken together, the rights of civil defence, its duties and tasks, the position in relation to other entities and parties in an armed conflict, the privilege of not being attacked and hindered in its work, are so important and specific that they confer to civil defence a special status. It is expected that this special status will render the activities and actions of civil defence more effective.

In international humanitarian law rules relating to civil defence more directly already existed, in addition to the rules which govern its work in an indirect way. These rules were contained in Article 63 of the Fourth Geneva Convention of 12 August 1949. But this Article was very limited in its scope. It did not confer to civil defence special status. The question now is: what is the relation of Article 63 of the Fourth Geneva Convention of 1949 to Articles 61-67 of Protocol I of 1977 giving civil defence special status? These new rules, as a *lex posterior*, replace, in relation between the parties to Protocol I, the old rule contained in Article 63 of the 1949 Conventions. These new rules are broader in scope, they cover a greater field of the activities of civil defence, they give it rights to defend its position in all situations, including the situation under occupation. Article 63 remains valid only in relations between the parties to the 1949 Geneva Conventions which have not become parties to the Protocol of 1977.

The problem may arise in a war in which some parties will be bound only by the 1949 Geneva Conventions and some parties also by Protocol I of 1977. If the allied armies and operations are not separated, the question may arise in some cases which rules for civil defence are valid in a theatre of war in which various parties are present, some of whom are not bound by the Protocol. From the point of view of the interest of war victims, it would be desirable that civil defence could operate under the new status prescribed by Protocol I, in which case its activity could be more effective. In these situations, the good offices of neutral powers, the International Committee of the Red Cross or any other body that is acceptable to both parties would be welcome, in order to arrive at practical arrangements which would make new rules on civil defence operative even in cases when some parties are not bound by Protocol I.

The Chapter on civil defence contains seven articles which differ from one another in content. They cannot be applied separately; they are closely interconnected. The question is whether this system is a good one and homogenous. The detailed analysis will go into this question, but it is obvious that the new rules, which are the result of long negotiations and debates, contain many compromise solutions with which nobody is satisfied. Some provisions do not fit into the whole system or status. There are certain contradictions. Thus, the system is not a perfect one. Therefore, in the application of these rules it will be necessary for all parties concerned to apply them in good faith and, in cases of differences in interpretations of meaning of various provisions, to have always in mind the main humanitarian purpose of the rules and of the tasks of civil defence, so that the war victims may benefit from better protection and assistance.

Chapter VI on civil defence, being a part of Protocol I, all principles and all rules of a general character contained in that Protocol apply to it. Also, many specific provisions of Protocol I touch the activities of civil defence and have to be applied, such as the provisions on wounded and sick and the medical service.

On the other hand, the Chapter on civil defence is a *lex specialis* which prevails for all questions concerning the status of civil defence, and should be applied also when different interpretations may arise.

Among the general rules of Protocol I which also govern the activity of civil defence, some of them may be mentioned.

The beginning and the end of the application, the situations in which the Protocol is applied, the type of conflicts for which these rules are designed, are regulated by the preamble, Article I, Article 3, Article 96 paragraphs 2 and 3. All these provisions have the purpose of ensuring the application of these humanitarian rules in all international armed conflicts, wherever there are victims requiring protection and assistance.

Article 96, paragraph 2, provides for a situation in which one party to the conflict is not bound by the Protocol; in that case that party can accept and apply it, which is considered sufficient to make the Protocol apply to both parties. This concerns the applications of the Protocol as a whole. The question may arise whether one party to the conflict, which is not bound by the Protocol, can accept and apply only the provisions of Protocol I relating to civil defence. The Protocol does not give an answer to this question. It would be contrary to the whole concept of Protocol I, which covers various types of situations and regulates various relations, to take out of it only some parts and make them legally applicable, because all these parts have the same purpose: protection of and assistance to war victims.

Among the rules of a general character may be mentioned Article 5 on protecting powers, and Article 6, on qualified persons. Protecting powers can and should control also the implementation of the rules concerning the protection of civil defence, and help in solving the questions which may arise in the course of application of the rules concerning civil defence.

