

# **HUMANITARIAN LAW IN ARMED CONFLICT**

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*“War is only a cowardly escape from the problem of peace”*

- By Thomas Mann

## **INTRODUCTION**

It is indeed a paradox when the war mongers say that they are fighting a war in order that peace may prevail. This has ever been the claim of all wars. Who says that the two biggest catastrophe in the history of human kind brought peace to the people. World War I was an extremely bloody war that engulfed Europe from 1914 to 1919, with huge losses of life and little ground lost or won. Fought mostly by soldiers in trenches, World War I saw an estimated 10 million military deaths and another 20 million wounded. While many hoped that World War I would be "the war to end all wars," in actuality, the concluding peace treaty set the stage for World War II. It was the bloodiest, deadliest war the world had ever seen. More than 38 million people died, many of them innocent civilians. It also was the most destructive war in history. Fighting raged in many parts of the world. More than 50 nations took part in the war, which changed the world forever.

The World War I of 1914-18 ended with the establishment of the League of Nations — the purpose of which was to explore the possibilities how further wars could be avoided. But in spite of all good intentions the fury of another war could not be abated and the World War II — deadlier than the I, was waged and fought and when that somehow ended, the United Nations Organization was formed as a forum to find ways and means for a lasting Universal Peace. But,

somehow, in spite of all pious intentions the war clouds still hover over the horizons in this part of the world or that and permanent peace seems just a dream worthy to be fulfilled but not fully fulfilled.

When there is a war and when it ends, one power is the victor and the other the vanquished. The victor revels in glory and the vanquished wreathes in pain, Even the victors have hundreds and thousands of homes destroyed; women rendered widows, children rendered orphans and the vanquished have still many more calamitous after effects to suffer. It is only some territories and lands that are won and lost and that alone are the gains that war achieve

Many other wars were waged and fought for peace and possession but it only brought untold miseries to human race. America invaded Iraq was for its oil wealth. Hundreds of thousands of innocent Iraqi civilians as well as American and Iraqi soldiers have been killed, injured or maimed. During the eight-year war between Iran and Iraq in the 1980s, there were more than 1 million casualty figures with millions injured. The attack on the American World Trade Centre on 11 September 2001 killed close to three thousand people and the subsequent reprisal on Afghanistan by American forces killed thousands of people in that country. World War 1 and World 11 combined have claimed millions of lives and in the African continent, tribal wars and regional wars continue to occur. The civil war between the Hutus and Tutsis in Rwanda had claimed more than 3 million lives and in the Democratic Republic of Congo, more than 3 million people have died due to conflict between warlords. Many countries especially in Africa are still embroiled in tragic wars. Malaysia too experienced war when it was once occupied by the Japanese and people faced many hardships and challenges to meet their basic needs. The Japanese only surrendered when the unconventional weapons or better known as nuclear weapons were used on Hiroshima and Nagasaki which took thousands of lives and maimed as well crippled thousands of people exposed to radiation.

The effects of war are both physical and psychological. Human societies are deeply affected by wars as residential areas, public infrastructure, hospitals and the very basis of human existence are destroyed. Wars bring untold miseries as well as political and economic instability. People's lives and daily existence come under threat. It would be difficult to find jobs or live our normal day-to-day existence. Populations are displaced and have to constantly move about for security.

It is often during armed conflicts that human rights are infringed upon the most. Therefore, over the years, experts have focused much attention on the formulation of instruments aimed at alleviating human suffering during war and

conflict. Today, three areas of modern international law attempt to provide protection to victims of war: human rights law, refugee law and humanitarian law.

The term "humanitarian" is often used in everyday language in a very broad sense, and can be confused with the term "human rights." Although both are concerned with the protection of the individual, the two bodies of law apply to different circumstances and possess slightly different objectives. The main distinction between the two bodies of law is that humanitarian law applies to situations of armed conflict, while human rights protect the individual in times of both war and peace. Humanitarian law aims to limit the suffering caused by war by regulating the way in which military operations are conducted.

## **What is international humanitarian law?**

International humanitarian law is a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare. International humanitarian law is also known as the law of war or the law of armed conflict. International humanitarian law is part of international law, which is the body of rules governing relations between States. International law is contained in agreements between States – treaties or conventions –, in customary rules, which consist of State practice considered by them as legally binding, and in general principles. International humanitarian law applies to armed conflicts. It does not regulate whether a State may actually use force; this is governed by an important, but distinct part of international law set out in the United Nations Charter.

## **Fundamental principles of humanitarian law**

International humanitarian law aims to limit the suffering caused by war by forcing parties engaged in a conflict to:

1. Engage in limited methods and means of warfare;
2. Differentiate between civilian population and combatants, and work to spare civilian population and property;
3. Abstain from harming or killing an adversary who surrenders or who can no longer take part in the fighting;
4. Abstain from physically or mentally torturing or performing cruel punishments on adversaries.

## **Where did international humanitarian law originate?**

International humanitarian law is rooted in the rules of ancient civilizations and religions – warfare has always been subject to certain principles and customs. Universal codification of international humanitarian law began in the nineteenth century. Since then, States have agreed to a series of practical rules, based on the bitter experience of modern warfare. These rules

strike a careful balance between humanitarian concerns and the military requirements of States. As the international community has grown, an increasing number of States have contributed to the development of those rules. International humanitarian law forms today a universal body of law.

