

A. Statement at the Diplomatic Conference

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[**Source:** *Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, Geneva (1974-1977)*, Vol. VII, Federal Political Department, Bern, 1978, pp. 192-194]

1. Mr Paolini (France) made the following statement:

“[T]he French delegation wishes to note that Protocol I is not restricted to reaffirming and developing humanitarian law in armed conflicts; it also reaffirms and develops to a considerable extent the laws and customs of war established earlier in a number of international conventions adopted more than fifty years ago, particularly the Hague Convention No. IV of 18 October 1907 concerning the Laws and Customs of War on Land. Humanitarian law and the law of war are thus interlinked although hitherto these two fields of international law have remained separate. This is particularly clear in Part III, concerning the methods and means of warfare, and Part IV, concerning the general protection of the civilian population against effects of hostilities.

“This consolidation of humanitarian law and the law of war will no doubt enable humanitarian law to make progress in some cases. But it does have its dangers. Once an international instrument of humanitarian law also deals with the conduct of warfare, it is necessary to make sure that it maintains strict respect for the sovereignty of States and their inalienable right to provide for their peoples’ self-defence against any aggression by foreign Powers.

“The French delegation therefore wishes to make it quite clear that its Government could not under any circumstances permit the provisions of Protocol I to jeopardize the ‘inherent right of self-defence,’ which France intends to exercise fully in accordance with Article 51 of the United Nations Charter, or to prohibit the

use of any specific weapon which it considers necessary for its defence. [...]

“With regard to Protocol I itself, the French Government cannot accept that the provisions of paragraph 4 of Article 46 (Article 51 in the final numbering) and paragraph 2 of Article 50 (new Article 57), concerning indiscriminate attacks, could prohibit its own armed forces, in defending the national territory, from carrying out military operations against enemy forces attacking or occupying certain areas or places.

“Nor can it accept that the provisions of Article 47 (new Article 52), concerning the general protection of civilian objects, or those of sub-paragraph (b) of Article 51 (new Article 58), recommending the Parties to avoid locating military objectives within or near densely populated areas, could prohibit or irrevocably prejudice the defence by its own armies of certain parts of the national territory or of towns or villages attacked by enemy forces. [...]

“The French delegation considers it regrettable that, because of their ambiguous nature, Articles 46 (new Article 51), 47 (new Article 52), 50 (new Article 57) and 51 (new Article 58) are of a nature to have serious implications for France’s defence policy, and it therefore wishes to express the most categorical reservations with regard to them...”.

B. Reservations and interpretative declarations concerning accession by France to Protocol I

[Source: “Accession by France to Protocol I of 8 June 1977,” in *IRRC*, No. 842, June 2001, pp. 549-552, 2001, available on <http://www.icrc.org/eng/review>]

Accession by France to Protocol I of 8 June 1977

France acceded on 11 April 2001 to the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), adopted in Geneva on 8 June 1977. That accession was accompanied by various declarations and reservations (see below).

Protocol I came into force for France on 11 October 2001. France was the 158th State to become party to that Protocol.

It should be recalled that France acceded on 24 February 1984 to the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).

Reservations and interpretive declarations concerning accession by France to the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)

