Chapter 2. Types of Conflict and Rules of Behaviour

The provisions of international humanitarian law are many and detailed. For example, the four Geneva Conventions of 1949 contain a total of 429 articles. The two Additional Protocols of 1977 add another 130 articles between them. The Third Geneva Convention, which complements already existing rules for the protection of prisoners of war in the 1899 and 1907 Hague Regulations, contains 143 articles. This figure can be contrasted with the 95 articles of the most comprehensive human rights instrument setting out good principle and practice in the treatment of prisoners and the management of civil penal institutions, the Standard Minimum Rules for the Treatment of Prisoners.73 Even if the 39 articles of another human rights instrument, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, are taken into account the provisions for the protection of captured combatants remain more numerous.

Clearly distinguishing between international humanitarian law instruments and human rights instruments on the treatment of prisoners purely on the basis of the number of articles is an unsatisfactory way of making a comparison. Furthermore the very specific human rights instruments designed to protect detainees from torture and mistreatment, and those for the protection of juvenile detainees, could also be taken into account. Nevertheless, it is a useful preliminary indication of the multiplicity of humanitarian law provisions to police officials who are probably more familiar with domestic and international human rights instruments for the protection of civil prisoners.

Given that the purposes of international humanitarian law are to regulate the conduct of hostilities and to protect victims of armed conflicts, and that the bulk of its provisions relate to international armed conflicts, this law is primarily the concern of the military. However, for the reasons indicated in the previous chapter, police officials should become familiar with humanitarian law, and comply with it and secure compliance with it. The point made there, that the lack of awareness of police officials about this subject should be remedied, will, it is hoped, be reinforced by the following account of some of its provisions, and especially the account of the status of police in times of armed conflict. In this respect, the distinction between combatant and civilian will first be made clear. The question of combatant and non-combatant status only arises in the circumstances of international armed conflict, and the conflicts to which this term applies are set out in the 1949 Geneva Conventions and 1977 Additional Protocol I to the Conventions.

73 Standard Minimum Rules for the Treatment of Prisoners, supra note 61.
(A) INTERNATIONAL ARMED CONFLICT

The Geneva Conventions and the First Additional Protocol apply to all cases of declared war or of any other armed conflict arising between two or more parties to the Conventions and Additional Protocol I from the beginning of such a situation, even if a state of war is not recognised by one of them, and to all cases of partial or total occupation of the territory of a high contracting party, even if the occupation meets with no resistance. The treaties also cover armed conflicts in which people are fighting against colonial domination and alien occupation, and against racial regimes in the exercise of their right of self-determination.\(^7^4\)

Members of the armed forces of a party to an international armed conflict (other than medical or religious personnel) are combatants, and any combatant captured by the adverse party is a prisoner of war.\(^7^5\) Such armed forces must be organised, placed under a command responsible to that party for the conduct of its subordinates, and subject to an internal disciplinary system that enforces compliance with the rules of international law applicable in armed conflict.

Compliance with these rules implies, in particular, that combatants are obliged to distinguish themselves from the civilian population by a uniform or by some other distinctive sign, at least while they are engaged in an attack or in a military operation preparatory to an attack. In exceptional circumstances, owing to the nature of hostilities, they may distinguish themselves as combatants by carrying arms openly.

A civilian is any person who is not a member of armed forces, and where there is doubt as to whether or not a person is a civilian, a person is to be considered a civilian. The civilian population comprises all persons who are civilians, and the presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character.\(^7^6\)

(a) Status of Police

Civil police forces are not armed forces in the sense in which that term is used in these definitions. It is clear that civil police forces have civilian status and that members of those forces have civilian and not combatant status.

This point is reinforced by article 43(3) of 1977 Additional Protocol I, which states that whenever a Party to a conflict incorporates a paramilitary or armed law

\(^7^4\) Article 2 common to the 1949 Geneva Conventions, and article 1(4) of the 1977 Additional Protocol I.
\(^7^5\) 1949 Geneva Convention III, article 4, and 1977 Additional Protocol I, articles 43 and 44.
\(^7^6\) 1977 Additional Protocol I, article 50.