The cornerstone of IHL is the Geneva Conventions. The first was signed by 16 countries in 1864. For centuries before then, rules had applied to the conduct of war, but they were based on custom and tradition, were local or just temporary 1864 changed all that and began a process of building a body of law that is still evolving today. The initiative for the first convention came from five citizens of Geneva. One of them, Henry Dunant, had, by chance, witnessed the battle of Solferino in 1859. He was appalled by the lack of help for the wounded and organized local residents to come to their aid. Out of this act came one of the key elements of the first convention – the humane treatment of those no longer part of the battle, regardless of which side they were on. Henri Dunant - founder of the International Red Cross - helped champion the first universally applicable codification of international humanitarian law: the Geneva Convention of 1864. It was at this time, too, that a neutral protective sign for those helping the victims of conflict was adopted; a red cross on a white background, the exact reverse of the Swiss flag. In the century and a half that followed the body of international humanitarian law grew. The Geneva Convention was extended, in 1906 and 1929 so as to improve the conditions of sick and wounded soldiers in the field and to define new rules on the protection of prisoners of war. In 1899 and 1907, the Hague Conventions, mainly aimed at regulating the conduct of warfare, were also adopted. In August 1949, the four Geneva Conventions as we know them today were adopted. This time they also included the protection of civilians, reflecting the terrible experience of World War II. Protocols were added to the Geneva Conventions in 1977 and 2005, and a range of other international conventions and protocols covering specific areas such as conventional weapons, chemical weapons, landmines, laser weapons, cluster munitions and the protection of children in armed conflicts has developed the reach of IHL. So too has the codification of customary law. Many of the international treaties on armed conflict were made in response to the many new methods of warfare. World War I (1914-1918) witnessed the first large-scale use of poison, aerial bombardments and capture of prisoners of war. World War II (1939-1945) saw civilians and military personnel killed in equal numbers.

## **Where is international humanitarian law to be found?**

A major part of international humanitarian law is contained in the four Geneva Conventions of 1949. Nearly every State in the world has agreed to be bound by them. The Conventions have been developed and supplemented by two further agreements: the Additional Protocols of 1977 relating to the protection of victims of armed conflicts. Other agreements prohibit the use of certain weapons and military tactics and protect certain categories of people and goods. These agreements include:

1. The 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict, plus its two protocols;
2. The 1972 Biological Weapons Convention;
3. The 1980 Conventional Weapons Convention and its five protocols;
4. The 1993 Chemical Weapons Convention;
5. The 1997 Ottawa Convention on anti-personnel mines;
6. The 2000 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. Many provisions of international humanitarian law are now accepted as customary law – that is, as general rules by which all States are bound.

The core, however, remains the Geneva Conventions and their additional Protocols. They combine clear legal obligations and enshrine basic humanitarian principles.

- Soldiers who surrender or who are hors de combat are entitled to respect for their lives and their moral and physical integrity. It is forbidden to kill or injure them.

-The wounded and sick must 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, Red Crescent or red crystal is the sign of such protection and must be respected

- Captured combatants are entitled to respect for their lives, dignity, personal rights and convictions. They must be protected against all acts of violence and

reprisals. They must have the right to correspond with their families and to receive relief.

-Everyone must be entitled to benefit from fundamental judicial guarantees. No one must be sentenced without previous judgment pronounced by a regularly constituted court. No one must be held responsible for an act he has not committed. No one must be subjected to physical or mental torture, corporal punishment or cruel or degrading treatment.

-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.

-Parties to a conflict must at all times distinguish between the civilian population and combatants in order to spare civilian population and property. Adequate precautions shall be taken in this regard before launching an attack.

-The International Committee of the Red Cross is regarded as the “guardian” of the Geneva Conventions and the various other treaties that constitute international humanitarian law. It cannot, however, act as either policeman or judge. These functions belong to governments, the parties to international treaties, who are required to prevent and put an end to violation of IHL. They have also an obligation to punish those responsible of what are known as “grave breaches” of IHL or war crimes

### **When does international humanitarian law apply?**

International humanitarian law applies only to armed conflict; it does not cover internal tensions or disturbances such as isolated acts of violence. The law applies only once a conflict has begun, and then equally to all sides regardless of who started the fighting. International humanitarian law distinguishes between international and non-international armed conflict. International armed conflicts are those in which at least two States are involved. They are subject to a wide range of rules, including those set out in the four Geneva Conventions and Additional Protocol I.

## **Non-international armed conflicts**

Non-international armed conflicts are those restricted to the territory of a single State, involving either regular armed forces fighting groups of armed dissidents, or armed groups fighting each other. A more limited range of rules apply to

internal armed conflicts and are laid down in Article 3 common to the four Geneva Conventions as well as in Additional Protocol II. It is important to differentiate between international humanitarian law and human rights law. While some of their rules are similar, these two bodies of law have developed separately and are contained in different treaties. In particular, human rights law – unlike international humanitarian law – applies in peacetime, and many of its provisions may be suspended during an armed conflict.

## **What is “protection”?**

International humanitarian law protects those who do not take part in the fighting, such as civilians and medical and religious military personnel. It also protects those who have ceased to take part, such as wounded, shipwrecked and sick combatants, and prisoners of war. These categories of person are entitled to respect for their lives and for their physical and mental integrity. They also enjoy legal guarantees. They must be protected and treated humanely in all circumstances, with no adverse distinction. More specifically: it is forbidden to kill or wound an enemy who surrenders or is unable to fight; the sick and wounded must be collected and cared for by the party in whose power they find themselves. Medical personnel, supplies, hospitals and ambulances must all be protected. There are also detailed rules governing the conditions of detention for prisoners of war and the way in which civilians are to be treated when under the authority of an enemy power. This includes the provision of food, shelter and medical care, and the right to exchange messages with their families. The law sets out a number of clearly recognizable symbols which can be used to identify protected people, places and objects. The main emblems are the Red Cross, the Red Crescent and the symbols identifying cultural property and civil defense facilities.

