

THE GENEVA CONVENTIONS, LAW OF ARMED CONFLICT

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Law of Armed Conflict

MANMED does not provide a detailed review of the law of armed conflict and the Geneva Conventions, and so it is presented here directly from the International Committee of the Red Cross protocols and international laws governing armed conflict, without change. Chapters II and V deserve particular attention, since medical care and conduct considerations are discussed in detail.

Basic rules of the Geneva Conventions and their Additional Protocols

The text of the Geneva Conventions and of their Additional Protocols is very Complex, and not always easily understood by the layman. A simplified work became necessary to present and explain these international law treaties to an ever-increasing number of readers. In this study, the author comments briefly on the main provisions of the Conventions and their Additional Protocols, brings out their meaning and specifies the relevant articles.

Foreword

The aim of this document, "The Geneva Conventions and the Additional Protocols-Basic Rules", is to provide a condensed synthesis of the rules of international humanitarian law in armed conflicts as contained in these legal instruments. This presentation itself is preceded by a summary, which sets out, as simply and briefly as possible, the fundamental rules which are the basis of these treaties and the law of armed conflicts as a whole. Prepared for dissemination purposes, this work cannot in any circumstances serve as a substitute for the complete provisions of the international agreements to which the marginal notes refer.

Summary : Basic rules of international humanitarian law in armed conflicts

1. Persons hors de combat and those who do not take a direct part in hostilities are entitled to respect for their lives and their moral and physical integrity. They shall in all circumstances be protected and treated humanely without any adverse distinction.
2. It is forbidden to kill or injure an enemy who surrenders or who is hors de combat.
3. The wounded and sick shall be collected and cared for by the party to the conflict which has them in its power.

Protection also covers medical personnel, establishments, transports and equipment. The emblem of the red cross or the red crescent is the sign of such protection and must be respected.

4. Captured combatants and civilians under the authority of an adverse party are entitled to respect for their lives, dignity, personal rights and convictions. They shall be protected against all acts of violence and reprisals. They shall have the right to correspond with their families and to receive relief.

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5. Everyone shall be entitled to benefit from fundamental judicial guarantees. No one shall be held responsible for an act he has not committed. No one shall be subjected to physical or mental torture, corporal punishment or cruel or degrading treatment.

6. Parties to a conflict and members of their armed forces do not have an unlimited choice of methods and means of warfare. It is prohibited to employ weapons or methods of warfare of a nature to cause unnecessary losses or excessive suffering.

7. Parties to a conflict shall at all times distinguish between the civilian population and combatants in order to spare civilian population and property. Neither the civilian population as such nor civilian persons shall be the object of attack. Attacks shall be directed solely against military objectives.

Note

This text constitutes the quintessence of the provisions of international humanitarian law which are summarized in the following pages. It does not have the force of an international legal instrument and is in no way intended to replace the treaties in force. It is designed, as is this whole work, to facilitate dissemination of international humanitarian law.

Chapter I: Provisions common to the four Conventions and to Protocol I

1. Field of application, duration of application, general principles of law
2. Prohibition of reprisals
3. Non-renunciation of rights
4. Supervision
 - a) Protecting Powers
 - b) International Committee of the Red Cross
5. Sanctions
6. Dissemination

(Please note: Roman numerals indicate the number of the Convention or the Protocol (designated by the letter P), Arabic numerals refer to the articles of these instruments.)

1. Field of application, duration of application, general principles of law

The Conventions and the Protocol are applicable in case of declared war or of any other armed conflict arising between two or more of the Parties to the Conventions and Protocol I from the beginning of such a situation, even if the state of war is not recognized by one of them. These agreements also cover armed conflicts in which people are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination.[I, 2; II, 2; III, 2; IV, 2; P. I, 1]

The application ceases at the general close of military operations and, in occupied territories, at the end of the occupation except for those categories of people whose final release, repatriation or settlement takes place at a later date. These people shall continue to benefit from the relevant provisions of the Conventions and the Protocol until their final release, repatriation or

settlement. [I, 5; III, 5; IV, 6; P. I, 3]

In cases not covered by the Conventions, the Protocol or other international agreements, or in the case of denunciation of these agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.[P. I, 1 ; I, 63; II, 62; III, 142; IV, 158]

2. Prohibition of reprisals

Reprisals, violations of the law in response to other violations of the law and to make them cease, are prohibited against the wounded, sick and shipwrecked, medical services and personnel, civil defence services and personnel, prisoners of war, civilians, civilian and cultural property, the natural environment and works and installations containing dangerous forces. They are admitted only in the conduct of the hostilities.[I, 46; II, 47; III, 13; IV, 33; P. I, 20, 51-56]

3. Non-renunciation of rights

The Geneva Conventions having as their aim the protection of war victims, these persons must be placed, as far as is possible, out of the reach of any pressures to make them renounce their rights. This is why these persons may in no circumstances renounce, in part or totally, the rights ensured them by the Conventions and the Protocol. The people mainly concerned are military and civilian medical personnel and the wounded, military and civilian sick and shipwrecked persons, as well as prisoners of war, civilian internees, inhabitants of occupied territories and foreigners on the territory of a Party to the conflict. The principle of non-renunciation applies to all the rights which protect war victims.[I, 7; II, 7; III, 7; IV, 8; P. I, 1]

4. Supervision

a) Protecting Powers

To ensure that the Geneva Conventions are respected, the Parties to the conflict should secure the cooperation and admit the supervision of Protecting Powers, in other words neutral States appointed to safeguard the interests of the Parties to the conflict in enemy countries. If such appointments have not been made, the International Committee of the Red Cross will offer the Parties to the conflict its help in the designation of Protecting Powers.[I, 8; II, 8; III, 8; IV, 9; P. I, 5]

b) International Committee of the Red Cross

The presence of the Protecting Powers does not stand in the way of humanitarian activities which the ICRC or any other impartial humanitarian organization undertakes for the protection of war victims.[I, 9; II, 9; III, 9; IV, 10]

This is an application of the provision that governments may at any time agree to entrust to an organization offering every guarantee of impartiality and efficiency the humanitarian duties

incumbent on the Protecting Powers by virtue of the Conventions.[I, 10; II, 10; III, 10; IV, 11]

ICRC delegates are, in particular, authorized to go to all places where there are protected persons, prisoners of war or civil internees and to talk to them without witnesses. The ICRC will be granted all the necessary facilities to carry out its humanitarian work.[III, 126; IV, 143; P. I, 81]

5. Sanctions

These articles have particular significance. They relate both to offences which are subject only to administrative or disciplinary sanctions as well as to grave breaches, against which they constitute an embryonic international penal law by elevating them to the rank of international crimes and designating them as "war crimes". These articles lay before the conscience of the world the list of especially grave violations of the Conventions and the Protocol which, were they to remain unpunished, would signify the degradation of human values and the regression of the entire concept of humanity.

These grave breaches are those involving any of the following acts, if committed against persons or property protected by the Conventions, as supplemented by the Protocol: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, any wilful omission seriously endangering the physical or mental health or integrity of a person in the power of a Party other than the one on which he depends, unlawful deportation or transfer, illegal detention, compelling a protected person to serve in the armed forces of a hostile Power, or wilfully depriving a protected person of the right to a fair and regular trial as prescribed in the Conventions and the Protocol, the taking of hostages, the destruction and appropriation of property not justified by military necessity and carried out on a large scale in an arbitrary and unlawful way.[I, 50; II, 51; III, 130; IV, 174; P. I, 11]

The following wilful acts are also grave breaches when they result in death or cause serious injury to body or health: attacks on the civilian population, civilians, civilian property, attacks launched indiscriminately or attacks on works and installations containing dangerous forces, in the knowledge that such attacks will cause loss of lives, injury to civilians or damage to civilian property which are excessive in relation to the actual and direct military advantage expected; attacks on non-defended localities and demilitarized zones, attacks on people known to be hors de combat and the perfidious use of the emblem of the red cross or red crescent and other recognized protective signs.

The following are also grave breaches of the Conventions and the Protocol: any transfer by an Occupying Power of part of its own civilian population into the territory it occupies, the deportation or transfer of all or part of the population of this territory, any unjustifiable delay in the repatriation of prisoners of war or civilians, apartheid and similar practices, attacks directed against clearly recognizable historical monuments, works of art or places of worship.

The Conventions and the Protocol require governments to enact any legislation necessary to

provide effective penal sanctions for persons committing or ordering the commission of any of the grave breaches; they will search for persons alleged to have committed, or to have ordered the commission of such breaches, including those resulting from a failure to act when under a duty to do so. Military commanders must be watchful to prevent breaches of the Conventions and the Protocol, will suppress them and, if necessary, report them to the competent authorities.[I, 49; II, 50; III, 129; IV, 146]

As we have seen, each contracting Party must also take the necessary steps to stop actions contrary to the Conventions other than grave breaches. But the Conventions accord the greatest importance to grave breaches because they provide for them to come under the criminal jurisdiction of all Parties to the Conventions. It is also possible for the offender to be brought before an international tribunal, if such a tribunal has been set up.

Because of the universality of such sanctions, extradition will be required whenever a State concerned has not summoned the accused to appear before its own courts. Being subject to so many different forms of possible jurisdiction, these crimes are not likely to go unpunished.

