

properly-organized military force in accordance with the laws of war, then clearly the situation was covered by the laws of war, with both sides being entitled to prisoner-of-war status. But this is no longer the case. Protocol I has altered the conception of combatants and consequently of those entitled to prisoner-of-war status. In order to protect national liberation movements, it is no longer necessary that two parties to a conflict recognize each other, so long as the forces involved are subject to an internal disciplinary system that is able to enforce compliance with international law. International law in the past has required such forces to have a fixed distinctive sign, recognizable at a distance, and to carry their arms openly. This is no longer the case. Operations like that in Vietnam have shown that those likely to describe themselves as national liberationists are unlikely to be readily distinguishable from the civilian population and may even be dressed in identical fashion. In addition, the members of the IRA or of guerilla movements in Africa operating within the towns rarely carry their arms openly. Under the protocol, violation of the rules of international law does not deprive a combatant of his status as such, or of his right to be a prisoner of war. In addition, while combatants are required to "distinguish themselves from the civilian population while they are engaged in an attack or in a military operation preparatory to an attack . . . there are situations in armed conflict where, if, owing to the nature of the hostilities, an armed combatant cannot so distinguish himself, he shall [nevertheless] retain his status as a combatant, provided that, in such situations, he carries his arms openly: (a) during each military engagement [— what if this is an ambush or an attack from the rear upon a sentry at a military installation?], and (b) during such time as he is visible to the adversary while he is engaged in a military deployment preceding the launching of an attack in which he is to participate". (There were differences of opinion as to whether this meant "visible" to the naked eye or with the assistance of mechanical aids.)

Since the situation envisaged in this provision will not refer to the forces of an organized state or government, this means that the reciprocal basis of the law of war and of humanitarian law generally has been disrupted. Such forces will continue to be required to wear uniforms or other distinguishing emblems and carry their arms openly at all times, and failure to do

so will render them likely to lose their protected status. National liberation forces, on the other hand, remain protected and, even should they fail to fulfil the requirements just referred to, while they lose "the right to be a prisoner of war, [they] shall, nevertheless, be given protections equivalent in all respects to those accorded to prisoners of war" in accordance with the Geneva Convention on Prisoners of War, as well as any further protection afforded such prisoners by the protocol. They would, however, be liable to trial for war crimes.

Other matters, too, reflect "North-South" divergences and the pressures of the Third World majority. The Angolan armed conflict and the Luanda trial that followed it, together with criticism of European volunteers with the South African and Rhodesian forces, have focused attention on the employment of mercenaries. The general view seems to be that there is something dishonourable in the profession of arms if the professional serves for purely mercenary, or perhaps even ideological, reasons. After Luanda, it appeared as if condemnation would be reserved for those who sold their services to an authority opposed to a national liberation movement, while those who assisted such a movement for whatever cause were merely complying with the new morality as expressed in resolutions of the United Nations and the Organization of African Unity. Protocol I acknowledges some of the obloquy heaped upon the mercenary in that it denies him status either as a combatant or a prisoner of war, but it does not say that mercenary service is in itself a crime. On the other hand, if it denies him protected status, it reduces him to the level of a non-combatant unlawfully taking up arms and, as such, liable to trial as a war criminal. It is possible to argue that he remains entitled to minimum humanitarian treatment and basic judicial guarantees.

Mercenaries

The reference to national liberation has also disappeared, and a mercenary is now described as any person who "(a) is specially recruited locally or abroad to fight in an armed conflict [— thus inhibiting the right of a belligerent defending itself against aggression from exercising its sovereignty within its territory by enlistment of visitors who may be willing to serve]; (b) does, in fact, take a direct part in the hostilities [— protecting, therefore, advisers or instructors sent by a sympathetic great power or its substitute]; (c) is

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