## **What Exactly is an Armed Conflict?**

There are three types of conflicts that are recognized by international humanitarian law: international armed conflict, internationalized armed conflict, and non-international armed conflict.

International humanitarian law does make it clear what an international armed conflict is. According to the Geneva Conventions of 1949, common article 2 states that "all cases of declared war or of any armed conflict that may arise between two or more high contracting parties, even if the state of war is not recognized, the convention shall also apply to all cases of partial or total occupation of the territory of a high contracting party even if the said occupation meets with no armed resistance" (Geneva Convention, 1949, common art.2). This means that the occurrence of international armed conflict is clear, that is, it would be a conflict between the legal armed forces of two different states. A good example would be the North Korean- South Korean war of 1950.

The second armed conflict recognized by international humanitarian law is a new phenomenon known as 'an internationalized armed conflict'. The situation of an internationalized armed conflict can occur when a war occurs between two different factions fighting internally but supported by two different states (Stewart, 2003, p 315). The most visible example of an internationalized armed conflict was the conflict in the Democratic Republic of Congo in 1998 when the forces from Rwanda, Angola, Zimbabwe and Uganda intervened to support various groups in the DRC (Stewart, 315).

### **What restrictions are there on weapons and tactics?**

International humanitarian law prohibits all means and methods of warfare which:

- fail to discriminate between those taking part in the fighting and those, such as civilians,
- Who are not, the purpose being to protect the civilian population, individual civilians and civilian property
- Cause superfluous injury or unnecessary suffering;

- Cause severe or long-term damage to the environment. Humanitarian law has therefore banned the use of many weapons, including exploding bullets, chemical and biological weapons, blinding laser weapons and anti-personnel mines.

### **Humanitarian law and the prohibition of use of force.**

The charter of the United Nations prohibits war; it even prohibits the threat to use force against the territorial integrity or political independence of any state. States are to settle their differences in all circumstances by peaceful means. A state which attempts to use force against another state to achieve its ends contravenes international law and commits an aggressive act, even when it is apparently in the right. This has been clearly stated in article 2, para 4 of the charter of the United Nations.: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."

The UN Charter does not however, impair the right of a state to resort to force in the exercise of its right to self defence. As stated in **Article 51** of the UN charter:

"Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security."

This article has been cited by the United States as support for the Nicaragua case and the legality of the Vietnam War. According to that argument, "although South Vietnam is not an independent sovereign State or a member of the United Nations, it nevertheless enjoys the right of self-defense,

and the United States is entitled to participate in its collective defense".<sup>1</sup> Article 51 has been described as difficult to adjudicate with any certainty in real-life situations<sup>2</sup>.

The same holds true for third party states who come to the aid of the state being attacked (right of collective defense). Finally the UN may order military or non military action to restore peace. This has been stated in Chapter VII, in particular Article 41 and 42:

#### **Article 41:**

“The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations”

#### **Article 42:**

“Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.”

### **The protection of the defenceless in war – the true “law of Geneva” or “red cross Law”**

Article 6 of the 1864 Geneva Convention reads, “wounded or sick combatants, to whatever nation they may belong, shall be collected and cared for”. This one sentence aptly sums up for the law of Geneva, also known as Red cross . Since 1864, however this law has been very considerably expanded and now includes protection for captured combatants and for civilian war victims, as well.

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<sup>1</sup> War Crimes Law And The Vietnam War, Benjamin B. Ferencz, The American University Law Review, Volume 17, Number 3, June 1968

<sup>2</sup> Glennon, Michael J. (2001–2002), Fog of Law: Self-Defense, Inherence, and Incoherence in Article 51 of the United Nations Charter, The 25, Harv. J.L. & Pub. Pol'y, p. 539

## **The general obligation of humane treatment**

All the four convention preface their provisions with a directive that the defenseless should receive humane treatment, the wording in each case being adapted to the specific categories of persons covered by the convention. Article 12 of the first convention, for example reads:

Members of the armed forces and other persons mentioned in the following Article , who are wounded or sick, shall be respected and protected in all circumstances. They shall be treated humanely and cared for by the Party to the conflict in whose power they may be, without any adverse distinction founded on sex, race, nationality, religion, political opinions, or any other similar criteria. Any attempts upon their lives, or violence to their persons, shall be strictly prohibited; in particular, they shall not be murdered or exterminated, subjected to torture or to biological experiments; they shall not willfully be left without medical assistance and care, nor shall conditions exposing them to contagion r infection be created. Only urgent medical reasons will authorize priority in the order of treatment to be administered.

Women shall be treated with all consideration due to their sex.

Article 12 of the second convention, relating to war at sea, article 13 of the third convention, relating to prisoners of war and article 27 of the fourth conventions, relating to civilians are similarly worded.

In order to close any loopholes, additional protocol I contains an extensive provision on the treatment of persons in the power of a party to the conflict. Article 75 of section 3, entitled “fundamental guarantees”, reads like a condensed version of the declaration of human rights, framed for the special conditions of war.

Under Article 75 all persons in power of one of the parties of the conflict “shall be treated humanely in all circumstances”. They must enjoy, as a minimum, the protection provided by this Article “without any adverse distinction based upon race, color, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria”.

Article 75 further contains a long list of obligations and prohibitions. It is thus prohibited to commit “ violence to the life, health, or physical or mental well being of persons, in particular murder” with special emphasis on the ban of “torture of all kinds, whether physical or mental”. A similar absolute prohibition is contained in each of the four conventions: torture is completely forbidden with no exception whatsoever and there is no such higher value such as for instance, “liberty” or “the nation’s survival” that could justify torture. The use of torture is always a grave breach of the Geneva conventions and must therefore be punished as a war crime<sup>3</sup>.