6. Dissemination

In time of peace as in time of war, the Parties are obliged to include the study of the Conventions and the Protocol in their programmes of military instruction and to encourage the civilian population to study them. Military and civil authorities must be fully acquainted with these texts and military commanders must ensure that members of the armed forces under their command are aware of their obligations under the Conventions and the Protocol.[I, 47; II, 48; III, 127; IV, 144; P. I, 83, 87]

In addition, Parties to a conflict are obliged to ensure that legal advisers are available to advise military commanders on the application of the Conventions and the Protocol and on appropriate instructions to the armed forces on this subject.[P. I, 82]

Chapter II: Protection of the wounded, sick and shipwrecked

Geneva Convention for the amelioration of the condition of the wounded and sick in armed forces in the field (Convention I of 12 August 1949). Geneva Convention for the amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea (Convention II of 12 August 1949) Additional Protocol I, Part II

1. Field of application of the two Conventions and the Protocol
2. Definition of protected persons
3. Protection, treatment and care
4. Search for the wounded, dead and missing
5. Recording and forwarding of information
6. Role of the civilian population and relief organizations; role of neutral ships
7. Medical units

- 8. Medical transport
- 9. Medical personnel
- 10. Medical mission
- 11. Emblem and signals

(Please note: Roman numerals indicate the number of the Convention or the Protocol (designated by the letter P), Arabic numerals refer to the articles of these instruments.)

1. Field of application of the two Conventions and the Protocol

Generally speaking, the Second Geneva Convention of 12 August 1949 is almost identical with the First. The main difference between the two is that the second concerns the wounded, sick and shipwrecked members of armed forces at sea while the first relates to the wounded and sick in armed forces in the field. Otherwise, the principles underlying the two Conventions are identical and the same rules apply to protected persons and property, taking into account the different conditions prevailing on land and at sea.[I, 13; II, 13]

Protocol I, Part 11, extends this protection to all wounded, sick and shipwrecked persons, whether they be civilians or members of the armed forces.[P. I, 8, 34]

2. Definition of protected persons I(1)

The terms "wounded" and "sick" mean military or civilian persons in need of medical care and who refrain from any act of hostility.[P. I, 8]

The term "shipwrecked" means military or civilian persons in a perilous situation at sea or on any other waters following a misfortune which has befallen them and who refrain from any act of hostility.

3. Protection, treatment and care

All wounded, sick and shipwrecked, to whichever Party they belong, shall be respected and protected.[P. I, 10]

In all circumstances, they shall be treated humanely and shall receive, to the fullest possible extent and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction between them on any other grounds. Women shall be treated with all the particular consideration due to their sex.[I, 12; II, 12; P. I, 10]

Wounded, sick and shipwrecked combatants who are captured become prisoners of war. Until their recovery or their disembarkation they will benefit from the provisions of Conventions I or II and III.

4. Search for the wounded, dead and missing

The general principle governing this section is, first and foremost, the right of families to know the fate of their relatives.[P. I, 32]

At all times, and particularly after an engagement, Parties to a conflict must immediately take all possible measures to search for and collect the wounded, sick and shipwrecked, to protect them against pillage and ill-treatment and ensure their adequate care, as well as to search for the dead and prevent their being despoiled.[I, 15; II, 18; IV, 16]

The Conventions specify that Parties to a conflict must ensure that burial, cremation or burial at sea of the dead, carried out individually as far as circumstances permit, is preceded by a careful and, if possible, medical examination of the bodies with a view to confirming death, establishing identity and making possible a report.[I, 17; II, 20]

In addition, as soon as circumstances permit, and at the latest from the end of active hostilities, each Party to the conflict must search for persons who have been reported missing by an adverse Party.[P. I, 33]

5. Recording and forwarding of information

Parties to a conflict must record all available particulars which could help to identify the wounded, sick and dead who have fallen into their hands: the Power on which they depend or nationality, regimental number, surname and first name, date of birth, date and place of capture and the nature of actions taken with regard to the individuals concerned, etc. This information is to be forwarded as soon as possible to the Information Bureau provided for in Convention III for transmission to the adverse Party, particularly through the intermediary of the Central Tracing Agency of the International Committee of the Red Cross (CTA). When this information is not channelled through the ICRC and its central Agency, each Party to the conflict will ensure that this information is also supplied to the Central Agency provided for in Convention III. [I, 16; II, 19; P. I, 33; III, 122; IV, 136]

6. Role of the civilian population and relief organizations; role of neutral ships.

The civilian Population must respect the wounded, sick and shipwrecked, even if they belong to the adverse Party, and shall commit no act of violence against them. The civilian population and relief organizations, such as National Red Cross and Red Crescent Societies, will be authorized, even in invaded or occupied regions, to collect and care for the wounded, sick and ship wrecked, even if they are enemy parachutists or guerillas. Nobody may be harassed, prosecuted or convicted for such humanitarian action.[I, 18; P. I, 17]

Furthermore, the competent authority may appeal to the civilian population and the relief organizations to collect the wounded, sick and shipwrecked, to search for the dead and report where they were found. The same applies in naval warfare to neutral merchant vessels, yachts or other craft which may be called upon, by the Parties to the conflict, to take on board and care for the wounded, sick and shipwrecked and also to collect the dead. [II, 21]

Medical units

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Military or civilian medical units are protected by the Conventions and the Protocol. Such units comprise all buildings or fixed installations (hospitals and other similar units, blood transfusion and preventive medicine centres, medical depots and stores) and mobile units (quarantine stations, tents, open air installations, vehicles assigned to medical purposes) [I, 19; P. I, 8, 9, 12] :

a) which belong to a Party to the conflict or which are recognized and authorized by a Party to the conflict (naturally including the National Red Cross and Red Crescent Societies and other authorized Societies);

b) which are placed at the disposal of a Party to the conflict

- by a neutral State,

- by an impartial international organization of a humanitarian nature.

Assigned to medical purposes means units devoted to searching for evacuating, transporting, diagnosing or treating the wounded, sick and shipwrecked, as well as to disease prevention.

It is however specified that the protection to which these medical units are entitled may cease if they are used to commit acts harmful to the enemy (for example, sheltering unwounded soldiers or installing a military observation post). Protection may only cease, however, after a warning has been given, setting a reasonable time limit, and after such warning has remained unheeded.[I, 21, 22;P, I, 13]

The equipment (stretchers, surgical apparatus, medicines, dressings, etc.) of mobile military units seized by the army will be reserved for the care of the wounded and sick.[I, 33]

In occupied territory, the occupant cannot requisition civilian medical units, their equipment, material or personnel so long as these resources are required for the needs of the civilian population and the wounded and sick already under treatment.[P. I, 14]

The real and personal property of Red Cross Societies and other authorized aid Societies will always be regarded as private property. The army or the occupant can, however, requisition them in case of urgent necessity, but only after the welfare of the sick and wounded has been assured.[I, 34]

8. Medical transport

"Medical transport" means the conveyance by land, water or air of the wounded, sick and shipwrecked, medical and religious personnel and medical equipment protected by the Conventions and the Protocol. Any means of transport may be used, whether military or civilian, permanent or temporary, assigned exclusively to this purpose and placed under the control of a Party to the conflict.[P. I, 8]

Medical transport by land (ambulances) must be respected and protected in the same way as mobile medical units. Military ambulances falling into enemy hands are subject to the laws of war

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on condition that the Party capturing them assumes responsibility for the sick and wounded they contain.[I, 35; P. I, 21]

Medical transport by water is carried out either by hospital ships or other medical ships and craft. The following vessels are protected by the Conventions and the Protocol on condition that their names and descriptions have been notified to the Parties to the conflict:[II, 22]

- military hospital ships of the Parties to the conflict;
- hospital ships used by National Red Cross Societies or other officially recognized aid Societies or by private persons, including those from neutral countries:[II, 24, 25]
- hospital ships made available to a Party to the conflict by a neutral State or by an impartial international organization of a humanitarian nature.[P. I, 22]

Hospital ships may not be attacked and may not be captured. The same applies to ships chartered for the transport of medical equipment. However, the Parties to the conflict have the right to board and inspect these ships.[II, 22, 31, 38]

Any hospital ship in a port which falls into enemy hands will be authorized to leave the port.[II, 29]

Other medical ships and craft shall be respected and protected in the same way as mobile medical units.[P. I, 23]

Medical transport by air (medical aircraft) carried out in areas not controlled by an adverse Party shall be respected and protected. In contact or similar zones, medical aircraft operate at their own risk, unless prior agreement has been reached between the Parties concerned. They must, however, be respected, even in the absence of such agreement, after they have been recognized as medical aircraft. When flying over an area controlled by an adverse Party, protection is subject to the prior agreement of this Party.[P. I, 24, 25, 26, 27]

Medical aircraft must not be used to attempt to acquire a military advantage over an adverse Party nor, without the prior agreement of this Party, to search for the wounded, sick and shipwrecked.[P. I, 28]

Medical aircraft flying over areas not controlled by the Party to which they belong may be ordered to land or to alight on water and must obey such an order. If inspection reveals that the aircraft has not infringed any rule of the law of armed conflicts, it must be authorized to continue its flight without delay.[P. I, 30]

Medical aircraft must not fly over the territory of neutral States except by previous agreement or in an emergency. In the latter case, the medical aircraft will make every effort to identify itself and the neutral State will refrain from attacking it as soon as it has recognized it as such. If wounded, sick or shipwrecked persons are collected or disembarked on neutral territory, they will

be cared for and detained by this State if they belong to the fighting armed forces of a Party to the conflict, so that they cannot again take part in the hostilities.[II, 40; P. I, 31]

9. Medical personnel

Medical and religious personnel of the Parties to the conflict, whether military or civilian, shall be respected and protected.[I, 24, 25; P. I, 15]

Such personnel (doctors, nurses, stretcher-bearers, etc.) should be assigned, either on a permanent or temporary basis, exclusively to medical purposes (see Point 7, Medical Units) or to the administration and operation of medical units or medical transport facilities (administrators, drivers, cooks, etc.). Religious personnel comprise military or civilian persons, such as chaplains, who are exclusively engaged in the work of their ministry. Medical and religious personnel benefit from special protection and are designated as "protected personnel".(3) [I, 24, 25, 26, 27; II, 36, 42; P. I, 8]

Protected personnel are the following:

- a) Military or civilian medical personnel of the Parties to the conflict, including those belonging to civil defence organizations;
- b) medical personnel of National Red Cross and Red Crescent Societies and other national aid Societies recognized by a Party to the conflict;
- c) religious personnel attached, either permanently or temporarily, to the armed forces, to medical units or transport, or to civil defence organizations.

