

# THE LEGAL PROTECTION OF MILITARY PARACHUTISTS IN INTERWAR INTERNATIONAL AIR LAW: A CONTRIBUTION FROM ROMANIAN LEGAL DOCTRINE

Mihai-Dan DEAȘ

"Henri Coandă" Air Force Academy, Brașov, Romania (mihai.deas@afahc.ro)

DOI: 10.19062/1842-9238.2026.24.1.2

**Abstract:** *The use of the parachute as a means of rescuing pilots and balloon observers raised, from the outset of military aviation, a fundamental question of international law: may a person descending by parachute be attacked in the air? This article analyses the legal status of military parachutists in the context of the First and Second World Wars, based on the provisions of Article 20 of the Draft Rules of Aerial Warfare adopted by the Hague Commission of Jurists (1922–1923). The author critically examines the criteria proposed by Western legal scholars — Spaight, Riesch, Kroell, Montersi and le Goff — regarding the legitimacy of attacks on aviators and balloon observers parachuting to safety.*

*The original contribution consists in proposing a system of four cumulative criteria — the aircraft being disabled from combat, the territory above which the jump occurs, the capabilities of local ground defences, and the self-interest of the belligerents — which more precisely characterise each operational situation than the existing doctrinal formulations, considered either too restrictive or practically inapplicable. The article further demonstrates the contemporary relevance of these criteria through their connection to Additional Protocol I to the Geneva Conventions (1977), Article 42.*

**Keywords:** *international air law, military parachutists, Hague Regulations, law of war, prisoners of war, aerial chivalry, Costeanu*

## 1. INTRODUCTION

Note on research continuity: This study explicitly builds on the author's previously published research: Deaș, M. (2021), "Historical Landmarks Regarding the Actions of Attacking in the Air of the Aeronautical Personnel that are Saved by Parachuting during the World Conflicts of the XXth Century", Review of the Air Force Academy. Whereas that study provided a historical-descriptive analysis of belligerent practice, the present article extends that research through three new contributions: [1]

(1) a detailed legal-doctrinal analysis of Article 20 of the Hague Commission and of the proposals by Kroell, Montersi and le Goff;

(2) an in-depth examination of each of the four criteria proposed by Costeanu;

(3) an assessment of the contemporary relevance of these criteria with reference to Additional Protocol I to the Geneva Conventions (1977), Art. 42.

With all attempts at regulation by the Hague Commission of Jurists, one fundamental question persists: "Must an observer or a pilot be attacked during the parachute descent?" In order to answer this properly, a brief history of the use of the parachute as a rescue means in wartime and the practice of the belligerents towards this procedure are required.

The development of military aviation during the First World War raised a question of international law without precedent: what is the legal status of the aviator or balloon observer who, forced to abandon his aircraft, descends by parachute? May he be attacked while still in the air? Or does the protection accorded to the shipwrecked sailor - enshrined in international conventions - apply by analogy to this "aerial shipwrecked" person?

