

Draft Convention for the Protection of Civilian Populations Against New Engines of War. Amsterdam, 1938.

All the High Contracting Parties,

Affirming their fidelity to their obligations under the Pact of Paris of 27 August 1928,

Declaring that in any war which they may wage they would necessarily be the victims of aggression, or such war would on their part be a war of legitimate assistance to a victim of aggression,

Undertaking to observe the following rules, which they acknowledge to embody principles of humanity demanded by the conscience of civilization,

Have decided to conclude a Treaty and for that purpose have appointed as their respective Plenipotentiaries.....

Who, having communicated to one another their full powers, found in good and due form, have agreed upon the following articles:

Article 1. The civilian population of a State shall not form the object of an act of war. The phrase "civilian population" within the meaning of this Convention shall include all those not enlisted in any branch of the combatant services nor for the time being employed or occupied in any belligerent establishment as defined in Article 2.

ATTACK OR BOMBARDMENT OF UNDEFENDED TOWNS

Art. 2. The bombardment by whatever means of towns, ports, villages or buildings which are undefended is prohibited in all circumstances. A town, port, village or isolated building shall be considered undefended provided that not only (a) no combatant troops, but also (b) no military, naval or air establishment, or barracks, arsenal, munition stores or factories, aerodromes or aeroplane workshops or ships of war, naval dockyards, forts, or fortifications for defensive or offensive purposes, or entrenchments (in this Convention referred to as "belligerent establishments") exist within its boundaries or within a radius of "x" kilometres from such boundaries.

BOMBARDMENT OF DEFENDED TOWNS

Art. 3. The bombardment by whatever means of towns, ports, villages or buildings which are defended is prohibited at any time (whether at night or day) when objects of military character cannot be clearly recognized.

Art. 4. Aerial bombardment for the purpose of terrorising the civilian population is expressly prohibited.

Art. 5. 1. Aerial bombardment is prohibited unless directed at combatant forces or belligerent establishments or lines of communication or transportation used for military purposes.

2. In cases where the objectives above specified are so situated that they cannot be bombarded without the indiscriminate bombardment of the civilian population, the aircraft must abstain from bombardment.

CHEMICAL, INCENDIARY OR BACTERIAL WEAPONS

Art. 6. The use of chemical, incendiary or bacterial weapons as against any State, whether or not a party to the present Convention, and in any war, whatever its character, is prohibited.

The application of this rule shall be regulated by the following three articles.

Art. 7. (a) The prohibition of the use of chemical weapons shall apply to the use, by any method whatsoever, for the purpose of injuring an adversary, of any natural or synthetic substance (whether solid, liquid or gaseous) which is harmful to the human or animal organism by reason of its being a toxic, asphyxiating, irritant or vesicant substance.

(b) The said prohibition shall not apply:

- I. to explosives that are not in the last-mentioned category;
- II. to the noxious substances arising from the combustion or detonation of such explosives, provided that such explosives have not been designed or used with the object of producing such noxious substances;
- III. to smoke or fog used to screen objectives or for other military purpose, provided that such smoke or fog is not liable to produce harmful effects under normal conditions of use;
- IV. to gas that is merely lachrymatory.

Art. 8. The prohibition of the use of incendiary weapons shall apply to projectiles specifically intended to cause fires except when used for defence against aircraft. The prohibition shall not apply:

- I. to projectiles specially constructed to give light or to be luminous;
- II. to pyrotechnics not normally likely to cause fires;
- III. to projectiles of all kinds which, though capable of producing incendiary effects accidentally, are not normally likely to produce such effects;
- IV. to incendiary projectiles designed specifically for defence against aircraft when used exclusively for that purpose;
- V. to appliances, such as flame-projectors, used to attack individual combatants by fire.

Art. 9. The prohibition of the use of bacterial weapons shall apply to the use for the purpose of injuring an adversary of all methods for the dissemination of pathogenic microbes or of filter-passing viruses, or of infected substances, whether for the purpose of bringing them into immediate contact with human beings, animals or plants, or for the purpose of affecting any of the latter in any manner whatsoever, as, for example, by polluting the atmosphere, water, foodstuffs or any other objects of human use or consumption.