Another perversion of human behavior must be mentioned in the same context: medical, or rather pseudo medical, experiments on human beings. Such procedures are prohibited<sup>4</sup>

Article 75 forbids “outrages on personal dignity in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault”, “the taking of hostages” and collective punishments” and also threats to commit such acts. A series of guarantees are intended to ensure proper and fair judicial trial.

Section III of the additional protocol I which contains minimum provision for the treatment of persons in the power of the opposing party to the conflict, names other groups who, because of their great vulnerability in conflict conditions, need extra protection: refugees and stateless persons Article 73), families dispersed owing to the war (Article 74), women (Article 76) and children (Article 77 and 78) and journalists (Article 79).

Article 75 is a special interest forming as it does the link between protection of human beings and international humanitarian law and the guarantees contained in human rights treaties.

### **Wounded, sick and shipwrecked persons**

The texts referring to this category of persons are to be found in the first Geneva convention for the Amelioration of the conditions of the wounded and sick armed forces in the field, the second convention for the Amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea, the fourth convention relative to the protection of civilian persons in time of war, part II (General protection of populations against certain consequences of wars), and Additional protocol I 1977, part II (wounded, sick and shipwrecked).

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<sup>3</sup> First convention; Article 50; Second convention; Article 51; Third convention, Article 130; fourth convention, Article 147

<sup>4</sup> Protocol I, Article 11

Under the Geneva conventions, two different series of rules are brought into application, depending on whether the wounded, sick or shipwrecked persons are members of the armed forces or civilians. Protocol I did away with this distinction and created a single law for both the categories, which greatly simplifies the practical application of the provisions<sup>5</sup>. There are now only “wounded” and “sick”, whether military or civilian, and only medical units, whether under military or civilian administration. Civilian wounded can therefore be treated in military hospitals, and combatants in civilian establishments. The protection is linked with the person or the unit, and not with their military or civilian nature.

Under the title “protection and care” Article 10 of protocol I states:

1. All the wounded, sick and shipwrecked, to whichever Party they belong, shall be respected and protected.
  
2. In all circumstances they shall be treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them founded on any grounds other than medical ones.

The provision says a lot in a few words. It obliges the belligerents to take the following measures regarding the wounded, sick and shipwrecked:

Respect- defenseless persons must be treated as their condition requires, and always with humanity;

Protection- they must be shielded from injustice and danger, that is, the effects of hostilities and against possible assaults on the integrity of their persons. Suitable measures must be taken to guarantee such protection;

Medical care and attention- these people are entitled to medical care, and may not be neglected as enemy persons on account of their origin (general prohibition of discrimination). They need not, however receive more than is actually possible: the wounded and sick of the opposing side do not have to be treated better than the party’s own combatants in the same circumstances.

The opposing party must respect medical units at all times, i.e., they must not be attacked or hampered in their functions. The protection ceases only if such a unit is misused to commit acts harmful to the opposite party,” outside their humanitarian function”. Naturally protection does not cease if wounded combatants are housed in the medical units together with their arms and equipment. Medical units include fixed or mobile hospitals, field hospitals or other installations used for medical care, for example, pharmaceutical stores.

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<sup>5</sup> Protocol I, Article 8.

Civilian medical units must be designated as such by the authorities of the state concerned. Thus all the medical units are protected<sup>6</sup>. However medical units may not be defended against take over by the enemy's armed forces. They should instead, be handed over to an approaching enemy in good order. In this sense, a field hospital is neutral. Medical units that fall in the hands of the adverse party should, as a general principle be allowed to continue their work.

At sea, hospital ships perform the functions of hospitals on land<sup>7</sup>. they are protected under the second Geneva Convention, provided that they are marked as such and that their characteristics have been notified to the parties to the conflict

Medical personnel, including those employed in the search for and or the collection of wounded, are to be respected and protected, whether they are civilian or military<sup>8</sup>.They may not be attacked and must in principle be allowed to continue performing their duties if they fall into the hands of the enemy. In particular, captured military medical personnel must be employed to care for prisoners of war<sup>9</sup>. Any personnel not required for such duties shall be repatriated.

Additional protocol I states that no person in any circumstances shall be punished for carrying out medical activities compatible with medical ethics, regardless of person benefitting there from<sup>10</sup>. No doctor may be compelled to perform acts contrary to the rules of medical ethics. Military and civilian religious personnel are entitled to same protection. equivalent to military medical personnel, finally are the “staff of national red cross societies and that of other voluntary aid societies, duly recognized and authorized by their governments,” provided that they are subject to military laws and regulations.

The 1929 convention noted that the red cross emblem had been formed by reversing the colors of the Swiss flag<sup>11</sup>since the revised conventions of 1949, the red cross on a white ground designates all persons, buildings, means of transport etc. that are entitled to protection and respect under international law, irrespective of whether they are civilian or military in character. This was the first protective sign enabling those engaged in combat to identify an object or a person to be protected, to hold their fire or to take other measures, in order to protect and respect human beings seeking the protection of the Red Cross.

<sup>6</sup> First convention, article 19 to 23, protocol I, article 8 (e) and 12 to 14.

<sup>7</sup> Second convention, article 22 to 35

<sup>8</sup> First convention, article 24 to 32; second convention, article 36 and 37; protocol 1, article 8(c) and 15.

<sup>9</sup> first convention, article 28

<sup>10</sup> protocol I, article 16.

