THE MANY FACES OF THE TERM OPEN CITY

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1 INTRODUCTION

According to a well known principle of the laws of war, an open town is a locality that a belligerent has declared to be “open”, i.e. undefended, and, if the adversary accepts this status, it will not be bombarded. The purpose is to prevent unnecessary suffering to non-involved civilians and to avoid unwarranted destruction. The principle has been supplemented by several related institutions: “undefended areas”, “hospital and safety zones”, “neutralized areas” and “non-defended localities”.

However, in recent times, the term has also been used in very different contexts relating to peace time. In the following pages, an attempt will be made to clarify the development of the classical term as well as get a glimpse of the new uses of the expression.

2 THE CLASSICAL MEANING

The open city or open town principle is a rather ancient one. It was applied inter alia in the Civil War in the U.S.A. (1861-1865) with regard to

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1 Or “open towns”, see e.g. D. Fleck (ed.), The Handbook of Humanitarian Law in Armed Conflicts (Oxford, Oxford University Press, 1995), at paras. 457-463 (non-defended localities); I. Detter, The Law of War, 2nd ed. (Cambridge, Cambridge University Press, 2000), pp. 278-


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Columbia (North Carolina) and Richmond (Virginia). Other famous cases are Paris (in June 1940), and Rome (in June 1944). Manila, on the other hand, was not recognized by Japan as an open city despite a declaration to that effect by General D. MacArthur of the United States (December 1941). Other famous cases of requests for open city status that were not recognized are Jerusalem (in 1967), Kabul, for which U.S. Secretary of State Powell suggested it in 2001 and Sarajevo (in 1993).

Opinions are divided on whether the open city rule is a customary one, or only a matter of usage. It is generally accepted that the rule of open towns applies only in areas of contact between enemies, and only to towns that are open for occupation.

A first attempt to codify the rule was made by the 1874 Brussels convention which never entered into force:

Fortified places are alone liable to be besieged. Open towns, agglomerations of dwellings, or villages which are not defended can neither be attacked nor bombarded. (Article 15)

The 1899 and 1907 Hague Regulations dropped the term “open town” and replaced it by “towns . . . which are not defended”:

The attack or bombardment by whatever means, of towns, villages, dwellings or buildings which are undefended is prohibited. (Article 25)

This provision can be interpreted as meaning that the immunity from attack could also apply to places that are not open for occupation. A problem that