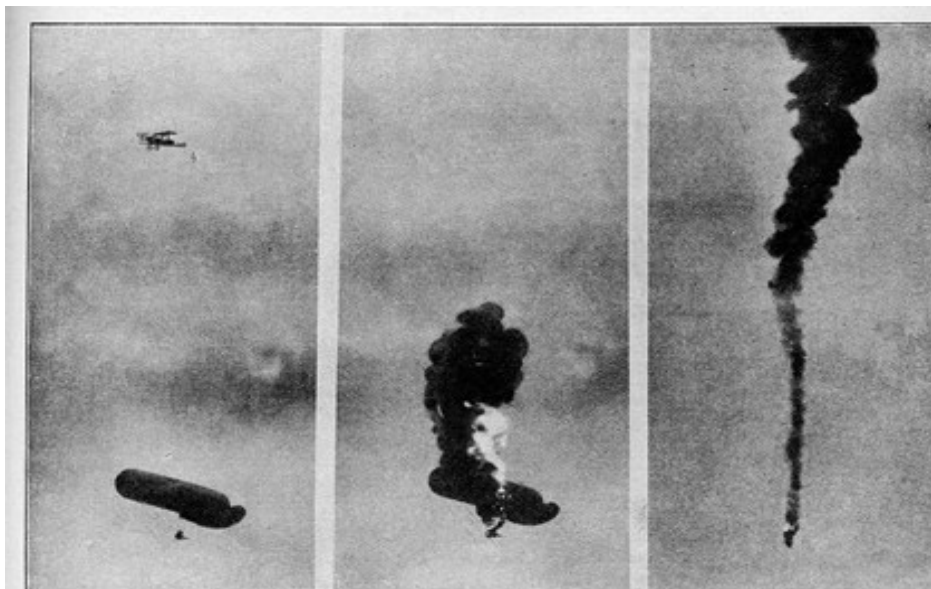
The Hague Commission of Jurists attempted to address these questions through Article 20 of the Draft Rules of Aerial Warfare (1922–1923), but its formulation proved insufficient. Legal scholars - James Spaight, Riesch, Kroell, Mario Montersi and Marcel le Goff - proposed alternative interpretations and redrafts, none succeeding in reconciling the practical requirements of military operations with humanitarian principles.[2]

This article, originally published in the *Aeronautics and Navy Magazine* in September–October 1943 by Slt. par. Alexandru Costeanu, Doctor of Law and parachutist officer in the Romanian Air Force, brings an original perspective: that of a practitioner combining legal training with direct operational experience. Costeanu proposes a system of four cumulative criteria for determining the legitimacy of the attack, going beyond both the Hague Commission text and Kroell's proposal.

## 2. THE BALLOON OBSERVERS AND THE PILOTS

### 2.1. Balloon observers and the rescue parachute

Throughout the entire conflict, balloon observers had parachutes at their disposal. Whenever these balloons came under attack - typically carried out using incendiary rounds - the aircraft would ignite, forcing the crew to leap from the burning balloon using their parachutes in order to survive.[3]



**FIG. 1** A biplane shooting successfully at a tethered "kite" balloon flying below, First World War[5]

On numerous occasions, however, the flaming balloon would collapse and plummet rapidly, landing directly on top of the observer who had already jumped, setting the parachute ablaze and ultimately resulting in the jumper's death. This is precisely why, in certain countries such as France, the practice of using parachutes among balloon observers had gradually fallen out of favor toward the final stages of the war.[4]

In the closing stages of the war, both German and French forces developed parachute systems capable of safely lowering the entire gondola along with its equipment, the crew member, and all collected reconnaissance data whenever the balloon was set alight. Under these circumstances, targeting the descending gondola became a justified military action - both because the destruction of the equipment on board represented a significant setback for the enemy, and because the observer, once he reached the ground with his records, posed a potential threat through the intelligence he could relay to his commanders.

## **2.2. Cases documented: the French attack order and American chivalry**

While Riesch arrives at conclusions that faithfully reflect the stances adopted by the warring parties regarding pilots and balloon observers who relied on parachutes to escape, Spaight goes a step further by referencing specific documented incidents from the First World War.[6]

To begin with, a directive issued to a French aerial reconnaissance unit:

"The plane No. 1 will attack the balloon first. If it fails, plane No. 2 will also attack. If plane No. 1 succeeds, then plane No. 2 will attack the observers who save themselves with the parachute. If planes No. 1 and 2 succeed, then plane No. 3 will attack the observers."[7]

French Corporal Leverrier sustained a gunshot wound to the head while abandoning his burning balloon by parachute. Sergeant Mathieu, who was similarly targeted by enemy aircraft during his descent, managed to survive the ordeal on 17 March 1917. A German aviator directed repeated short bursts of fire at the helpless observer who had abandoned the balloon. The British air forces responded in kind, as Captain H.G. Watson of the Australian Flying Corps targeted the suspension lines connecting the descending soldier to his parachute. Captain Rickenbacker, by contrast, chose to hold his fire when faced with a pilot who had bailed out of a stricken aircraft.[8]