If military medical personnel fall into enemy hands, they may be retained so as to care for prisoners of war. They will not themselves be regarded as prisoners of war. They will nevertheless benefit at least from all the provisions of the Geneva Convention of 12 August 1949 relative to the treatment of prisoners of war.[I, 28; II, 37; III, 33]

In occupied territory, civilian medical personnel may not be requisitioned if their services are necessary to provide for the medical needs of the civilian population and the care of the wounded and sick already under treatment.[P. I, 14]

10. Medical mission

Finally, the Protocol provides that nobody may be punished for having carried out medical activities compatible with medical ethics, regardless of the beneficiaries of this activity, nor be compelled to carry out acts contrary to the rules of medical ethics or to refrain from carrying out acts required by these rules.[P. I, 16]

1 1. Emblem and signals

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The sign of the red cross (4) or red crescent must be displayed on the flags, buildings, installations and mobile formations of medical units, on their means of transport, as well as on armlets, clothes and headgear of medical and religious personnel. It will be as large as the circumstances require.[I, 39; P. I, 18]

An important regulation: the distinctive emblem of the Convention and the Protocol may be displayed only on medical units and by medical personnel protected by the Convention and the Protocol, and only with the consent of the competent authority. Strict observance of this rule is essential to respect the Convention the Protocol.[I, 42; P. II, 18]

In naval warfare, ships and craft entitled to the protection the Convention will be marked as follows:[II, 43]

- a) all exterior surfaces must be white,.
- b) one or more dark red crosses, as large as possible, must painted on each side of the hull as well as on horizontal surfaces, so as to afford the greatest possible visibility from the sea and from the air. A white flag with a red cross shall be flown at the mainmast, as high as possible.

The international Red Cross organizations and their duly authorized personnel are permitted to use the emblem of the red cross on a white ground at all times.[I, 44]

Apart from these regulations, the use of the emblem or the designation "red cross" or "Geneva cross", or any sign or designation constituting an imitation, shall be prohibited at all times; the necessary measures will be taken to prevent and repress any abuse of these distinctive signs. The perfidious use of the emblem of the red cross (and other protective signs or signals) is a grave breach.[I, 53, 54; II, 45; P. I, 18, 85]

In addition to the distinctive emblem, the Parties to the conflict may authorize the use of distinctive signals (light, radio and secondary radar signals, internationally recognized codes and signals).[P. I, 18 and Annex I]

Notes

1. For protected medical personnel, see point 9.
2. As far as Possible, military medical units and especially civilian medical units should be placed well out of the way of military objectives.
3. Protected personnel must carry identity cards and make themselves known by means of the distinctive emblem of the red cross or red crescent (1, 40, 41; 11, 42; P. 1, 18 and Annex 1, Chapter I and II). They may be armed for their own defence and that of the wounded in their charge (I, 22; II, 35; P. 1, 13).
4. The form of the cross is not specified but it has become customary to use a so-called Greek cross, i.e. a cross with four arms of equal length not touching the edge of the shield, comprising

the inverted colours of the Swiss flag. Instead of the red cross, some countries use the red crescent. The red Lion and-sun emblem is no longer in use.

Chapter III: Rules relating to the conduct of combatants and the protection of prisoners of war

Geneva Convention relative to the treatment of prisoners of war (Convention III of 12 August 1949) Additional Protocol I, Part II

Section I

Status

Section II

Regulations relating to the conduct of combatants

Section III

Protection of prisoners of war

1. Rights and obligations
2. Protection and treatment
3. Physical conditions of internment
4. Moral and psychological conditions of internment
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 - a) General observations
 - b) Escapes or attempts to escape
 - c) Prisoners' representatives
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7. Repatriation
 - a) Direct repatriation and hospitalization in a neutral country
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8. Death
9. Information bureaux and Central Tracing Agency
10. Assistance by relief societies and the ICRC
11. The right of Protecting Powers and the ICRC to visit

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Section I

Status

The status of prisoner of War is governed jointly by article 4 of the Third Convention and by

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articles 43 and 44 of the Protocol. The general principle is the following: any member of the armed forces of a Party to a conflict is a combatant and any combatant captured by the adverse Party is a prisoner of war.[III, 4; P. I, 43, 44]

This general rule is supplemented by three types of provisions which specify the conditions in which armed forces are recognized as such, to extend the qualification (or the treatment) of prisoner of war to categories of persons not covered by the general rule, and finally to deprive, in a specific case, a captured combatant of his qualification as a combatant and hence of his status of prisoner of war.

a) To be recognized as such, the armed forces of a Party to a conflict must be organized and placed under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or other authority not recognized by the adverse Party. In addition, these armed forces must be subject to an internal disciplinary system which, inter alia, enforces compliance with the rules of international law applicable in armed conflicts. In particular, this compliance requires combatants to distinguish themselves from civilians, except in particular circumstances (see point c below) by a uniform or other distinctive sign, visible and recognizable at a distance, while they are engaged in an attack or in a military operation preparatory to an attack. Violation by a combatant of the rules applicable in armed conflict is punishable but if this combatant at least carries his arms openly during the engagement, he is not deprived of his right to the status of prisoner of war in case of capture. If the Party to which these armed forces belong omits or deliberately refuses to enforce compliance with these rules, it can result in all members of these forces losing their status of combatant and prisoner of war.

b) The status or treatment of prisoner of war is extended to various categories of persons who do not come under the definition of combatants as given below, or who are not combatants. The following are thus also entitled to the status of prisoner of war:

- those taking part in a levy en masse, that is, when the inhabitants of a non-occupied territory spontaneously take up arms on the approach of the enemy to combat invasion without having had time to organize themselves as laid down under point a) above, if they carry their arms openly and respect the laws and customs of war;
- persons authorized to follow the armed forces without being directly part of them;
- crews of the merchant marine and civil aviation;
- members of military personnel serving in civil defence organizations.[P. I, 67]

The following are entitled only to the treatment of prisoner of war:

- persons arrested in occupied territory because they belong to the armed forces of the occupied country;
- military internees in a neutral country;
- members of non-combatant medical and religious personnel who are part of the armed forces.

c) In exceptional cases, when required by the nature of the hostilities, a combatant can be released

from the obligation to distinguish himself from the civilian population by wearing a uniform or distinctive sign recognizable at a distance during military operations. However, in such situations, these combatants must distinguish themselves by carrying arms openly during the engagement and during such time as they are visible to the adversary while engaged in a military deployment preceding the launching of an attack in which they are to participate. Even failing to comply with the obligation of carrying arms openly can deprive a combatant of his status, but not of the guarantees relating to it, in the case of his being prosecuted for carrying arms illegally either with or without other offences.

These provisions are not intended to modify the generally accepted practice of uniforms being worn by members of regular armed units of the Parties to conflicts.

To avoid uncertainty and prevent any arbitrary measures at the time of capture, the Protocol specifies that any person taking part in hostilities and captured is presumed to be a prisoner of war and is treated as a prisoner of war, even in case of doubt as to his status. In the latter case, the question will be decided by a tribunal at a later date. A person who, having taken part in hostilities, is eventually deprived of his right to the status of prisoner of war, benefits not only from the provisions of the Fourth Convention applicable in his case but also from the fundamental guarantees laid down in article 75 of the Protocol (see Section III, point 6 at end, below page 31).[III, 5; P. I, 45]

Spies and mercenaries are not entitled to the status of prisoner of war. Children under the age of fifteen shall not be recruited into the armed forces.(3) [P. I, 46, 47]

Children under the age of fifteen shall not be recruited into the armed forces.[P. I, 77]

Section II

Rules relating to the conduct of combatants

Part III of the Protocol does not confine itself to stating the rules relating to the status and treatment of prisoners of war. It also recalls the correct conduct of combatants in the course of hostilities. The fundamental principle forming the basis of these rules is that the right of the Parties to the conflict to choose methods or means of warfare is not unlimited.[P. I, 35]

For example, it is prohibited to employ weapons, projectiles and methods and materials of warfare of a nature to cause superfluous injury, particularly those which are intended to cause, or can be expected to cause widespread, long-term and severe damage to the natural environment. Neither may the presence of civilian persons be used to render certain points or areas immune from military operations.[P. I, 51; IV, 28]

It is prohibited to kill, injure or capture an adversary by resort to perfidy. Acts inviting the confidence of an adversary to lead him to believe that he is entitled to receive, or is obliged to accord protection under the rules of international law applicable in armed conflict, with intent to

betray that confidence, shall constitute perfidy. The recognized emblems (the white flag, the emblem of cultural property, other recognized protective signs) and in particular the sign of the red cross or red crescent must not be used improperly. The use of the national insignia of States not Parties to the conflict is forbidden. The national insignia of the adverse Party must not be used during attacks or in order to shield, favour, protect or impede military operations.[P. I, 37; P. I, 38; P. I, 39]

The Protocol thus asserts that the law of armed conflicts demands a minimum of honesty on the part of the combatants. Other rules of conduct of combatants are summarized either in Section I of this chapter or in the relevant chapters of this manual (see in particular Chapter 1, points 2 and 5, Chapter 11, points 3-4 and 7-11 and Chapter IV, Section 1). But it should be stressed here, once again, that it is prohibited to declare that no quarter will be given, to threaten the adversary with this and to conduct hostilities in such a way that there are no survivors. The enemy who is hors de combat, or who has surrendered, or who shows his intention to surrender, or who has parachuted from an aircraft in distress, shall not be made the object of attack. If the capturing Party is unable to evacuate its prisoners from the fighting zone, it must release them and take all feasible precautions to ensure their safety.[P. I, 40, 41, 42]

Section III

Protection of prisoners of war

1. Rights and obligations

Regarding the rights of prisoners of war, the principle specifying that prisoners of war are in the hands of the enemy Power, but not of the individuals or military units who have captured them, should be borne in mind. Prisoners of war are entitled in all circumstances to respect for their persons and their honour. [III, 12, 14]

Women must be treated with all the regard due to their sex and shall in all cases benefit from treatment at least as favourable as that granted to men. Finally, it should be noted that prisoners of war retain the full civil capacity they had at the time of their capture. Within the limits imposed by captivity, they therefore continue to enjoy their civil rights according to the law of their country of origin. In particular, they can marry by proxy.[III, 14]

As for the duties of prisoners, they are generally derived from the laws of war and the rules of military discipline.