As the status of civil defence is an innovation, it is important for all concerned to be informed about it and to become familiar with these rules. In this sense the provisions of Article 83 on dissemination are of particular importance. Dissemination of the Geneva Conventions and of this Protocol should also include the position and activity of civil defence. Civil defence itself should contribute to the dissemination of the new rules concerning its

proper status, each in its own country. This dissemination should have as a purpose to inform armed forces, civil authorities, Red Cross and Red Crescent Societies and other bodies about the new specially protected status; about the meaning and importance of this status; about the responsibilities which fall upon both civil status; about the responsibilities which fall upon both civil defence organs and other bodies, in particular military authorities, to secure the observance of this status in the largest interest of the population which is a victim of war. In many countries civil defence is a mass organization enlisting great numbers of people and the application of the specially protected status cannot be secured without the proper knowledge of all those concerned about this status.

Dissemination should be discussed at international meetings which deal with the questions and situations in which civil defence is called upon to work. This would also promote dissemination on the national level.

Part II of Protocol I, concerning the wounded, sick and shipwrecked, and the activity of medical and health services, certainly has many points in common with civil defence. The wounded and sick are victims to whom not only medical services, but also civil defence are called upon to respect, protect and render assistance. Medical personnel of civil defence are mentioned *expressis verbis* in Article 8, so that they are specially protected both as medical personnel and as civil defence personnel. The same is valid for religious personnel mentioned in the same Article.

The provisions of Protocol I concerning civilian population (Part IV) apply to civil defence as well, as it is a civilian organization, its personnel are civilians entitled to protection as such, its objects and equipment and installations are civilian objects in the sense of the Protocol. This Part of the Protocol contains many rules relating to various subjects, and they all apply also to civil defence. Civil defence should in its activity take into consideration these rules, make use of them, and base itself on this important set of rules.

Provisions concerning relief to civilian population certainly concern civil defence when it is offering such relief. These provisions are to be found in Articles 68-71 of Protocol I. Red Cross, Red Crescent and other humanitarian organizations, mentioned in Article 81 of Protocol I, have similar or the same tasks as civil defence: assistance to war victims, rescuing, etc. For this reason it is important to coordinate the work of civil defence and of these different bodies.

Various solutions are possible depending upon the country. In many countries the Red Cross, the Red Crescent while remaining a separate body and autonomous in its organization, is acceptable to perform several of the tasks which come within the scope of civil defence under the authority and the mandate given to it by civil defence. But every country remains free to adopt such a solution for this coordination which corresponds to its structure and division of tasks in time of war. All these various provisions of Protocol I, which were mentioned, clearly show that persons responsible for the work of civil defence must know very well not only the provisions on civil defence, but also all the other relevant provisions of Protocol I and of the Geneva Conventions. Without this knowledge they would not be able to perform the activity of civil defence in a satisfactory way. This calls for a systematic dissemination of the rules of international humanitarian law within civil defence.

The new status of civil defence is granted under certain fixed conditions. Every State is free to organize its civil defence as it sees fit. It can take as a model the conditions and rules

set out in Protocol I, Articles 61 to 67, in which case the civil defence of that State is entitled to enjoy special protection prescribed by international humanitarian law. If these conditions, in particular the basic condition, its humanitarian character, are not fulfilled, such a State cannot claim for its civil defence special status and special protection. How would it be known whether the civil defence of a State has fulfilled the conditions and whether it wishes to claim protection? A State may give its civil defence the tasks enumerated in the definition in this Chapter, but it may also give it other tasks. Who will judge whether these additional tasks are compatible with the special status? The definition leaves certain questions unanswered; different interpretations are possible. What is probably missing in the Protocol is a procedure, compulsory, which would clarify the legal position of civil defence of any given state; a procedure according to which each state should notify the other contracting parties about its decision on whether it wishes its civil defence to comply with the conditions prescribed in Articles 61 to 67, and to be entitled to special protection or not. A state may give to certain parts of its civil defence humanitarian tasks and claim protection, and to entrust other parts or units with other tasks as well without claiming special protection. Various solutions are possible. The fact is that civil defence varies very much from country to country. Also, in the course of time, a state may introduce changes in its civil defence. Besides humanitarian tasks, civil defence has or may have combatant duties. Therefore, doubts may arise as to the status of civil defence of a given state. Certainly in cases of doubts, states may utilize the services of protecting powers or their substitutes. But why not avoid confusion ? By the introduction of a procedure, such as notification to other parties, confusion could be avoided. What may create difficulty is the fact that there is no special international body or organization responsible with the task of intervening in advance and regulating legal and other questions that may arise in the application of the specially protected status of civil defence. This function could be given to the International Committee of the Red Cross (ICRC) and to the International Civil Defence Organization (ICDO). States may entrust these tasks also to other international bodies. But it would be better to have these questions regulated by the Protocol to avoid any doubts.