**FIG. 2** Captain Rickenbacker's SPAD XIII — chivalry and self-restraint in aerial combat[9]

## **2.3. Riesch's conclusion: absence of a uniform legal framework**

Riesch summarises the legal situation precisely: in the absence of rules of international law expressly addressing the legitimacy of attacking aviators or balloon observers descending by parachute, the warring parties of the First World War found themselves uncertain about the appropriate course of action they were expected to take.

"The conduct of the belligerents was inconsistent. Some aviators attacked the parachutists without inquiring into the reasons that had led them to that situation, even resorting to tracer and incendiary cartridges to fire upon the unfortunate airmen and balloon observers; others simply riddled the canopy of those attempting to save themselves with bullets. It can be said that the majority of aviators during the First World War spared their opponents who were descending by parachute." [10]

### **3. THE LEGAL FRAMEWORK: ARTICLE 20 OF THE HAGUE COMMISSION (1922–1923)**

#### **3.1. The text and limits of Article 20**

The Hague Commission of Jurists (1922–1923) adopted Article 20 of the Draft Rules of Aerial Warfare, which prohibits attacks on persons on board an aircraft that can no longer be used. Costeanu criticises the formulation "aircraft that can no longer be used" as being simultaneously too precise and insufficient. [11]



**FIG. 3** The\_Hague Conference 1922 [12]

Too precise, because it excludes cases that deserve the same treatment; insufficient, because it cannot be practically verified in aerial combat conditions. From 1915, French and English intelligence services began launching agents by parachute behind German lines - a wholly different category that created additional uncertainty.

This particular provision covers merely a quarter of all instances involving parachute descents undertaken for survival purposes, leaving the remaining three quarters without any legal protection. Only one specific scenario is explicitly addressed in the Hague Commission's text - that of an aircraft rendered unable to continue fighting - and this accounts for just a fraction of the actual situations encountered in practice.

#### **3.2. Kroell's proposal and its limitations**

Kroell proposes a new formulation: " No individual who abandons an aircraft by means of a parachute in order to preserve their life may be made the target of an attack." Costeanu acknowledges that this formulation is more comprehensive, but criticises it on the grounds of practical inapplicability. [13]

The purely subjective criterion of purpose (saving life vs. military action) leaves complete freedom of judgement to those called upon to apply it, since the distinction cannot be objectively verified either by aviators or by ground troops.

Paradoxically, Kroell's proposal may lead to more paratroopers being attacked, not fewer, precisely because the subjective criterion offers no reliable standard.

### **3.3. Montersi, le Goff and the maritime law analogy**

Mario Montersi and Riesch argue through analogy with shipwrecked sailors: the crew saving itself by parachute must be assimilated to shipwrecked sailors and enjoy immunity during the descent. Marcel le Goff subscribes to Kroell's position, but introduces an important operational nuance:

"Solo jumps from an aircraft that has not been disabled in combat are to be regarded with suspicion, and those who perform them may be neutralized; descents carried out by multiple individuals simultaneously invariably constitute sufficient grounds for engagement and elimination." [14]

Costeanu observes that the maritime law analogy is partially valid but has limits: in air law, the principle that a ship is sunk only after the safety of the crew has been ensured cannot be applied. The conditions of aerial combat are fundamentally different from naval ones. [15]

## **4. THE ORIGINAL CONTRIBUTION: THE FOUR-CRITERIA SYSTEM**

Facing the shortcomings of both Article 20 and Kroell's proposal, Costeanu contends that no single standard is sufficient to determine when attacking aviators descending by parachute may be considered lawful, and that multiple criteria are instead required in order to more precisely distinguish between the various operational circumstances that may arise:

- The combat status of the aircraft at the time of the incident;
- The geographic area over which the descent takes place;
- The available means of ground-based defense in the vicinity;
- The strategic interests of the parties involved in the conflict.