<sup>11</sup> convention of 1929

The effectiveness of the protection offered by the emblem depends on the trust that the parties to the conflicts have in the correct use of the protective sign by the adverse party. For this reason, the use of the emblem must be reflected not only through international law<sup>12</sup>, But also in domestic legislation. Misuse of the emblem is forbidden, deliberate use of the protective sign with the intention of abusing the trust of the adversary for example, by making a military advance under the protection of the red cross or transporting arms by means of a marked ambulance or similar vehicle is perfidy and in certain circumstances must be considered as a war crime<sup>13</sup>. Such conduct is extremely grave, since misuse destroys confidence in the protective sign and can therefore lead to the loss of its protective effect even for installations, means of transport and persons legitimately marked with the sign.

## **Prisoners of war**

The third Geneva Convention relative to the treatment of prisoners of war deals extensively with the light of those taken captive in war. its contents must be summarized as follows- “prisoners of war shall at all times be treated humanely”<sup>14</sup> Prisoners of war are members of the armed forces of one of the parties to the conflict who fall into the hands of the adverse party during an international armed conflict. During captivity, prisoners of war retain their legal status as members of the armed forces, as indicated extremely by the fact that they are allowed to wear their uniforms, that they continue to be the subordinate to their own officers who are themselves prisoners of war and at the end of hostilities they have to be returned to their own country without delay. since the prisoners are in the care of adverse state, it is their responsibility for fulfilling its international obligations<sup>15</sup>. Being a prisoner of war is in no way a form of punishment.

Certain persons authorized to accompany the armed forces without belonging to them are also to be treated as prisoners of war e.g., civilian members of ship and aircraft crews, war correspondents, though not those journalists who are to be treated as civilians under the rules of protocol I<sup>16</sup>. Lastly, members of the population who spontaneously take up arms to resist approaching enemy forces (levee en masse) are entitled to be treated as prisoners of war<sup>17</sup>. Members of medical services who are taken prisoner are granted special status: they must be given the care of prisoners of war of their own side, or to be returned to the

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<sup>12</sup> first convention, article 38 to 44 , 53 and 54; annex I to protocol I, art 3 and 4.

<sup>13</sup> protocol I, article 85. 3 (f).

<sup>14</sup> third convention, article 13

<sup>15</sup> Article 12

<sup>16</sup> Article 4 A (4) and (5).

<sup>17</sup> Article 4.A(6)

party to which they belong<sup>18</sup>. In general, any doubt as to the status of a captured person must be cleared up by a competent tribunal<sup>19</sup>.

Prisoners of war keep their legal status from the time they are captured until they are repatriated. They cannot lose his status during their captivity, either by any measure of the authority in charge or by their action. Protected persons may in no circumstances renounce the rights to which they are entitled<sup>20</sup>. The third Geneva convention –“the prisoner of war convention” deals with the rules relating to treatment of prisoners of war ( article 21 to 108). Viz.;

-When captured, prisoners of war are obliged to give name, military rank, date of birth and serial number only. They cannot be compelled, in any circumstances to provide further information<sup>21</sup>. Also under the third convention, torture and other severe ill treatment are considered war crimes<sup>22</sup>.

-Prisoners are entitled, immediately upon capture, to complete what is called a capture card<sup>23</sup>, which is then sent, via the ICRC central tracing agency, to the official information bureau in the prisoners own country<sup>24</sup>. The latter has the task to inform the prisoner’s relatives. In this way, links with home and family can be rapidly re-established.

-Prisoners must be transferred as soon as possible out of the danger zone and brought to the place of safety, in which the living conditions must be “ as favorable as those for the forces of the detaining power who are billeted in the same area”<sup>25</sup>. -The captivity should take account of the habits and customs of the prisoners.<sup>26</sup>

-Prisoners of war in good health may be required to work,<sup>27</sup> But mat be employed in dangerous work only if they volunteer. Removal of mines is mentioned as dangerous work<sup>28</sup>. Although the use of prisoners of war with

<sup>18</sup> First convention, article 30 and 31; third convention, article 33

<sup>19</sup> third convention, Article 5, Para 2.

<sup>20</sup> third convention, Article 7

<sup>21</sup> article 17

<sup>22</sup> Article 130 and protocol I, article 85.5.

<sup>23</sup> Article 70 and Annex IV

<sup>24</sup> Article 122.

<sup>25</sup> Article 25

<sup>26</sup> ibid

<sup>27</sup> Article 49 to 57.

<sup>28</sup> Article 53, Para 3

suitable training to remove mines may appear appropriate particularly if they have personal knowledge and if they freely consent.

-Prisoners if prosecuted are entitled to a fair trial and even if convicted, retain their legal status as prisoners of war. Measures of reprisal are forbidden against them<sup>29</sup>.

-Unjustified delay in repatriating prisoners of war is a grave breach of protocol I.<sup>30</sup>

The third convention deals with provision in relation to the repatriation of prisoners of war<sup>31</sup>, three categories are distinguished.

1. The severely wounded and sick must be repatriated directly and without delay, i.e., as soon as they are fit to travel<sup>32</sup>. This is a humane gesture towards combatants who will never again be involved in war.
2. All other prisoners of war must be released and repatriated without delay after the cessation of active hostilities<sup>33</sup>.
3. Without waiting for the war to end, the parties to the conflict should repatriate prisoners of war on humanitarian grounds, possibly on a reciprocal basis, i.e., by means of an exchange of prisoners. The ICRC tries constantly to bring about agreements of this kind.

## **Civilians**

A glance at the history suffers most from the consequences of hostilities. This seems to have been especially true since the beginning of 20th century. And yet, the law of war is based on the very simple idea that hostilities should take place between the armed forces of conflicting parties. War must therefore keep out of the way of civilians.

