

PUBLIC
ANNEX H

Claude PILLOUD† · Jean DE PREUX ·
Yves SANDOZ · Bruno ZIMMERMANN ·
Philippe Eberlin · Hans-Peter Gasser · Claude F. Wenger
(*Protocol I*)

Philippe EBERLIN (*Annex I*) ·
Sylvie-S. JUNOD (*Protocol II*)

with the collaboration of

Jean PICTET

Commentary on the Additional Protocols

of 8 June 1977
to the Geneva Conventions
of 12 August 1949

Editors

Yves SANDOZ · Christophe SWINARSKI ·
Bruno ZIMMERMANN

International Committee of the Red Cross

Martinus Nijhoff Publishers

Geneva 1987

ISBN 90-247-3460-6

Copyright

© 1987 by International Committee of the Red Cross

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, mechanical, photocopying, recording, or otherwise, without the prior written permission of the International Committee of the Red Cross.

PRINTED IN THE NETHERLANDS

necessary, to suppress them and report them to the competent authorities. Paragraph 3 lays down similar requirements as regards its purport, though referring to the case where a commander “is aware that subordinates or other persons under his control are going to commit or have committed a breach”. Thus these two paragraphs complement each other.

- 3560 In adopting these texts, the drafters of the Protocol justifiably considered that military commanders are not without the means for ensuring respect for the rules of the Conventions. In the first place, they are on the spot and able to exercise control over the troops and the weapons which they use. They have the authority, and more than anyone else they can prevent breaches by creating the appropriate frame of mind, ensuring the rational use of the means of combat and by maintaining discipline. Their role obliges them to be constantly informed of the way in which their subordinates carry out the tasks entrusted them, and to take the necessary measures for this purpose. Finally, they are in a position to establish or ensure the establishment of the facts, which would be the starting point for any action to suppress or punish a breach.
- 3561 Every commander at every level has a duty to react by initiating “such steps as are necessary to prevent such violations”. By way of example, a non-commissioned officer must intervene to restrain a soldier who is about to kill a wounded adversary or a civilian, a lieutenant must mark a protected place which he discovers in the course of his advance, a company commander is to have prisoners of war sheltered from gunfire, a battalion commander must ensure that an attack is interrupted when he finds that the objective under attack is no longer a military objective, and a regimental commander must select objectives in such a way as to avoid indiscriminate attacks.
- 3562 The text of paragraph 3 also requires that any commander “where appropriate”, will “initiate disciplinary or penal action against violators”. Paragraph 1 lays down the obligation for military commanders to prevent breaches “and, where necessary, to suppress and to report [them] to competent authorities”. Thus these two texts again are complementary. During the course of the discussions some delegations expressed the fear that these provisions would result in an unjustified transfer of responsibilities from the level of the government to that of commanders in zones where military operations are taking place.¹⁷ They also feared that inappropriate prosecutions could take place, and that military commanders might encroach on the judgment of the judicial authorities.¹⁸ These fears, which were the reason for the requests for voting by paragraph on this article,¹⁹ do not seem to be justified. It is not a matter of transferring to military commanders the competence and responsibilities which are those of the judicial authorities, even if this is a military court, whether or not it is represented by a military commission constituted in accordance with the law. The object of these texts is to ensure that military commanders at every level exercise the power vested in them, both with regard to the provisions of the Conventions and the Protocol, and with regard to other rules of the army to which

¹⁷ See *O.R.* IX, p. 402, CDDH/I/SR.71, para. 17.

¹⁸ *Ibid.*

¹⁹ See *supra*, p. 1018, note 5.