Some of these duties are formally stated in the Convention; thus article 17, relating to questioning of the prisoner, specifies that he is bound to give his name, first names and rank, date of birth and army, regimental, personal or serial number or, failing this, equivalent information.(4) however, the same article adds that no physical or mental torture, nor any other form of coercion may be inflicted on prisoners of war to obtain from them information of any kind whatever.[III, 17]

The Convention also provides for the case - which is not excluded, if the laws of the Power on which prisoners depend allow it - for the release on parole or promise. Article 21 states that prisoners released under these conditions will be bound, on their personal honour, scrupulously to fulfil, both towards the Power on which they depend and the Power which has captured them, the engagements of their paroles or promises.[III, 21]

This mention is important for it shows that honesty is essential to the successful application of humanitarian rules.

2. Protection and treatment

The Protocol prohibits declaring that no quarter will be given, threatening the adversary with this, and conducting hostilities in such a way that there are no survivors. The enemy who is hors de combat, who has surrendered or who shows his intention of surrendering, or who has parachuted from an aircraft in distress shall not be the object of attack.[P. I, 40, 41, 42]

In these articles, the Convention states that prisoners of war must at all times be treated humanely and that subject to any privileged treatment on account of rank, sex, state of health, age or professional qualifications, all prisoners of war shall be treated alike. The Protocol specifies that no prisoner may be subjected to physical mutilation or to medical and scientific experiments of any nature whatever, which are not justified by the medical treatment of the prisoner concerned and which are not in his interest. It nevertheless allows for exceptions in the case of donations of blood for transfusion or of skin for grafting, providing that these are voluntary.[III, 13, 16; P. I, 11]

Among the general principles protecting prisoners of war, the following should also be mentioned: they shall not be unnecessarily exposed to danger while awaiting evacuation from a fighting zone. When they have been captured under unusual conditions of combat which prevent their being evacuated in the normal way, they shall be released and all feasible precautions shall be taken to ensure their safety.[III, 19; P. I, 41]

Prisoners of war may be interned only in premises located on land and affording every guarantee of hygiene and wholesomeness. No prisoner of war may at any time be sent to or detained in an area where he may be exposed to the fire of the combat zone, nor may his presence be used to render certain points or areas immune from military operations.[III, 22,23]

Prisoners without the recognized status of prisoner of war are at all times entitled to the fundamental guarantees (see Chapter IV, Section II, Point 2, letter g, page 43 and point 6 below, guarantees of judicial procedure).

3. Physical conditions of internment

The Detaining Power assumes general responsibility for the life and welfare of prisoners of war, who must be kept in good health. Women and children under the age of fifteen becoming

prisoners of war must be treated with special respect and protected against any form of indecent assault. Other information concerning the application of these principles can be found under the following headings: [P. I 76, 77]

Quarters [III, 25]

Food [III, 26, 28]

Clothing [III, 27]

Hygiene and medical attention [III, 29, 30, 31]

Under all circumstances, prisoners of war will receive any medical care they may need and will preferably be treated by medical personnel of the Power on which they depend and, if possible, of their nationality.

Transfers [III, 12, 46, 48]

Prisoners of war may only be transferred to a Power which is a party to the Convention and after the Detaining Power has satisfied itself that the Power in question is willing and able to apply the Convention.

Transfer within the territory of the Detaining Power will always be carried out humanely and in conditions no less favourable than those enjoyed by the troops of the Detaining Power during their movements.

4. Moral and psychological conditions of internment

The Convention is not only concerned with the physical conditions of internment. A great number of articles are devoted to moral and psychological conditions. They deal not only with religion, intellectual and sports activities but also with the kind of work considered suitable to maintain prisoners' self-respect and mental well-being and protect them from boredom and idleness. In application of these principles, the Convention includes a number of provisions on the following matters:

-Religion [III, 34, 35]

-Intellectual and sports activities [III, 38]

-Work [III, 49, 50, 51, 57]

In order to prevent the work carried out by prisoners from degenerating into inhumane exploitation or participation in the war effort of the Detaining Power, such work is limited by a series of very strict rules.

-Property and working pay [III, 18, 28, 59, 60, 61, 62]

-Correspondence [III, 71, 74, 76]

-Prisoners of war shall be allowed to send and receive letters and cards free of postage.(5)

5. Aid

The Convention affirms the right of prisoners of war to receive relief.

Relief supplies may be individual or collective but the Convention indicates a preference to relief

parcels of a standard model, intended for all the prisoners in a camp and shared out among them by prisoners' representatives.(6) [III, 72]

All relief shipments are exempt from import, customs and other dues and the experience acquired by the ICRC and National Red Cross Societies in the course of the two World Wars is implicitly recognized.[III, 74, 75]

6. Discipline

a) General observations

To ensure discipline in accordance with military honour, every prisoner of war camp is placed under the immediate authority responsible commissioned officer belonging to the regular at forces of the Detaining Power.[III, 39]

This officer must be fully acquainted with the text of the Convention and the relevant provisions of the Protocol. These texts must also be posted in each camp, in the prisoners' own language, in places where all may read them. The wearing of badges of rank and nationality, as well as decorations, shall be permitted, in due respect for the dignity of the persons concerned.[III, 41; P. I, 83; III, 40]

Military commanders must ensure that members of the armed forces under their command are aware of their obligations under the Conventions and the Protocol. They are responsible for preventing any breaches of these provisions, for suppressing them and, if necessary, reporting them to the competent authorities.[P. I, 87]

b) Escapes or attempts to escape

The Convention has several provisions relating to escapes or attempts to escape. These are accepted as being consistent with military honour and patriotic courage. Punishments incurred in cases of escape are consequently limited. Weapons may be used against prisoners who escape or attempt to escape, but such use should only be made as a last resort and must always be preceded by warnings appropriate to the circumstances.[III, 91, 92, 93; III, 42]

c) Prisoners' representatives

Article 79 stipulates that in all places where there are prisoners of war, except in those where there are officers, the prisoners shall freely elect by secret ballot, every six months, and in case of vacancies, representatives entrusted with representing them before the military authorities, the Protecting Powers, the ICRC and any other organization which may assist them. These prisoners' representatives shall be eligible for re-election. In camps for officers and persons of equivalent status or in mixed camps, the senior-ranking officer among the prisoners of war shall be recognized as the camp prisoners' representative.[III, 79]

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This institution is very important. Benefiting from various prerogatives and facilities enumerated in article 81, the prisoners' representative is the intermediary qualified to further the physical, spiritual and intellectual well-being of prisoners of war.[III, 80, 81]

He not only supervises the distribution of relief supplies but also does all he can to mitigate the severities of discipline, to help prisoners in their difficulties with the detaining authority.

Finally, it should be stressed that prisoners must have the unrestricted right to apply to the representatives of the Protecting Powers, either through their prisoners' representative or, if they consider it necessary, direct, in order to draw their attention to any points on which they may have complaints about their conditions of captivity.[III, 78]

d) Sanctions

The Convention specifies that prisoners of war shall be subject to the laws, regulations and orders in force in the armed forces of the Detaining Power.[III, 82]

A general leniency clause protects prisoners of war against excessively severe interpretation of the laws and regulations. In deciding whether an offence committed by a prisoner of war should be subject to disciplinary or judicial punishment, the Detaining Power shall ensure that the competent authorities exercise the greatest leniency and adopt, wherever possible, disciplinary rather than judicial measures.[III, 83]

Disciplinary sanctions may only be ordered by the camp commander or an officer appointed by him, and in no case by a prisoner of war. Moreover, certain concessions are granted to prisoners undergoing disciplinary punishment: permission to take exercise and to be in the open air for at least two hours daily, permission to read and write, as well as to send and receive letters.[III, 96, 98]

Finally, in no case shall disciplinary punishments be inhuman, brutal or dangerous to the health of prisoners of war and the duration of any single punishment shall never exceed thirty days.[III, 89, 90]

As far as judicial sanctions are concerned, a prisoner of war may only be tried by a military court, except under specified circumstances. Furthermore, prisoners of war may not be sentenced to any penalties other than those imposed for the same acts committed by members of the armed forces of the Detaining Power. Collective punishment for individual acts is forbidden, as are corporal punishment, imprisonment in premises without daylight and, in general, torture or cruelty in any form whatsoever.[III, 84, 87]

It is important to note that prisoners who are prosecuted shall still benefit from the Convention, even if they are convicted.[III,85]

The death penalty can be imposed, in principle, for offences liable to capital punishment in the armed forces of the Detaining Power. Since the accused is not a national of the Detaining Power, owes it no allegiance, and is in its power as a result of circumstances beyond his control, the court must take these facts into account before pronouncing a death sentence.[III, 100]

As far as possible, the death penalty shall not be pronounced on pregnant women or mothers having dependent infants. If it is pronounced, it will not be carried out. The same will apply to prisoners under the age of eighteen at the time the offence was committed.[P. I, 76; P. I, 77]

Article 101 extends to at least six months the period that must elapse between the time the death penalty is pronounced and the time the sentence is executed. Furthermore, Article 107 provides an opportunity for the Protecting Power to intervene in the case of a death sentence being pronounced.[III, 101, 107]

The guarantees of judicial procedure form part of the fundamental guarantees, which means that they must be accorded even to prisoners whose status of prisoner of war is not recognized.