In the reality of the modern warfare, however the civilian population is exposed to numerous dangers. For the purpose of international humanitarian

<sup>29</sup> Article 13, Para 3

<sup>30</sup> protocol I, Article 84. 4 (b)

<sup>31</sup> Article 109 to 119

<sup>32</sup> Article 109

<sup>33</sup> Article 118

law, two types of hazards, each calling for different protective provisions must be distinguished:

- The dangers caused by military operations themselves; and
- The threats to which vulnerable persons are exposed when in the power of the enemy.

The civilians are justified who spontaneously take up arms on the approach of enemy and yet retain their status as civilians. The fourth convention prohibits the use of civilians as a shield to protect certain areas or installations, usually of military importance, from enemy attack<sup>34</sup>. The collective punishment of civilians and measures aimed at intimidating or terrorizing the civilian population<sup>35</sup>, Pillage, hostage taking and reprisals against civilians are also forbidden<sup>36</sup>. To protect the civilian population as a whole or groups of specially vulnerable people. e., the wounded and sick, the infirm and elderly, children, women etc. safety zones may be set up with the consent of both sides, during the conflict or in time of peace already demilitarized zones<sup>37</sup>. Such zones may not be subjected to military attack; on the other hand, they may not be defended against an enemy advance. Their sole purpose is to guarantee the physical survival of the population sheltering within them.

The parties to the conflict are urged to take special care of children under fifteen years who have been orphaned or separated from their families. Searching for missing relatives should also be facilitated.

The legal status and the protection of civilians in the power of the enemy are well regulated in the Fourth convention. Those taking part in the 1949 Diplomatic conference still had vivid memories of the crimes committed against civilians during the Second World War, in occupied Europe and in the far East. Additional protocol I therefore had only to fill certain loopholes or to amend a few unsatisfactory regulations. It is thus made clear, for example, that refugees and stateless persons in the territory of a party to the conflict must be treated as protected persons in the same way as nationals of the power of origin. special efforts should be made to reunite families<sup>38</sup>.

Protocol I also deals with the situation of journalists engaged in dangerous professional missions. Article 79 makes it clear that journalists performing “dangerous missions” i.e., working in a theatre of war are to be

<sup>34</sup> fourth convention, art 28, reinforced by protocol I, Article 51 (7).

<sup>35</sup> Article 33, Para 1.

<sup>36</sup> Article 33, Para 2 and 3 and 34.

<sup>37</sup> Article 14 and 15; protocol I, Article 59 and 60.

<sup>38</sup> Article 74

considered as civilians in every respect. They are therefore entitled to the protection normally as civilians; however they cannot claim any special rights. They must comply with the restrictions pertaining to civilians and in particular must not take part in hostilities. If they expose themselves to unusual dangers, then they must accept the consequences.

The fourth convention contains special rules for three typical situations in which civilians need protection from the enemy.

#### a. Aliens on the territory of a party to the conflict

When war breaks out between two states nationals of one of them may for a number of reasons, be on the territory of the other state. They thus find themselves suddenly deprived of diplomatic and consular protection and in the power of the enemy state since a state of war sets aside the international rules governing peaceful relations between states. Under the Geneva Law, these people are “protected persons”. And the detaining power must allow the nationals of the adverse state to leave, but only if they return to their own country is not contrary to their own interest. Persons who remain voluntarily or forcibly, in the power of the enemy state must be treated in accordance with the legislation applying to foreign nationals in peacetime. Naturally the authorities must guarantee the minimum protection stipulated in the human rights treaties.

Nevertheless, the detaining power is permitted to take the necessary control measures. Persons affected by such measures are entitled to have such action reconsidered by a court or by administrative bodies. Protected persons may of course be transferred to their own country at any time, and must be repatriated at the latest at the end of hostilities. The detaining power may hand them over to a third state, but only if the person concerned will not be persecuted for their political or religious convictions.

#### b. Persons living in occupied territories

The inhabitants of occupied territories are protected by all the provisions of the fourth convention, Hague regulations of 1907 and by the section of the fourth convention devoted to occupied territories<sup>39</sup>. The fundamental rule is that the rights of such persons are fully protected by

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<sup>39</sup> Fourth convention, Article 47 to 78

international law and they are the “protected persons” . The occupying power may not alter their legal situation either a unilateral act or annexation of the territory. Individuals living in occupied territory may also not renounce their status or waive their rights under the fourth convention. The reason is to prevent abuse and attempts at forced consent. The aim of the law on belligerent occupation is to maintain the existing situations in the occupied territory, the status quo ante. The military occupation is considered as a temporary situation. Thus national legislation remains in force, and the occupying power may not abolish it. Local authorities, including the law courts, must be able to continue their activities.

#### c. Treatment of internees

During the Second World War, internees were subjected to appalling abuses of power. For e.g., the concentration camps in central and eastern Europe and in the Far East. To prevent such events from recurring, the fourth convention contains a particularly well developed section on the internment of civilians<sup>40</sup>. The differences arising from the nature of the internees as civilians are duly taken into account.

#### d. Aid to the civilian population: special measures

The fourth convention and the additional protocol I contain provisions concerning relief operations for the population in occupied territory. Under the law of belligerent occupation, the occupying power is obliged to make sure that the population receives food and medical supplies.<sup>41</sup> If this is beyond its possibilities, then that power is obliged to permit relief operations by third states or by an “impartial humanitarian organization” (usually the ICRC) and to facilitate such operations.

