

BRUGES DECLARATION ON THE USE OF FORCE

September 2, 2003

The Institut de Droit international

Recalls Article 1 of its Statutes adopted by the Ghent international legal conference (*conférence juridique internationale*) of 10 September 1873 in which it is stated that the *Institut's*

“2. [...] purpose is to promote the progress of international law [...] d) by contributing, within the limits of its competence, either to the maintenance of peace, or to the observance of the laws of war”.

Recalls its resolution adopted at the Zurich Session in 1877 entitled “Application of the Law of Nations to the War of 1877 between Russia and Turkey” in which it considered itself “unable to close the present Session without again raising its voices in favour of law and humanity”.

The *Institut* considers that its duty is to reaffirm that the use of force by States in international relations is governed by international law. One of the major achievements of the twentieth century was the “outlawing” of war, in particular by the Briand-Kellogg Pact whose 75th anniversary is being celebrated, and by the United Nations Charter on the basis of which the following fundamental principles were proclaimed:

- the threat or use of force are prohibited and States are bound to settle their disputes by peaceful means;
- a war of aggression constitutes an international crime;

- force may be used only in the exercise of the right to legitimate self-defence or under the authorization of the Security Council;
- the primary responsibility for the maintenance of international peace and security is entrusted to the Security Council.

Only the Security Council, or the General Assembly acting under the more limited framework of the “Uniting For Peace” Resolution of 1950, may, depending on the particular circumstances at hand, decide that a given situation constitutes a threat to international peace and security, without this necessarily meaning that the recourse to force is the only possible adequate response.

The *Institut* equally reaffirms that acts of terrorism, from whatever source, are prohibited under international law and constitute an international crime.

In addition, the waging of an armed conflict entails the application of the totality of international humanitarian law and in particular, the following principles:

- the distinction between the civilian population and military personnel as well as between civilian objects and military objectives must be respected in all circumstances; and civilian persons and objects must never be targeted;
- combatants who are captured have the right to be treated as prisoners of war; in cases of doubt, their status has to be determined by a tribunal; and even if such a tribunal decides that they do not meet the conditions for the status of prisoner of war, they nonetheless benefit from the rights guaranteed by international humanitarian law in respect of all persons in the power of the enemy (which are codified in Article 75 of the First Additional Protocol of 1977 to the Geneva Conventions of 1949).

Belligerent occupation of a territory entails the application of the rules of international humanitarian law codified in the Hague Regulations of 1907, the Fourth Geneva Convention of 1949 and the First Additional Protocol:

- belligerent occupation does not transfer sovereignty over territory to the occupying power;
- the occupying power can only dispose of the resources of the occupied territory to the extent necessary for the current administration of the territory and to meet the essential needs of the population;
- the occupying power assumes the responsibility and the obligation to maintain order and to guarantee the security of the inhabitants of the territory and to protect its historical heritage, cultural property and basic infrastructure essential to the needs of the population;
- the occupying power has the obligation to meet the basic needs of the population;
- the occupying power has the obligation to respect the rights of the inhabitants of the occupied territory which are guaranteed by international humanitarian law and international human rights law, the minimum content of which is codified in Article 75 of the First Additional Protocol.

The *Institut de Droit international* appealing to the universal conscience of mankind, emphatically requests all States to respect the above mentioned fundamental principles.

JUSTITIA ET PACE