Judicial procedure must be regular, i.e. it must include at least the following guarantees: the accused to be informed without delay of the particulars of the offence he is alleged to have committed, which must have constituted an offence at the time it was committed; resumption of innocence; no coercion on a prisoner to force him to confess judgement to be pronounced in the presence of the accused and, in principle, publicly. The prisoner cannot be punished more than once for the same act or on the same charge if it is based on the same law and the same judicial procedure.[III, 86, 99; P. I, 75]

The rights of defence are recognized and guaranteed and, accordingly, the prisoner of war shall be entitled to be assisted by one of his fellow prisoners, to be defended by a qualified attorney of his own choice, to call witnesses and, if he thinks it necessary, to employ the services of a competent interpreter. On the same conditions as members of the armed forces of the Detaining Power, he will have the right of appeal with a view to quashing or revising the sentence pronounced on him; any judgement and sentence shall be immediately reported to the Protecting Power.[III, 105, 106; P. I, 75]

7. Repatriation

a) Direct repatriation and hospitalization in a neutral country

Even during hostilities, the Convention prescribes the direct return to their own countries of the wounded and sick whose mental or physical fitness seems to have been seriously impaired, and hospitalization in neutral countries of specific categories of those less seriously sick or wounded.[III, 109]

A model agreement, annexed to Convention 111 (Annex 1, referred to in Article I 10) cites numerous cases which can give rise to application of this principle. Mixed Medical Commissions,

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set up at the outbreak of hostilities, are called upon to decide what prisoners are to be repatriated. The Parties to the conflict must send back to their own country, regardless of number or rank, seriously wounded and sick prisoners of war, after caring for them until they are able to travel.[III, 112]

No sick or injured prisoner of war may be repatriated against his will during hostilities.

No repatriated person may be employed on active military service.[III, 117]

b) Release and repatriation at the end of hostilities

Situations which can arise at the end of a war have shown that the way in which the principle of the Code for prisoners of war of 1929 was worded, requiring the repatriation of prisoners on the conclusion of peace, could be detrimental to them, because experience has shown that a very long time can elapse between the time hostilities cease and the time peace is concluded. To remedy this, the Convention states that repatriation will take place "without delay after the cessation of active hostilities", i.e. after the cease-fire.[III, 118]

One exception to immediate repatriation is provided in the case of prisoners convicted or prosecuted for criminal offences, who may be detained until the end of legal proceedings and, if necessary, until they have completed their sentences.[III, 119]

8. Death

Prisoners of war are entitled to make wills. The Convention prescribes that wills of prisoners of war shall be drawn up so as to satisfy the conditions of validity required by legislation in their countries of origin, which will take the necessary steps to inform the Detaining Power of its requirements in this respect.[III, 120]

The Convention specifies the conditions of burial (or, in certain cases cremation) appropriate to ensure respect for the dead and to safeguard the interests of their families. The Protocol supplements these provisions.[III, 120; P. I, 35]

In case of death from suspicious causes, an enquiry is opened in order to determine responsibility, particularly with a view to possible compensation for beneficiaries.[III, 121]

Death certificates must be forwarded as rapidly as possible to the Prisoner of War Information Bureaux.

9. Information bureaux and Central Tracing Agency

The services rendered to prisoners and their families by the Central Prisoner of War Agency (now known as the Central Tracing Agency) during the two World Wars and the numerous conflicts since 1945 are well known.

Created under the auspices of the ICRC, this Agency keeps in its archives over fifty million cards which constitute a unique information system to establish the rights of prisoners or their families. In particular, it contains all the information it can obtain through private or official sources concerning prisoners of war with a view to determining their identity, and any particulars about them relating to transfers, releases, repatriations, escapes, hospitalization and death.

These results have been consolidated by the Convention, which not only requires Governments to set up official bureaux to collect and transmit information about prisoners of war, but provides for establishment of a Central Prisoner of War Information Agency in a neutral country.[III, 122, 123; P. I, 34]

To facilitate the work of the national Bureaux and the Central Information Agency, States must grant them free postage for mail, as well as all exemptions provided for in Article 74 and, as far as possible, exemption from telegraphic charges or, at least, greatly reduced rates.(7) [III, 124]

Families have the right to know what has become of their relatives. As soon as circumstances permit and, at the latest, from the end of hostilities, the Parties to the conflict should therefore search for persons reported missing by an adverse Party and transmit all relevant information concerning such persons in order to facilitate the search.[P. I, 33; III, 119]

10. Assistance by relief societies and the ICRC

Relief societies, the ICRC and the Red Cross and Red Crescent Societies have played such an important role in helping prisoners of war during the two World Wars that the Convention devotes an article to them, to facilitate and encourage their activity.

This provision requires the Powers to grant them and their duly accredited delegates, all the necessary facilities to visit prisoners, distribute relief supplies and material from any source, for religious, educational or recreative purposes, and help them organize their leisure activities within camps. The special status of the ICRC in this sphere must be recognized and respected.[III, 125]

1 1. The right of Protecting Powers and the ICRC to visit

Furthermore, the Convention provides that representatives of the Protecting Powers shall have permission to go to all places where prisoners of war may be, particularly to places of internment, imprisonment and labour. They shall have access to all premises used by prisoners. ICRC delegates shall enjoy the same prerogatives. The appointment of such delegates shall be submitted to the approval of the Power detaining the prisoners of war to be visited.[III, 126]

The Parties to the conflict shall grant the ICRC all facilities within their power to enable it to carry out the humanitarian functions assigned to it by the Conventions and the Protocol, to assure protection and assistance to the victims of conflicts. The ICRC may also carry out any other humanitarian activities for the benefit of these victims, subject to the consent of the Parties to the

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conflict. The League of Red Cross Societies and National Red Cross and Red Crescent Societies shall also receive the necessary facilities to carry out their humanitarian work.[P. I, 81; III, 9]

Notes

1. In article 4 of the Third Convention, the term "armed forces" or "regular armed forces" covers only "regular" manpower, i.e. constituted in application of the national legislation recognized by the Government in power at the time of the constitution. Members of "other" militia do not form part of the regular establishment. This distinction is eliminated by the Protocol.
2. A reminder that The Hague Regulation concerning the laws and customs of war on land (article 1), confirmed by article 4 of the Third Convention, does not confer recognition of the status of prisoner of war to combatants not forming part of the "regular" army unless they fulfil the following conditions: a) being headed by a person responsible for his subordinates, b) having a fixed distinctive sign recognizable at a distance, c) carrying arms openly and d) conducting their operations in accordance with the laws and customs of war.
3. Only persons acting under false pretences or in a deliberately clandestine manner can be considered as spies. Thus a member of the armed forces in uniform is not a spy even if he conceals himself to gather information.
4. These particulars will be reproduced on the identity card which the Parties to the conflict are required to issue to the prisoner of war (III, 17, 18).
5. Immediately after capture, the Detaining Power must issue the prisoner of war with a "capture card" by means of which he can himself inform his family and the Central Tracing Agency of his capture (see below, point 9, page 33).
6. See below, point 6, page 29.
7. These facilities have been ratified by the Universal Postal Convention, Article 37 (Acts of the Universal Postal Union, Brussels, 1952).

Chapter IV: Protection of civilian persons and populations in time of war

Additional Protocol I, Part IV

Geneva Convention relative to the protection of civilian persons in time of war
(Convention IV of 12 August 1949)

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(Please note: Roman numerals indicate the number of the Convention or the Protocol (designated by the letter P), Arabic numerals refer to the articles of these instruments.)

Section I

Protection against the effects of hostilities

Apart from a few provisions of limited scope, the Geneva Conventions do not deal with the general protection of civilian populations against the effects of hostilities. This matter came under The Hague Conventions, most of whose rules go back to 1907 and have from that time acquired a customary character and are still valid. But the evolution that has taken place since the beginning of this century in military technique and, in particular, extraordinary developments in aerial warfare has made it necessary to develop and make more specific the existing law of armed

conflicts. This is the subject of Part IV of the First Protocol additional to the Conventions.

1. Fundamental principle and basic rules

The fundamental principle on which the law of armed conflicts is based is expressed as follows: In any armed conflict, the right of the Parties to the conflict to choose methods or means of warfare is not unlimited. Two basic rules follow from this principle. The first prohibits the use of weapons, projectiles and material and methods of warfare of a nature to cause unnecessary injury. The second, in order to ensure respect and protection for the civilian population and civilian property, obliges the Parties to the conflict to distinguish at all times between the civilian population and combatants, as well as between civilian property and military objectives and to direct their operations only against military objectives.[P. I, 35; P. I, 48]

2. Definition of civilians and civilian Property

Any Person not belonging to the armed forces (see Chapter III, Section I) is considered as a civilian and the same applies in case of doubt as to his status. The civilian population comprises all persons who are civilians.[P. I, 50]

Civilian property is anything which is not a military objective, i.e. which by its nature, location, purpose or use does not effectively contribute to military action and whose total or partial destruction, capture or neutralization would not offer a definite military advantage in the circumstances ruling at the time. Thus, military equipment, a road of strategic importance, a supply column on its way to the army, a civilian building evacuated and reoccupied by combatants are military objectives. In case of doubt, a property which is normally assigned to civilian use should be considered as civilian and must not be attacked.[P. I, 52]

3. Protection of civilian persons and property

The prohibition of attacks on civilian persons and civilian property includes all acts of violence, whether committed in offence or defence. Attacks or threats of violence intended to terrorize the civilian Population are also prohibited.[P. I, 49, 51, 52]

The prohibition includes attacks launched indiscriminately. In particular these are attacks which are not directed or which cannot be directed, because of the methods or means of combat employed, at a military objective. Also considered as indiscriminate are attacks which treat as a single military objective a number of clearly separated and distinct military objectives located in a town, village or other area containing a similar concentration of civilians or civilian property. The same applies to attacks which cause incidental civilian losses and damage excessive in relation to the concrete and direct military advantage anticipated.[P. I, 49, 51, 52]

The presence or movements of the civilian population or individual civilians must not be used to try to shield military objectives from attack or to shield, favour or impede military operations.