#### e. Pro memoria

Finally it should be recalled that the provisions for the protection of the civilian population in times of war form part of general international law for the protection of the individuals. The Genocide convention which makes the most extreme form of assault on individuals as international crime and the universal

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<sup>40</sup> fourth convention, Article 79 to 135.

<sup>41</sup> Fourth convention, article 55 and 56.

and regional conventions on human rights must therefore be observed also in wartime, although certain derogations are permitted in exceptional cases. They are applicable simultaneously with the Geneva conventions and their additional protocols. In this way, comprehensive legal protection of human dignity should be ensured in extreme conditions of war.

### **Regional human rights treaties concerning armed conflicts**

#### **The Universal Declaration of Human Rights (UDHR)**

The **Universal Declaration of Human Rights (UDHR)** is a declaration adopted by the United Nations General Assembly on 10 December 1948 at the Palais de Chaillot, Paris. The Declaration arose directly from the experience of the Second World War and represents the first global expression of rights to which all human beings are inherently entitled.

**Article 5-** No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

**Article 14-** Everyone has the right to seek and to enjoy in other countries asylum from persecution.

The **Office of the United Nations High Commissioner for Refugees (UNHCR)**, also known as the UN Refugee Agency, is a United Nations agency mandated to protect and support refugees at the request of a government or the UN itself and assists in their voluntary repatriation, local integration or resettlement to a third country. Its headquarters are in Geneva, Switzerland and is a member of the United Nations Development Group

#### **The Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG)**

The Convention on Genocide was among the first United Nations conventions addressing humanitarian issues. It was adopted in 1948 in response to the atrocities committed during World War II and followed G.A. Res. 180(II) of 21 December 1947 in which the UN recognized that "genocide is an international crime, which entails the national and international responsibility of individual persons and states." The Convention has since then been widely

accepted by the international community and ratified by the overwhelmingly majority of States.

The jurisprudence of the International Court of Justice considers the prohibition of genocide as peremptory norms of international law ( see Reservations to the Convention on Genocide, 1951 I.C.J. Rep. 15, 23; see also Case Concerning Barcelona Traction, Light and Power Co. (Belg. v. Spain), 1970 I.C.J., Rep. 3, 32). Moreover, the ICJ recognizes that the principles underlying the Convention are principles which are recognized by civilized nations binding on States, even without any conventional obligation.

**Article 2** of the Convention defines genocide as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

**Article 3** defines the crimes that can be punished under the convention:

- (a) Genocide
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

### The Refugee Convention 1951

The United Nations Convention Relating to the Status of Refugees (commonly known as the Refugee Convention) is the primary international legal document relating to refugee protection. It defines who is a refugee and outlines the rights of refugees and the legal obligations of states towards refugees and asylum seekers.

The Refugee Convention was adopted at a United Nations conference on 28 July 1951 and entered into force on 22 April 1954. The Refugee Convention was originally designed to respond to the needs of European refugees in the years following World War II. As such, it applied only to persons who had

become refugees as a result of “events occurring before 1 January 1951”. The Convention also allowed signatories to limit their obligations to refugees originating from Europe alone.

In 1967, the Protocol Relating to the Status of Refugees removed the geographic and time limitations of the original Convention, broadening its scope to create capacity to respond to new refugee situations. The protocol entered into force on 4 October 1967.

### Definition of a refugee

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Article 1 of the Convention as amended by the 1967 Protocol provides the definition of a refugee:

"A person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.."

### Rights of refugees

The Refugee Convention also recognizes that refugees hold certain rights. Some of these are universal human rights recognized in other human rights treaties such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, for example the rights to freedom of religion, work and education. The Refugee Convention outlines the degree level of rights recognition which should be accorded to refugees.

For instance, the Convention requires states parties to accord to refugees:

- The same rights as citizens in relation to freedom of religion, intellectual property, access to courts and legal assistance, accessing elementary education, labor rights and social security.

- Treatment which is as favorable as possible and at least as favorable as that accorded to foreign nationals, in relation to the acquisition of property, self-employment, practicing as a professional, housing, accessing secondary and tertiary education.
- Treatment which is at least as favorable as that accorded to foreign nationals with respect to freedom of association, wage-earning employment, freedom of movement

The Refugee Convention also recognizes a number of rights which are specific to refugees.

### Article 31: Refugees unlawfully in the country of refuge

Article 31 of the Refugee Convention prohibits states parties from imposing penalties on refugees who, when coming directly from a territory where their life or freedom was threatened, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and can show good cause for their illegal entry or presence.

This Article recognizes that refugees have a lawful right to enter a country for the purposes of seeking asylum, regardless of how they arrive or whether they hold valid travel or identity documents. As such, what otherwise be considered illegal actions (e.g. entering a country without a visa) should not be treated as such if a person is seeking asylum. This means that it is incorrect to refer to asylum seekers who arrive without authorization as “illegal”, as they in fact have a lawful right to do so if they are seeking asylum.

Article 31 also prohibits states parties from restricting the freedom of movement of refugees who arrive without authorization, with the exception of restrictions necessary for regularizing their status. Furthermore, such restrictions should be applied only until their status in the country is regularized or they obtain admission into another country.

### Articles 32 & 33: Expulsion and Non-refoulement

Article 32 of the Refugee Convention prohibits states parties from expelling a refugee who is lawfully in their territory, except on grounds of national security or public order.

Article 33 of the Refugee Convention outlines the principle of non-refoulement. According to this principle, states parties must not forcibly expel or return (refoul) a refugee to a situation where their life or freedom may be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion. The principle of non-refoulement has become part of customary international law and is considered to be binding on all states, even those which have not signed the Refugee Convention.