### **4.1. Criterion 1 - The combat status of the aircraft at the time of the incident**

The first criterion - whether the aircraft was visibly taken out of combat - is closest to the Hague Commission text. If the plane crashes into flames immediately after the jump, it is clearly an apparatus out of combat. If the aircraft continues to fly apparently intact, the jump becomes suspicious. The difficulty remains that many intermediate situations cannot be distinguished from outside.

### **4.2. Criterion 2 - The geographic area over which the descent takes place**

Costeanu introduces a key distinction neglected by earlier doctrine: the location of the jump radically determines the legal situation. If the jump is made above the parachutist's own territory, the enemy will almost always attack, because the saved aviator can resume combat. A trained pilot is harder to replace than an aircraft - making the attack militarily legitimate, even if it appears inhumane.

Should the individual descending by parachute find himself deep within hostile territory, the opposing force will typically refrain from engaging him either from the air or from the ground - and will be even less inclined to do so when the opportunity to take him prisoner presents itself. Capturing him alive carries greater strategic value than eliminating him outright, since prisoners can be interrogated and put to work, thereby augmenting the productive capacity of the capturing nation. What shields the parachutist in such circumstances is not any sense of battlefield honor, but rather the cold pragmatic reasoning of the adversary. [17]

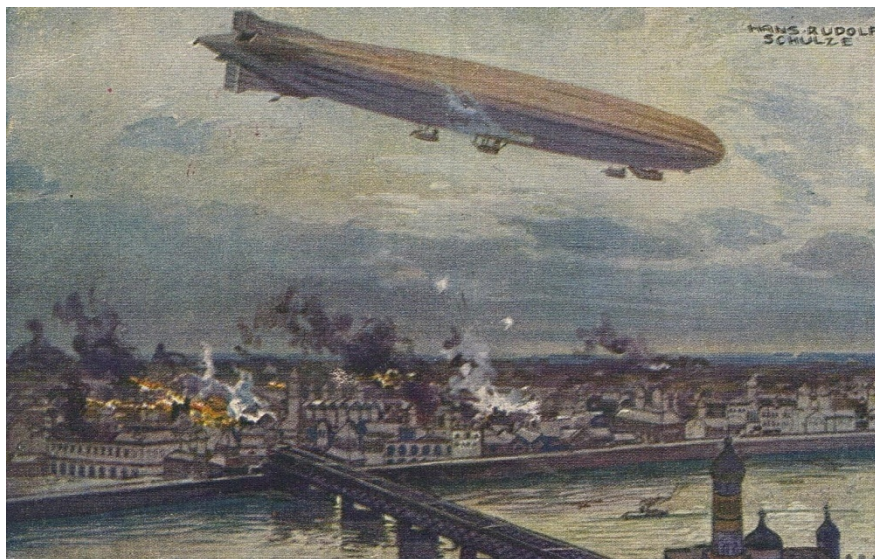


FIG. 4 The German airship Schütte Lantz SL2 bombed Warsaw in 1914[16]

#### 4.3. Criterion 3 - The available means of ground-based defense in the vicinity

The third criterion concerns the concrete capacity of ground forces to capture the parachutist. If local defence is organised and the certainty of capture is high, aerial attack is counterproductive. If, conversely, the parachutist can land in uncontrolled zones or steer the parachute towards his own lines - increasingly possible with manoeuvrable parachutes - the attack becomes justified.