The Fourth Convention provides for the conclusion by Parties to a conflict of local agreements for the evacuation from besieged or encircled areas of wounded, sick, disabled and old people,

children and women in labour, and for the passage of ministers of all religions, medical personnel and equipment on their way to such areas.[IV, 17]

The Protocol forbids starving civilian populations. Objects indispensable to the survival of civilian populations, such as foodstuffs, agricultural areas, crops, livestock, drinking water installations and supplies and irrigation works must neither be attacked, destroyed, removed nor rendered useless. A belligerent may depart from this rule only on its own territory and only if imperative military necessities require it to do so.[P. I, 54]

The environment itself must be protected against widespread, long-term and severe damage. Methods or means of warfare likely to cause such damage and thereby jeopardize the health or survival of the population are forbidden.[P. I, 55]

4. Special protection of certain property

Cultural property (1) is entitled to special protection. Historical monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples must not be the objects of any acts of hostility, nor be used in support of the military effort.[P. I, 53]

In case of risk of the release of dangerous forces which could cause severe losses among the civilian population, dams, dykes and nuclear electrical generating stations, must not be attacked, even if they constitute military objectives. This protection can only cease if they are used for the regular, significant and direct support of military operations and if attack is the only practical means of stopping this support. These installations may be marked with a special sign (three bright orange circles in a straight line).[P. I, 56, Annex I, 16]

5. Special Protection of certain zones and localities

a) Safety zones

The Fourth Convention provides that either before or after the outbreak of hostilities, hospital and safety zones and localities may be established so as to protect wounded, sick and aged persons, children under the age of fifteen, expectant mothers and mothers of children under the age of seven. The Protecting Powers and the ICRC are invited to lend their good offices in order to facilitate the setting up and recognition of such zones and localities.[IV, 14]

If necessary, and when circumstances permit, these zones may be set up in or near places which already benefit from special protection as cultural property (see point 4).

b) Neutralized zones

Neutralized zones are zones established in fighting areas and intended to shelter from the dangers of war all persons, without distinction, who are not taking part, or no longer taking part, in hostilities and who do not perform any work of a military nature while they remain in these zones. They are established by agreement between the Parties concerned on the proposal of the Party

setting up the zone. [IV, 15]

c) Non-defended localities

Any inhabited place near or in a zone where armed forces are in contact and which is open to occupation by the adversary may be declared a non-defended locality. Such a locality must fulfil the following conditions:[P. I, 59]

- a) all combatants, as well as mobile weapons and mobile military equipment must have been evacuated;
- b) no hostile use may be made of fixed military installations or establishments,.
- c) no acts of hostility may be committed by the authorities or by the population,.
- d) no activities may be undertaken in support of military operations.

As long as these conditions are met, no attack can be launched on the locality by any means whatsoever.

d) Demilitarized zones

The Protocol prohibits extension of military operations to zones on which the opposing Parties have conferred by agreement the status of demilitarized zone, if such extension is contrary to the terms of such an agreement.[P. I, 60]

The purpose of the agreement will normally be to create a zone fulfilling the same conditions as for non-defended localities.

6. Precautionary measures

To implement the rules protecting civilian persons and property, those who plan or decide upon an attack are bound to take certain precautions. They must do everything feasible to verify that the objectives to be attacked are definitely military objectives. They must choose means and methods of attack which avoid, or at least reduce to a minimum, incidental losses and damage which could be caused to civilians and civilian property. They must refrain from launching an attack if it seems clear that such losses or damage would be excessive in relation to the concrete and direct military advantage anticipated, and even cancel or suspend it if it becomes apparent that such is the case. Advance warning must be given in good time to the civilian population of attacks which may affect them when circumstances permit. Finally, the location of military objectives in the vicinity of civilian populations and civilian property shall be avoided as far as possible and all other necessary precautions must also be taken (shelters, signs, etc.).[P. I. 57, 58]

7. Civil defence

Civil defence organizations have humanitarian tasks. They are intended to protect the civilian population against the dangers of hostilities or disasters and to help it recover from their immediate effects, as well as to ensure the conditions necessary for its survival (warning,

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evacuation, shelters, rescue, medical services, fire-fighting, public services, etc.). These organizations and their personnel are entitled to perform their tasks except in case of imperative military necessity and must be respected and protected. Objects used for civil defence purposes may not be destroyed or diverted from their proper use except by the Party to which they belong.[P. I, 61, 62]

These rules are also valid in occupied territory where civil defence organizations shall receive from the authorities the necessary facilities for the performance of their tasks. The occupant must not requisition buildings or equipment belonging to civil defence organizations nor divert them from their proper use.[P. I, 63]

The same rules also apply to civil defence organizations of neutral States operating on the territory of a Party to the conflict with the consent and under the control of that Party.[P. I, 64]

This protection may only cease if civil defence organizations are used to commit, outside their proper tasks, acts harmful to the enemy and only after an appropriate warning with a reasonable time-limit has been given and disregarded. The fact that civil defence organizations are formed along military lines, that they cooperate with military personnel or are placed under the direction of military authorities and incidentally benefit military victims is not considered as a harmful act. The same applies to the carrying of light individual weapons by civilian personnel for the purpose of maintaining order or for self-defence.[P. I, 5]

The distinctive sign of civil defence organizations is an equilateral blue triangle on an orange ground. [P. I, 66, Annex I, 15]

Members of the armed forces and military units permanently and exclusively assigned to civil defence organizations must be respected and protected, provided that the conditions stated above are observed and that they prominently display the international distinctive sign of civil defence. If they fall into enemy hands, they are prisoners of war. [P. I, 67]

Section II

General protection and administration of civilians in time of war

1. Scope of the Fourth Convention

Article 4 of the Fourth Convention defines protected persons as follows: persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or occupying Power of which they are not nationals.[IV, 4]

This protection rules out any arbitrary actions by the enemy at whose mercy the protected persons may be.

The Fourth Convention is especially concerned with supplementing Section 111 of the Hague Regulations of 1907 on the laws and customs of war relating to occupied territories. But, in addition to a section concerning the administration of foreigners, it also includes provisions relative to the general protection of civilian populations and provisions common to the territories of the Parties to the conflict and to occupied territories.

Both these latter groups of provisions are supplemented or even replaced by corresponding Articles in the Protocol.

2. General protection of all persons affected by the armed conflict

The rules of general protection stated in this subdivision refer to all persons affected by an armed conflict, whether or not they are protected persons in the meaning of Article 4 of the Fourth Convention. In principle they therefore concern nationals as well as non-nationals of the Parties to the conflict, nationals of neutral States on the territory of a Party to the conflict as well as nationals of States not Parties to the Conventions and the Protocol who find themselves on this territory.

a) Aid

The Fourth Convention guarantees the free passage of all consignments of medicaments and medical equipment, as well as objects necessary for religious worship intended only for civilians of another Contracting Party, even those of an enemy. It also permits the free passage of foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and women in labour. The Protocol considerably extends the scope for undertaking relief operations. It provides that when the civilian population of a territory under the control of a Party to the conflict, other than an occupied territory, is not adequately provided for, relief actions of a humanitarian and impartial character, conducted without any adverse distinction, must be undertaken, subject to the agreement of the Parties concerned in such relief action. These may consist of foodstuffs, medicines, clothing, bedding, means of shelter and other supplies essential to the survival of the civilian population. [IV, 23; P. I, 69, 70, 71]

The personnel taking part in relief actions must be respected and protected.

b) Protection of children

The Protocol declares that children must be the object of special respect and must be protected against any form of indecent assault. They must receive the care and aid they require, whether because of their age or for any other reason.

All practicable measures must be taken to prevent children under the age of 15 from taking a direct part in the hostilities and, if they have become orphaned or separated from their families as a result of the war, to ensure that they are not left to their own resources and that their maintenance, the exercise of their religion and their education are facilitated in all circumstances.

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In case of arrest, children shall be kept in quarters separate from those of adults, except where families are accommodated as family units. The death penalty must not be executed on persons who were under the age of 18 at the time the offence was committed. [P. I, 77; IV, 24]

Unless there are imperative reasons for doing so, no Party to the conflict shall arrange for the evacuation of children other than its own nationals to a foreign country. When evacuation does occur, all necessary steps must be taken to facilitate the return of the children to their families and their country. [P.I, 78]

c) Protection of women

Women shall be the object of special respect and must be protected against any form of indecent assault. Pregnant women and mothers of dependent infants, who are arrested for reasons related to the armed conflict, shall have their cases considered in absolute priority and in the event of a death penalty being pronounced, it will not be carried out. [P. I, 76]

d) Reuniting of dispersed families and family news

All the Parties to the Conventions and the Protocol must facilitate the reunion of dispersed families and encourage the work of the humanitarian organizations engaged in this task. [P. I, 74]

In particular, each Party to the conflict must facilitate enquiries made by members of families dispersed because of the war with the object of renewing contact with one another and, if possible, of meeting. [IV, 26]

All persons in the territory of a Party to the conflict, or in a territory occupied by it, shall be enabled to give news of a strictly personal nature to members of their families, wherever they may be, and to receive news from them. [IV, 25]

e) Refugees and stateless persons

Persons who, before the outbreak of hostilities, were considered as stateless persons or refugees under the relevant international agreements or under the legislation of the State of refuge or State of residence are protected persons within the meaning of the Fourth Convention. [P. I, 73]

f) Journalists

Journalists engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians and protected as such. They may obtain identity cards attesting to their status as journalists. [P. I, 79]

g) Fundamental guarantees

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In so far as they are affected by a situation of armed conflict, persons who are in the power of a Party to the conflict and who do not benefit from more favourable treatment by virtue of the conventions and the Protocol shall be treated humanely in all circumstances and shall benefit from the fundamental guarantees without any discrimination based on any pretext whatsoever. Among the fundamental guarantees, it is specified that the person, the honour, the convictions and religious practices of all such persons must be respected. The following acts in particular are prohibited under any pretext whatever, whether committed by civil or military agents: [P. I, 75]

- a) violence to the life, health and physical or mental well-being of persons, particularly:
 - murder;
 - torture of all kinds, whether physical or mental;
 - corporal punishment,.
 - mutilation;
- b) outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault;
- c) the taking of hostages;
- d) collective punishments;
- e) threats to commit any of the foregoing acts.