SAFETY ZONES

Art. 10. For the purpose of better enabling a State to obtain protection for the non-belligerent part of its civil population, a State may, if it thinks fit, declare a specified part or parts of its territory to be a "safety zone" or "safety zones" and, subject to the conditions following, such safety zones shall enjoy immunity from attack or bombardment by whatsoever means, and shall not form the legitimate object of any act of war.

Art. 11. A safety zone shall consist of either:

- (a) a camp specially erected for that purpose and so situated as to ensure that there is no defended town, port, village or building within "x" kilometres of any part of such camp, or
- (b) an undefended town, port, village or building as defined in Article 2.

Art. 12. The inhabitants of a safety zone shall consist of persons who form part of the non-combatant civil population of the State concerned, and shall comprise only the following classes of persons:

- (a) persons over the age of 60 years,
- (b) persons under the age of 15 years,
- (c) persons between 15 and 60 years of age who, by reason of physical or mental infirmity, or by reason of their being expectant mothers or mothers who are suckling infants, are unfit or unable to take part in any work that would enable the State concerned to carry on the war. The question whether any person is or is not within this category is one for the decision of the Controlling Authority hereafter referred to, and
- (d) such other persons (not exceeding in the aggregate five percent of the number of such non-combatants) as shall be necessary for the purpose of tending such non-combatants and

maintaining law and order within the safety zone, as well as the Controlling Authority hereafter referred to.

Art. 13. The situation of any such safety zone and the road, permanent way, river or canal whereby supplies will be brought to such safety zone shall be notified to other Powers in time of peace through diplomatic channels by means of a map and written description, and such notification shall indicate the precise site and limits of the zone. In time of war such notification shall be given through the agency of one of the States signatory to this Convention and not participating in the war. It shall be the duty of such State forthwith to inform directly the Governments of all States actively concerned in any such war of the contents of such notification, and as soon as may be to acquaint therewith the representatives of all States accredited to its Government and not actively participating in such war. A safety zone notified in time of war shall not be deemed to be such until the expiration of 48 hours after such State as aforesaid has informed the Governments of all States actively concerned in any such war as aforesaid.

Art. 14. Such safety zones must be circular in shape and clearly indicated by marks visible by day to aircraft, and the nature of such marks shall be set out in the notification to other Powers as provided in the last-mentioned Article. The marks used for its safety zones by a State must all be of the same size, colour and pattern. The distinctive flag of the Geneva Convention shall not be used as a mark for such safety zones, nor shall the national flag of any State be so used.

Art. 15. It shall be unlawful during time of war to export any article whatsoever from any such safety zone.

Art. 16. No person other than those specified in Article 12 shall during time of war be permitted to enter any such safety zone. It shall be lawful for the purposes of providing food, clothing and other necessities of life to those within the zones for transport services (whether by land, sea or air) to proceed as far as the limits of the safety zone as indicated in the notification to other Powers, but not to enter within or fly over such limits, and to remain there for such period only as shall enable the articles transported to be unloaded. For such period as it is engaged upon or returning from such service, and provided it bears the same distinctive marks as those by which such safety zone is indicated, any railway, motor, steam or electric vehicle, ship or aircraft shall whilst within "x" kilometres of any part of the safety zone enjoy the same immunity as such safety zone, and such immunity shall extend to the road, permanent way, river or canal (so far as the same is within the said "x" kilometres of any part of the safety zone) along which such railway, vehicle or ship must necessarily travel in bringing supplies to or returning from the safety zone. No road, permanent way, river or canal which shall have been used for military purposes at any time whilst the safety zone existed as such shall be entitled to the immunity aforesaid.

Art. 17. Every safety zone shall in time of war be subject to the supervision of a Controlling Authority composed of one or more nationals of a non-belligerent State, and it shall be the duty of such Controlling Authority to satisfy itself that the rules herein contained relating to the establishment of safety zones are in all respects complied with. The Controlling Authority shall be accorded every facility for the carrying out of its duties by the Government of the State concerned, and shall enjoy diplomatic privileges.

Art. 18. The Controlling Authority shall be chosen by and be responsible to a Commission of Control appointed to any State which desires to avail itself of the protection hereby afforded to safety zones by the President of the Permanent Court of International Justice, and may be so appointed in time of peace as well as in time of war. Such Commission of Control shall consist of not less than three nationals of non-belligerent States, and shall be accorded every facility for the carrying out of its duties by the Government of the State to which it is appointed, and shall

enjoy diplomatic privileges, but shall not interfere with the territorial sovereignty of such State.