Infantry units on the ground consistently open fire on enemy airmen with little regard for legal or ethical considerations, driven by an incomplete understanding of the unfolding situation, an absence of humanitarian awareness, and uncertainty surrounding where the descending individual will eventually land. A single weapon discharging somewhere along the line is sufficient to trigger a chain reaction, prompting the entire front to unleash a barrage of fire upon the person attempting to save himself.[18]

#### 4.4. Criterion 4 - The strategic interests of the parties involved in the conflict

The fourth criterion is, in Costeanu's view, the most practically important. Chivalry and humanitarianism play a very small role in the operations of modern war. The determining factor is military opportunity: the capture of a trained pilot, capable of providing valuable intelligence, is often preferable to killing him in the air.

This leads Costeanu to a striking paradox, formulated with remarkable lucidity: the improvement in the treatment of parachutists during the Second World War compared to the First was caused not by moral or humanitarian progress, but by the progress of local defence organisation and the "higher understanding of self-interest" - namely, that capturing a living enemy aviator yields more value than shooting him as he descends.

## 5. OPERATIONAL PARTICULARITIES

### 5.1. The distinct situation of balloon observers

Costeanu draws an analytical distinction between the aviator and the balloon observer. Captive balloons operate generally above their own territory; the observer who jumps will almost certainly land in friendly lines.

The attack is therefore militarily justified: an observer who has spent time aloft may have noted troop movements and enemy intentions which, once communicated, could be very dangerous to the adversary.[19]

Matters grow considerably more complex when a balloon is ripped loose by adverse weather conditions and swept across into hostile territory - in such a scenario, targeting the observer who abandons the balloon becomes wholly unjustifiable, given that he poses no offensive threat whatsoever and has no feasible means of making his way back to friendly lines. From the very moment he leaps, he is effectively nothing more than a prisoner of war.

### **5.2. Air battles above the contact lines**

When aerial combat unfolds directly over the front lines, even if opposing aircraft choose not to engage the parachutist while he remains airborne, the moment he nears the ground he is met with a barrage of fire from the infantry stationed below. No legal norm can control this behaviour in practice.[20]

### **5.3. Air battles over the sea**

When the aerial battle is fought far out at sea, away from any coast or fleet, attacking parachutists is unjustified - they will perish in the waves regardless. When an enemy fleet is nearby and can recover survivors, the attack becomes legitimate again. In air law, one cannot apply the maritime principle that a ship is sunk only after the safety of its personnel has been ensured.

## **CONCLUSIONS**

It follows, therefore, that no single standard alone is adequate for determining when engaging airmen who are saving themselves by parachute is lawful and when it is not - rather, a combination of multiple criteria must be taken into account:

- The combat status of the aircraft at the time of the incident;
- The geographic area over which the descent takes place;
- The available means of ground-based defense in the vicinity;
- The strategic interests of the parties involved in the conflict.

Such criteria are incapable of establishing with complete certainty when it is appropriate to engage airmen who have abandoned their aircraft by parachute; however, they serve to more accurately characterize each individual situation without narrowing the range of applicable cases - or rather, where some may limit its scope, others act to broaden it.

One might level the charge that we have set aside humanitarian and ethical considerations entirely. Such a criticism would not be without merit; however, it must be stated plainly and without ambiguity that morality, notions of battlefield honor, and humanitarian principles carry very little weight in the conduct of modern warfare. There is little reason to attribute to them a significance they simply do not possess?[21]

Incidents involving attacks on personnel descending by parachute occurred with greater frequency during the First World War than in the Second. This shift can be attributed to advances in the organization of ground-based defenses and a heightened appreciation of strategic self-interest - securing the capture of an enemy airman in order to extract valuable intelligence proved far more beneficial to the nation than the largely impulsive urge to open fire on him while still airborne.

The relevance of this analysis extends beyond the interwar period. Additional Protocol I to the Geneva Conventions (1977), Article 42, prohibits attacks on persons parachuting from a disabled aircraft, extending protection beyond the 1923 Hague Commission formulation. The fundamental distinction introduced in contemporary law - between parachutists saving themselves and those launched on military operations - corresponds precisely to the criteria proposed by Costeanu in the pages of the *Aeronautics and Navy Magazine* in 1943.