Finally, the guarantees of judicial procedure (see Chapter III, point 6, page 31) also form part of the fundamental guarantees accorded to all persons affected by an armed conflict.

h) Activities of the Red Cross and other humanitarian organizations

The Parties to the conflict must grant the ICRC all facilities within their power to enable it to carry out the humanitarian functions assigned to it by the Conventions and the Protocol, in order to ensure protection and assistance to the victims of conflicts. The ICRC may also carry out any other humanitarian activities in favour of these victims, subject to the consent of the Parties to the conflict.

These Parties shall also grant their respective Red Cross and Red Crescent organizations the facilities necessary for carrying out their humanitarian activities. As far as possible, they shall facilitate the assistance which other National Societies, the League of Red Cross Societies and other humanitarian organizations extend to the victims of conflicts.

3. General treatment of persons protected by the Fourth Convention (2)

a) Respect for the human person

Article 27 of the Fourth Convention states the basic principle of the Geneva Conventions. It

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proclaims respect for the human person and the inalienable character of his fundamental rights. This Article is now supplemented by Article 75 of the Protocol relative to fundamental guarantees as well as by other relevant provisions which appear under the heading "General Protection" (point 2, page 41). Article 27 declares:

Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity. [IV, 27]

Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution or any form of indecent assault.

In case of infringement of these rules, the State is responsible. [IV, 29]

b) Applications to Protecting Powers and the Red Cross

To guarantee observance of the principle stated above, protected persons shall have every facility for making application to the Protecting Powers, the ICRC, the National Red Cross or Red Crescent Society of the country where they may be and to any other organization that might assist them. [IV, 30]

c) Prohibition of maltreatment and pillage

It follows from this same principle that no physical or moral coercion may be used against protected persons, in particular to obtain information from them, or from third parties, and that the High Contracting Parties specifically agree that each of them is prohibited from taking any action of a nature to cause either physical suffering or extermination of the protected persons in their hands. This prohibition applies not only to murder, torture, corporal punishment, mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person, but also to any other form of brutality by civilian or military agents. [IV, 31, 32]

Pillage is prohibited. [IV, 33]

The taking of hostages is prohibited. [IV, 34]

4. Treatment of foreigners on the territory of a party to the conflict

While recognizing the right of foreigners to leave the territory at the outset of, or during a conflict, the Convention also affirms the right of the State to detain them on certain conditions if their departure would be against the national interests. If departures take place, they must be carried out in satisfactory conditions as regards safety, hygiene, sanitation and food. The situation of foreigners who remain will continue to be governed, in principle, by the provisions concerning aliens in time of peace. [IV, 35, 36, 38]

In all cases, foreigners on the territory of a Party to the conflict benefit from the rules stated under General Protection of all persons affected by the armed conflict and, in particular, from the fundamental guarantees (see point 2, page 41 and following). In addition, a number of basic rights are ensured them by the Convention (right to receive individual or collective relief, medical and hospital treatment, to practise their religion, and to benefit from the measures decreed by the Government in favour of certain categories of persons).

Among the enemy aliens on the territory of a Party to the conflict, there may be some whose situation merits special consideration: these are refugees, forced by events or persecution to leave their homeland and seek asylum elsewhere.

If the country of refuge enters into war with their country of origin, these refugees are qualified as enemy aliens because they have the nationality of an enemy Power. But their situation is a special one in that they are expatriates, no longer having ties with their country of origin and not benefiting from the support of the protecting Power. However, they do not yet have permanent links with the country that has received them. Therefore, they do not enjoy the protection of any government. It is to make allowance for this situation that the Convention provides the following article: the Detaining Power shall not treat as enemy aliens exclusively on the basis of their nationality *de jure* of an enemy State, refugees who do not, in fact, enjoy the protection of any government. [IV, 44]

The Protocol adds that persons who, before the beginning of hostilities, were considered as stateless persons or refugees under the relevant international instruments accepted by the Parties concerned or under the national legislation of the State of refuge or State of residence shall be protected persons within the meaning of the Fourth Convention in all circumstances and without any adverse distinction. [P. I, 73]

In order to remove any possibility for the States parties to the Convention to evade their obligations, it is prohibited to transfer protected persons to a Power which is not a party to the Convention. In the event of a transfer to a Power which is a party to the Convention, the Detaining Power must satisfy itself that the Power in question is willing and able to apply the Convention. The Convention adds that a protected person can in no circumstances be transferred to a country where he or she may have reason to fear persecution for his or her political opinions or religious beliefs. If internment or placing in assigned residence are ordered, this decision will be reconsidered as soon as possible and, if it is upheld, the case will be re-examined at least twice yearly. [IV, 45, 42, 43]

5. Occupation administration

a) Protection of persons

Regarding the protection of persons, reference will first be made to point 2 under General Protection of all persons affected by the armed conflict (page 41 and following), and in particular

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to the section dealing with aid, fundamental guarantees and the protection of children and women, as well as to point 3, letter a): Respect for the human person.

One of the most important clauses is that prohibiting deportations. Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive. [IV, 49]

Furthermore, as far as children are concerned, it is provided that the Occupying Power shall, with the cooperation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children. It will take all necessary steps to facilitate the identification of children and the registration of their parentage. It may not, in any case, change their personal status, nor enlist them in formations or organizations subordinate to it. [IV, 50]

The force of arms belonging to the Occupying Power, it will assume responsibility for public order and safety by virtue of Article 43 of The Hague Regulations. The rules laid down in the Convention are intended to safeguard the lives and interests of the population in humane conditions. Detailed provisions govern the following:

Work: Only persons over the age of eighteen may be compelled to work, and this work will be carried out only within the occupied territory, according to the legislation in force. [IV, 51]

Food: The Occupying Power has the duty of ensuring the food and medical supplies of the population. Fair value must be paid for any requisitioned goods. [IV, 55]

Hygiene and public health must be ensured and maintained by the Occupying Power with the cooperation of national and local authorities. [IV, 56]

Religion: The Occupying Power shall permit ministers of religion to give spiritual assistance to the members of their religious communities. [IV, 58]

Relief: The Occupying Power must permit necessary relief operations to aid the population and facilitate them by all means at its disposal, particularly by authorizing the charitable work of the Protecting Power, of a neutral State, of the ICRC or any other impartial humanitarian organization. [IV, 59, 61]

b) Protection of property

Article 53 refers to the protection of property. In a way, this extends the scope of the Convention, whose principal object is the protection of persons. It is justified by the fact that certain attacks on private property are extremely detrimental to the mental and material situation of the persons concerned.

The Occupying Power is prohibited from destroying real or personal property belonging individually or collectively to private persons, or to the State or other public authorities, or to social or cooperative organizations, except where such destruction is rendered absolutely necessary by military operations. [IV, 53]

c) Role of the National Society

The National Red Cross or Red Crescent Society is qualified to aid the wounded, sick and shipwrecked, to distribute relief and to supervise the welfare of the population with the means at its disposal. It must be shielded from any pressures that could prejudice its traditional character. To this end, and subject to temporary and exceptional measures imposed for urgent security reasons by the Occupying Power, the Convention provides as follows:

a) Recognized National Red Cross and Red Crescent Societies shall be able to pursue their activities in accordance with Red Cross principles, as defined by the International Red Cross Conferences. Other relief societies shall be permitted to continue their humanitarian activities under similar conditions. [IV, 63]

b) The Occupying Power may not require any changes in the personnel or structure of these societies, which would prejudice their activities.

Similarly, magistrates and public officials are, up to a point, protected against political pressures. The Occupying Power may not alter the status of public officials or judges in the occupied territory, or apply sanctions or take measures of coercion or discrimination of any kind against them, because they abstain from fulfilling their functions for reasons of conscience. [IV, 54]

d) Penal legislation

Finally, a detailed statute relative to penal legislation aims to permit the maintenance of order while protecting the population in the occupied territory from overbearing treatment on the part of the Occupying Power. The principle is that the penal legislation of the occupied territory remains in force, except in so far as it constitutes a threat to the Occupying Power, in which case it may be repealed or suspended by that Power. Subject to this reservation, the tribunals of the occupied territory shall continue to function for all offences covered by this legislation. [IV, 64]

In order to ensure that justice is observed, the courts shall apply only those provisions of law which were applicable prior to the offence, and which are in accordance with general principles of law, in particular the principle that the penalty shall be proportionate to the offence. They shall take into consideration the fact that the accused is not a national of the Occupying Power. [IV, 67]

Judicial procedure must be regular, i.e. it must include at least the following guarantees: the

accused to be informed without delay of the particulars of the offence he is alleged to have committed, which must have constituted an offence at the time it was committed; presumption of innocence, no coercion to obtain confessions, judgement to be pronounced in the presence of the accused and, in principle, publicly. The prisoner may not be punished more than once for the same act or on the same charge if based on the same law and the same judicial procedures. The rights of defence are recognized and guaranteed in that the accused has the right to question witnesses, or have them questioned, to be defended by a qualified attorney of his own choice and to call on the services of an interpreter. Finally, all convicted persons will be informed of their rights to appeal and the time limits within which they may do so. [P. I, 75; IV, 71, 72, 73]

Within this framework, the Occupying Power may promulgate penal provisions but the Convention confines within very strict limits the possibility of imposing the death penalty.

