

choice of military objectives in the planning of a mission, the objective chosen must be that which may be expected to cause the least danger to civilian lives and to civilian objects²⁹.

In establishing the calculus of proportionality, examples of variables which must be factored into the equation are: the military importance of the target, density of the civilian population in the target area, proximity of civilian objects including infrastructures, likely incidental effects of the attack such as the release of hazardous substances, type of weapon available, accuracy of the weapon, method and trajectory of delivery, rights of neutral countries, etc.³⁰

It is interesting to note that the scope of applicability of A.P. I is defined within Article 49.2 stating that:

49.2 The provisions of this protocol with respect to attacks apply to all attacks in whatever territory conducted, including the national territory belonging to a Party to the conflict but under the control of an adverse Party.

49.3 The provisions of this Section apply to any land, air or sea warfare, which may affect the civilian population, individual civilians or civilian objects on land. They further apply to all attacks from the sea or from the air against objectives on land but do not otherwise affect the rules of international law applicable in armed conflict at sea or in the air.

Through a literal and restrictive interpretation of Article 49.2 one can argue that the scope of applicability excludes the application of the text to military operations in outer space. Such a restrictive interpretation can probably be held to be unreasonable. An expansive interpretation, which would enlarge the scope of applicability to include military operations in outer space, is probably more reasonable. Despite this interpretative debate, military operations that aim to neutralize satellite architecture, located either on land or at sea or which are within the air medium would certainly be encompassed within the scope of applicability of the Protocol.

Perhaps, the key to understanding the concept of proportionality is the frame of reference, which is to be used since "proportionality" is by definition a relative concept. The frame of reference is to be taken from a strategic reference point and not from a narrow tactical perspective.³¹

I 5. Humanity

Conventional origins of the principle of humanity may also be found in the preamble of the St-Petersburg Declaration³². Evidence of the importance of this principle is found in the fact that it is also one of the seven Fundamental Principles of the Red Cross and Red Crescent Movement. This principle is based upon the desire to maintain human dignity during military operations by the respect of the human being³³. The goal of this principle is to reduce and alleviate suffering caused by war. This principle completes the others. As professor Schmitt cogently argues, "*suffering is useless if it is militarily unnecessary and, because it offers no direct and concrete military advantage, disproportionate*"³⁴. Perhaps one of the most important conventional expressions of this principle is to be found in the text of the so-called "Martens Clause" which first appeared within the preamble to the Hague Convention IV of 1907.³⁵

Until a more complete code of the laws of war has been issued, the high contracting parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the

²⁹ A.P. I art. 57 .3, supra note 11.

³⁰ Rogers, *Law on the Battlefield*, supra note 22 at 19.

³¹ Professor Michael N. Schmitt articulates three manners in which the principle of proportionality is most often violated. These are: 1) a lack of full knowledge as to what is being hit; 2) the inability to surgically craft the amount of force being applied to the target; and 3) the inability to ensure the weapon strikes precisely the point. In "Bellum Americanum: The U.S. View of Twenty-First Century War and its Possible Implications for the Law of Armed Conflict" (1998) 19 Michigan Journal of International Law at 1080 (hereinafter referred to as "Bellum Americanum").

³² "...Uselessly aggravate the sufferings of disabled men, or render their death inevitable" Reprinted in Roberts & Guelff supra note 20.

³³ As stated by the ICJ "A great many rules of humanitarian law applicable in armed conflict are so fundamental to the respect of the human person and "elementary considerations of humanity". Nuclear Weapons Case, supra note 6 para. 80.

³⁴ Bellum Americanum, supra note 31 at 1084.

³⁵ Reprinted in Roberts & Guelff supra note 5 at 67 and 70.