1. The provisions of Protocol I of 1977 shall not prevent France from exercising its inherent right of self-defence, in accordance with Article 51 of the Charter of the United Nations.
2. With reference to the draft Protocol prepared by the International Committee of the Red Cross, which formed the basis for the work of the Diplomatic Conference of 1974-1977, the Government of the French Republic still considers that the provisions of the Protocol relate to conventional weapons only and that they do not regulate or prohibit recourse to nuclear weapons, nor can they undermine the other rules of international law applying to other weapons which France needs to exercise its inherent right of legitimate defence.
3. The Government of the French Republic considers that the expressions possible and endeavour to used in the Protocol mean what can be achieved or what is practicable, given the prevailing circumstances, including humanitarian and military considerations.
4. The Government of the French Republic considers that, of itself and in context, the expression "armed conflicts" employed in Article 1(4) refers to a situation of a type that does not include committing ordinary crimes – including terrorist acts – irrespective of whether those crimes are collective or individual.
5. Given the practical need to use non-specific aircraft for the purpose of medical evacuation, the Government of the French Republic does not interpret Article 28 (2) as ruling out the presence on board of communication equipment and encoding material or the use of such equipment or material solely in order to facilitate navigation, identification or communication for the benefit of a medical transport mission, as defined in Article 8.
6. The Government of the French Republic considers, in relation to the provisions of Article 35 (2) and (3) and Article 55, that the risk of causing harm to the natural environment through the use of methods and means of warfare, must be analysed objectively on the basis of information available at the time of its assessment.
7. Taking account of the provisions of Article 43 (3) of the Protocol concerning armed law enforcement agencies, the Government of the French Republic informs the States party to the Protocol that its armed forces permanently include the gendarmerie nationale (national police force).
8. The Government of the French Republic considers that the situation referred to in the second sentence of Article 44 (3) can exist only if a territory is occupied or in the event of an armed conflict within the meaning of Article 1 (4). The term "deployment" used in paragraph 3 (b) of that same article means any movement towards a place from which an attack may be launched.
9. The Government of the French Republic considers that the rule stated in the second sentence of Article 50 (1) may not be interpreted as obliging commanding officers to take a decision which, depending on the circumstances and the information available to them, might be incompatible with their duty to ensure the safety of the troops under their responsibility or to maintain their military position, in accordance with the other provisions of the Protocol.
10. The Government of the French Republic considers that the expression "military advantage" used in Article 51 (5) (b), Article 52 (2) and Article 57 (2) (a) (iii) indicates the advantage expected to be gained from the attack as a whole and not from isolated or specific parts of the attack.
11. The Government of the French Republic declares that it will apply the provisions of Article 51 (8) to the extent that their interpretation does not impede the use, in accordance with international law, of the means that it may deem indispensable to protect its civilian population against obvious and deliberate serious violations of the Geneva Conventions and the Protocol by the enemy.

12. The Government of the French Republic considers that a specific area may be considered a military objective if, owing to its location or any other criterion listed in Article 52, its total or partial destruction, its capture or neutralization, taking account of the circumstances prevailing at the time, presents a decisive military advantage. The Government of the French Republic also considers that the first sentence of Article 52 (2) does not tackle the issue of collateral damages resulting from attacks launched against military objectives.
13. The Government of the French Republic declares that if the objects protected under Article 53 are used for military purposes, they shall thereby lose the protection from which they might have benefited pursuant to the provisions of the Protocol.
14. The Government of the French Republic considers that Article 54 (2) does not prohibit attacks carried out with a specific goal, with the exception of those that aim to deprive the civilian population of objects indispensable to its survival and those that are directed against objects which, although they are used by the adverse party, do not serve to provide sustenance for its armed forces alone.
15. The Government of the French Republic cannot guarantee to provide absolute protection for works and installations containing dangerous forces, which may contribute to the war effort of the adverse party, or for the defenders of such installations but it will take every necessary precaution, pursuant to the provisions of Article 56, Article 57 (2) (a) (iii) and Article 85 (3) (c), to avoid severe collateral losses among the civilian populations, including in the event of any direct attacks.
16. The Government of the French Republic considers that the obligation to cancel or suspend an attack, pursuant to the provisions of Article 57 (2) (b), calls only for normal measures to be taken to cancel or suspend that attack, on the basis of information available to the party deciding to launch the attack.
17. The Government of the French Republic considers that Article 70 relating to relief actions is without implication for the existing rules applicable to war at sea with regard to maritime blockades, submarine warfare and mine warfare.
18. The Government of the French Republic does not deem itself bound by a declaration made in application of Article 96 (3) unless it has explicitly acknowledged that the declaration was made by an authoritative body that truly represents a people engaged in an armed conflict as defined in Article 1 (4).