In no case may this penalty be pronounced on a protected person who was under the age of eighteen at the time the offence was committed, nor may it be carried out on a pregnant woman or a mother of young infants dependent on her.[IV, 68; P. I, 76, 77]

No death sentence may be carried out before at least six months have elapsed from the time this sentence was notified to the Protecting Power.[IV, 75]

A special clause protects refugees. [IV, 70]

6. Treatment of civilian internees

Both in the case of enemy civilians on the territory of a Party to the conflict, and that of protected persons in occupied territory, the principle is that if the Detaining Power considers it necessary, for imperative reasons of security, to take safety measures concerning protected persons, it may, at the most, subject them to assigned residence or to internment. [IV, 41,78]

Internment therefore is not a punishment. Like the code for prisoners of war, it must in all circumstances respect human dignity. The conditions of internment are virtually the same as those applying to prisoners of war and, by and large, the rules of internment applicable to civilians follow almost word for word those concerning prisoners of war (see articles 79 to 135 of the Fourth Convention).

However, it should be noted that several articles concerning, for example:

- management of property, [IV, 114]
- facilities for legal proceedings, [IV, 115]
- visits, [IV, 116]

have no direct parallels in the Convention relating to prisoners of war. They are intended to alleviate the hardships of internment for persons who, not being subject to military discipline, may in some cases benefit from less severe treatment than that meted out to prisoners of war.

Furthermore, as far as working conditions are concerned, an essential difference is worth pointing

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out. Whereas prisoners of war (excepting officers) can be compelled to work, civil internees can only be employed as workers if they so wish. Apart from its strictly voluntary character, their work is governed by the same rules as those of prisoners of war. [IV, 95]

Also worthy of attention is a provision concerning family life, whereby internees may request that their children who are left at liberty without parental care should be interned with them. [IV, 82]

As far as possible, interned members of the same family must be housed in the same premises and given separate accommodation from other internees; they must also be granted all necessary facilities for leading a proper family life.

As far as the release of internees is concerned, the Convention specifies that each interned person must be released by the Detaining Power as soon as the reasons which necessitated his internment no longer exist. In addition, the Parties to the conflict will endeavour, during the hostilities, to conclude agreements for release, repatriation, return to places of residence or hospitalization in a neutral country of certain classes of internees, in particular children, pregnant women and mothers with infants and young children, the wounded and sick and internees who have been detained for a long time. [IV, 132]

Internment must cease as soon as possible after the close of hostilities and, at the end of hostilities or occupation, the States must try to ensure the return of all internees to their last place of residence or facilitate their repatriation. The spirit of this provision is of far-reaching consequence, benefiting not only internees but, in a general way, all persons displaced by the events of war. [IV, 133; IV, 134]

Notes

1. This property is also protected by The Hague Convention of May 14, 1954 for the protection of cultural property in the case of armed conflict.
2. A reminder that the definition of protected persons is given in article 4 of the Convention, see above, page 40. A distinction is made between protected persons: aliens on the territory of a Party to conflict (see page 45) and the population of occupied territories (see page 47).
3. A reminder that article 33, mentioned above, page 45, prohibits pillage.

Chapter V: Protection of victims of non-international armed conflicts

ARTICLE 3 COMMON TO THE FOUR CONVENTIONS AND ADDITIONAL PROTOCOL II

Section I

Article 3 common to the four Conventions

Section II

Additional Protocol II

1. Wounded, sick and shipwrecked
 - a) Protection and care
 - b) Medical personnel
 - c) Medical units and transport
 - d) Distinctive emblem
2. Protection of the civilian population
3. Protection of certain objects
4. Humane treatment
 - a) Fundamental guarantees
 - b) Persons deprived of their liberty
 - c) Penal prosecutions
 - d) Non-discrimination

(Please note: Roman numerals indicate the number of the Convention or the Protocol (designated by the letter P), Arabic numerals refer to the articles of these instruments.)

The general rules relating to non-international armed conflicts refer to the two following cases:

- a) any situation where, within a State's territory, clear and unmistakable hostilities break out between the armed forces and organized armed groups (see Section I);
- b) any situation where dissident forces are organized under the leadership of a responsible command and exercise such control over a part of the territory as to enable them to conduct sustained and concerted military operations (intensive fighting, see Section II).

Section I

Article 3 common to the four Conventions

Article 3 common to the four Conventions applies to all armed conflicts of a non-international character and occurring in the territory of one of the Powers parties to the Convention. In such a case, persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those who are hors de combat for any other reason will in all circumstances be treated humanely without any adverse distinction.[I, 3; II, 3; III, 3; IV, 3]

The common article 3, of which it has justly been said that it is, in itself, a small Convention within a larger one, states what constitutes a minimum of humane treatment. The following acts, committed against the persons mentioned above, are and must remain prohibited at all times and

in all places:

- a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- b) taking of hostages;
- c) outrages upon personal dignity, in particular, humiliating and degrading treatment;
- d) the passing of sentences and carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

Common article 3 adds that a humanitarian organization such as the ICRC may offer its services to the Parties to the conflict and that these Parties should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention. Finally, it declares that the application of these provisions shall not affect the legal status of the Parties to the conflict.

Section II

Additional Protocol II

In the case of intensive fighting, and in the absence of the acknowledgement of a state of war involving the application of the entire law of war, the provisions of the common article 3 still apply. In addition, the rules of the second additional Protocol must be observed.

1. Wounded, sick and shipwrecked

a) Protection and care

All the wounded, sick and shipwrecked must be respected and protected, treated humanely and cared for without any distinction founded on any grounds other than medical ones. All possible measures must be taken without delay, particularly after an engagement, to search for and collect the wounded, sick and shipwrecked and to pay the last honours to the dead. [P. II, 7, 8]

b) Medical personnel

Medical personnel must be respected, protected and helped in the performance of their duties in aiding all the wounded and sick without discrimination. Nobody may be punished for having carried out medical activities compatible with medical ethics, whoever may have benefited therefrom, nor be compelled to perform acts contrary to the rules of medical ethics, or refrain

from performing acts required by these rules.[P. II, 9, 10, 11]

c) Medical units and transport

Medical units and transport must be protected and respected in the same way as medical personnel as long as they are not used to commit hostile acts.[P. II, 11]

d) The distinctive emblem

The distinctive emblem of the red cross and the red crescent, used under the direction of the authority concerned, must be respected. It must not be used improperly.[P. II, 12]

2. Protection of the civilian population

The chief interest of Protocol II lies in the extension to non-international armed conflicts of the principal rules of Protocol I relating to the protection of civilian populations against the effects of hostilities.

The Protocol thus declares that neither the civilian population as such, nor individual civilians may be the object of attacks; moreover, acts of terrorism against them are prohibited. Civilians benefit from this protection as long as they do not take a direct part in hostilities. Starvation of civilians is a prohibited method of combat.[P. II, 13]

The displacement of the civilian population may only be ordered if its safety or imperative military reasons require it, and only after all possible measures have been taken to ensure it will be received under satisfactory conditions.[P. II, 17]

Relief societies, such as the Red Cross and Red Crescent Societies, may offer their services and if necessary provide impartial, humanitarian relief, subject to the consent of the High Contracting Party concerned.[P. II, 18]

3. Protection of certain objects

Certain objects benefit from special protection. This applies to objects indispensable to the survival of the civilian population. It also applies to cultural property and places of worship which constitute the cultural and spiritual heritage of peoples and which must neither be attacked nor used in support of the military effort.[P. II, 14; P. II, 16]

Installations such as dams, dykes and nuclear stations, containing dangerous forces, the release of which could cause severe losses among the civilian population, must not be attacked even if they are military objectives.[P. II, 15]

4. Humane treatment

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a) Fundamental guarantees

All persons who do not take a direct part in hostilities will be treated humanely in all circumstances and will benefit from the fundamental guarantees without any discrimination whatsoever. Whether or not they have been deprived of their liberty, it is specified that their person, honour, convictions and religious practices must be respected. The following acts against any person, whether committed by civilian or military agents, and for any reason whatever, are prohibited.[P. II, 4]

a) violence to the life, health and physical or mental well-being, particularly:

- murder;
- torture in any form, whether mental or physical;
- corporal punishment;
- mutilations;

b) outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault,.

c) the taking of hostages;

d) collective punishments;

e) threats to commit the foregoing acts.

Children must receive the care and aid they need, particularly with regard to education, including religious and moral education, and steps must be taken to return them to their families when they have been temporarily separated from them. Children under fifteen must not be recruited into the armed forces nor allowed to take part in hostilities.

All measures must be taken, if necessary, with the consent of their parents or those responsible for them, to evacuate them from an area where hostilities are taking place.

b) Persons deprived of their liberty

In addition to the fundamental guarantees and to those granted to the wounded and sick, persons detained or interned for reasons related to the armed conflict must be accorded all guarantees with respect to medical care, food, hygiene, safety, relief, the practice of their religion and working conditions. [P. II, 5]

The Protocol prescribes that men and women must be separated, except when they are members of the same family; that they must be allowed to send and receive letters; that places of internment and detention must not be located near the combat zone and that the physical or mental health and integrity of the internees or detainees must not be endangered by any unjustified act or omission.

c) Penal prosecutions

Sentences may only be pronounced by a court offering the essential guarantees of independence and impartiality: the accused to be informed without delay of the particulars of the offence alleged against him, exclusion of collective responsibility and of conviction for an act or omission which did not constitute an offence at the time it was committed, presumption of innocence, judgement passed in the presence of the accused, no coercion to obtain confessions, information of the right of appeal. The death penalty must not be pronounced on those who were under eighteen at the time of the offence nor on pregnant women or mothers of dependent infants.[P. II, 6]

d) Non-discrimination

All these guarantees must be applied without any adverse distinction founded on any grounds whatever.