## **The Hague Convention 1951**

### **THE DESTRUCTION OF CULTURAL PROPERTY DURING ARMED CONFLICT**

Throughout history war has gone hand in hand with the destruction of people and property, including cultural property. Countless works of art and historic monuments have been destroyed and pillaged as a result of armed conflicts. Just think of the pillage of Jewish art during the Second World, the destruction of the old city of Dubrovnik or more recently the looting of the Iraqi National Museum after the Coalition Forces invaded Baghdad. As international humanitarian law gradually developed the need to protect cultural property from the devastating affects of war grew. Today several legal instruments are in place to prevent the destruction of cultural property in times of armed conflict.

### **THE CURRENT INTERNATIONAL FRAMEWORK OF PROTECTION**

The main legal instruments:

- a. The 1907 Hague regulations ( Arts. 23(g), 56)
- b. The 1954 Hague convention and first protocol
- c. The 1977 Additional Protocols to the Hague Convention (Arts. 53,16).
- d. The 1999 Second Protocol to the 1954 Hague Convention

### **The scope of application**

The protection of cultural property is governed by several legal instruments. In each conflict one has to see which of the instruments have been ratified to determine the level of protection cultural property should be afforded. The 1907 Hague Regulations have become part of customary law and are binding on all states. The provisions relating to cultural property, namely, Articles 23(g) and 56, are therefore applicable to all states in an international

armed conflict. Some argue that certain parts of the 1954 Hague Conventions and 1977 Additional Protocols reflect customary law and are therefore also binding on all states.

### Definition of cultural property

The 1954 Convention contains by far the most detailed regulations regarding the protection of cultural property.

The term cultural property covers ( Art 2):

- Moveable or immovable property of great importance to cultural heritage of everyone;
- Buildings whose main purpose is to exhibit or preserve movable property;
- Centres containing large amount of cultural property.

Generally speaking, this means that most museums containing works of arts, historic cities, archaeological sites, and important places of worship, whether temple, church or synagogue, are protected by the Convention. The 1977 Additional Protocols include places of worship which constitute the spiritual or cultural heritage of people.

### General protection

The protection of cultural property consists of safeguarding of and respect for cultural property. Safeguarding measures have to be taken in time of peace and include inter alia: setting up an inventory, building shelters, preparing guidelines on how to proceed when law breaks out

Respect for cultural property implies that the State Parties may not use cultural property for military purposes nor carry out an act of hostilities against cultural property during an armed conflict. Only if military necessity requires can State Parties deviate from this rule. State Parties have to take measures that will prevent theft, pillage and looting of cultural property. Any acts of reprisals against cultural property are protected under the 1977 Additional Protocols to the Geneva Conventions cultural property enjoys general protection because cultural property is civilian in nature (Art. 52 API). Cultural property that is covered by Article 53 enjoys 'additional' protection.

### Special protection

The 1954 Convention introduces the system of special protection. Only refuges providing shelter to cultural property, centers containing monuments

and immovable cultural property of very great importance can be granted special protection under strict conditions. Special protection is granted by entry in the International Register of Cultural Property under Special Protection. The Register contains hardly any inscriptions and due to several reasons has not functioned properly. The Convention also contains provisions relating to occupation, personnel, military measures and transport of cultural property

Many changes have taken place since the adoption of the 1954 Convention. These developments should also be reflected with respect to the protection of cultural property. The Second Protocol to the 1954 Convention, adopted in 1999, addresses several shortcomings of the Convention but also strengthens the system of protection of cultural property in many respects

Due to the fact that the system of special protection has been rather unsuccessful, the Second Protocol introduces the system of enhanced protection. Three criteria have to be met before cultural property can be placed on the List of Cultural Property under Enhanced Protection (Art. 10):

It is cultural heritage of the greatest importance for humanity

It is protected by adequate legal and administrative measures recognizing its importance and ensuring the highest level of protection

It is not used for military purposes or used to shield military objectives

## **Conclusion:**

It is often during armed conflicts that human rights are infringed upon the most. Therefore, over the years, experts have focused much attention on the formulation of instruments aimed at alleviating human suffering during war and conflict. Today, three areas of modern international law attempt to provide protection to victims of war: human rights law, refugee law and humanitarian law.

Humanitarian law aims to limit the suffering caused by war by regulating the way in which military operations are conducted. The international humanitarian law has to a great extent helped to regulate the conduct of those engaged in armed forces. Efforts have been made to revere the human rights of the prisoners of war, civilians and the wounded and sick persons. The core, however, remains the Geneva Conventions and their additional Protocols. They combine clear legal obligations and enshrine basic humanitarian principles.

The need for humanitarian laws was sensed only after the catastrophic event of I st world war. war is often justified by saying that it is fought for peace. But if one try to recall the spine chilling experiences of wars in the past, none resulted in peace. The result was only huge losses and unending miseries to human kind.

The other gain of war, if that could be called a gain at all, is that the victor gets regarded as a great power, feared and awed by others. ultimately it is the destruction of human life and property. Thus, humans must avoid wars at all cost. The only way we can protect our lives and ensure stability in our country is to practice tolerance and respect for each otter. Or else, the day is not far when we too would become extinct like the dinosaurs

**BIBLIOGRAPHY:**

1. Bhalchandran M. K., Verghese Rose (editors), International humanitarian law, intrnational committee of red cross, New Delhi, 1997
2. Shaw Malcolm N., International law ( fifth Edition), Cambridge university press, 1997
3. <http://www.refugeecouncil.org.au>
4. <http://www.asser.in>
5. <http://www.icrc.org>
6. <http://www.unesco.org>
7. <http://www.britannica.com>