## REFERENCES

- [1] \*\*\* M. Deaş, *Historical Landmarks Regarding the Actions of Attacking in the Air of the Aeronautical Personnel that are Saved by Parachuting during the World Conflicts of the XXth Century*, Review of the Air Force Academy, 2021;
- [2] \*\*\* *Aeronautics and Navy Magazine*, number september–october 1943, p. 1000–1018 (Costeanu, Al., "*Paratroopers can be attacked in the air?*");
- [3] \*\*\* *Ibidem*, p. 1001;
- [4] \*\*\* <https://www.thehistoryreader.com/modern-history/parachutes-world-war-1/>, accessed 25.03.2026;
- [5] \*\*\*<https://www.westernfrontassociation.com/world-war-i-articles/2021/july/balloonatics-during-the-first-world-war-1914-1918/>, accessed 25.03.2026;
- [6] \*\*\* Riesch, cited in: *Aeronautics and Navy Magazine*, number september–october 1943, pp. 1001–1002 (Al. Costeanu, *Paratroopers can be attacked in the air?*);
- [7] \*\*\* J.M. Spaight, cited in: *Aeronautics and Navy Magazine*, number september–october 1943, pp. 1003–1004 (Al. Costeanu, *Paratroopers can be attacked in the air?*);
- [8] \*\*\* *Ibidem*, p. 1005;
- [9] \*\*\* <https://content.lib.auburn.edu/digital/collection/eddier/id/690/>, accessed 25.03.2026;
- [10] \*\*\* Riesch, cited in: *Aeronautics and Navy Magazine*, number september–october 1943, pp. 1003–1004 (Al. Costeanu, *Paratroopers can be attacked in the air?*);
- [11] \*\*\* *Aeronautics and Navy Magazine*, number september–october 1943, p. 1005 (Al. Costeanu, *Paratroopers can be attacked in the air?*);
- [12] \*\*\*[https://commons.wikimedia.org/wiki/Category:The\\_Hague\\_Conference\\_1922#/media/File:Confere nties,\\_SFA022824915.jpg](https://commons.wikimedia.org/wiki/Category:The_Hague_Conference_1922#/media/File:Confere nties,_SFA022824915.jpg), accessed 28.03.2026;
- [13] \*\*\* *Aeronautics and Navy Magazine*, number september–october 1943, pp. 1005–1007 (Costeanu, Al., "*Paratroopers can be attacked in the air?*")
- [14] \*\*\* le Goff, Marcel, *Traité de droit aérien*, Paris, 1939, p. 100 — cited in: *Aeronautics and Navy Magazine*, number september–october 1943, pp. 1014–1016;
- [15] \*\*\* *Aeronautics and Navy Magazine*, number september–october 1943, pp. 1007–1009 (Al. Costeanu, *Paratroopers can be attacked in the air?*);
- [16] \*\*\*[https://commons.wikimedia.org/wiki/File:German\\_Sch%C3%BCtte-Lanz\\_Airship\\_SL2\\_bombing\\_Warsaw,\\_Poland,\\_in\\_1914,\\_Hans\\_Schulze\\_%2829992553564%29.jpg](https://commons.wikimedia.org/wiki/File:German_Sch%C3%BCtte-Lanz_Airship_SL2_bombing_Warsaw,_Poland,_in_1914,_Hans_Schulze_%2829992553564%29.jpg), accessed 05.04.2026;
- [17] \*\*\* *Aeronautics and Navy Magazine*, number september–october 1943, pp. 1010–1012 (Al. Costeanu, *Paratroopers can be attacked in the air?*);
- [18] \*\*\* *Ibidem*, pp. 1012–1014;
- [19] \*\*\* *Ibidem*, pp. 1007–1009;
- [20] \*\*\* *Ibidem*, pp. 1012–1014;
- [21] \*\*\* *Ibidem*, pp. 1016–1018.