Art. 19. The Controlling Authority of a safety zone shall also satisfy itself that the provisions of Article 16 are complied with by any transport service proceeding to or from such safety zone, and that the permanent way, road, river or canal used by such transport service had not been used for military purposes whilst such safety zone existed as such.

Art. 20. It shall be the duty of a Controlling Authority which becomes aware of any breach of any of the provisions of this Convention by any belligerent forthwith to notify the Commission of Control to which it is responsible, and the Commission of Control, if satisfied that such breach has occurred shall forthwith notify the President of the Permanent Court of International Justice, specifying the breach and naming the State by which such breach is committed, and shall also forthwith notify the Governments of all belligerents.

Art. 21. If any State seeking to avail itself of the protection hereby afforded to safety zones commits a breach of any of the provisions relating to safety zones contained in this Convention in respect of one or more of its own safety zones, and such breach is notified as provided in the preceding article, and the safety zone or safety zones affected by such breach are specified in such notice, it shall be lawful for any other belligerent to give notice to such State that the safety zone or safety zones concerned will after the receipt of such notice no longer be recognized as such, but it shall not be lawful to cause any injury to civilian populations by way of reprisals for such breach.

SANCTIONS

Art. 22. Any party claiming that a breach of any of the provisions of this Convention (other than a breach of the provisions relating to the establishment of safety zones committed by a State seeking to obtain the protection hereby afforded to such safety zones, for which breach the provisions of the last preceding Article shall be the sole remedy) has occurred shall notify the President of the Permanent Court of International Justice with a view to the immediate constitution of a Commission of Investigation.

Art. 23. The Commission of Investigation shall proceed with all possible speed to make such inquiries as are necessary to determine whether any such breach has occurred.
It shall report to the Permanent Court of International Justice.

Art. 24. The Permanent Court of International Justice shall invite the party (1) against which the complaint has been made to furnish explanations.

It may send commissioners to the territory under the control of that party or of the party making such complaint for the purpose of proceeding to an inquiry, to determine whether any such breach has occurred.

(1) Signatory States not already adhering to the Statute of the Permanent Court would have to undertake to do so. ' (Note in the original). '

Art. 25. The Permanent Court of International Justice may also carry out any other inquiry with the same object, and may determine any question which may arise requiring determination by a judicial tribunal, such decision to be given with all possible speed.

Art. 26. The parties involved in the above-mentioned operations, and, in general, all the parties to the present Convention, shall take the necessary measures to facilitate these operations, particularly as regards the rapid transport of persons and correspondence.

Art. 27. According to the result of the above-mentioned operations, the Permanent Court of International Justice, acting with all possible speed, shall establish whether any such breach has occurred.

Art. 28. In the event of any such breach being established to its satisfaction the Permanent Court of International Justice shall publish its findings, specifying the State or States which has or have committed such breach, and thereupon it shall be lawful for any Signatory State not being a party to such breach without thereby committing any breach of its treaty obligations or of International Law to do all or any of the following

things:

- (a) assist with armed forces the State against which such breach shall have been committed,
- (b) supply such last-mentioned State with financial or material assistance, including munitions of war,
- (c) refuse to admit the exercise by the State or States committing such breach of belligerent rights,
- (d) decline to observe towards the State or States committing such breach the duties prescribed by International Law for a neutral in relation to a belligerent.

Art. 29. Any State committing a breach of this Convention is liable to pay compensation for all damage caused by such breach to a State injured thereby or any of its nationals.

Art. 30. Each of the High Contracting Parties agrees that it will without delay enact such domestic legislation as may be required to carry into effect the obligations entered into by it hereunder.

Art. 31. This Convention is in addition to, and not in substitution for, the humanitarian obligation imposed upon any Signatory State by any general treaty such as the Hague Conventions of 1899 and 1907 and the International Convention relating to the Treatment of Prisoners of War, 1929.

Art. 32. Non-Signatory Powers may adhere to this Convention. To do so they must make known their adhesion to the High Contracting Parties by means of a written notification addressed to all the High Contracting Parties.