

Review

General Principles of the Four Geneva Conventions and Treatment of Prisoners of War: An Appraisal

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Abstract: The four Geneva Conventions of 1949 form the core of International Humanitarian Law, establishing standards for humane treatment during armed conflicts. Their general principles are built on distinction, proportionality, military necessity and humanity. Across all four conventions, the central aim of this work is to limit suffering in war by setting binding obligations on parties to a conflict, and that compliance is monitored by pretending power and the International Committee of the Red Cross.

Keywords: Geneva Conventions, International Humanitarian Law, Prisoners of War, Humane treatment, Armed conflict

INTRODUCTION

The four Geneva Conventions adopted on 12th August 1949 in the aftermath of World War II, are international treaties that set the legal standards for humanitarian treatment in war. Together with their additional protocols, they form the foundation of modern international humanitarian law. The conventions were created to protect people who are not, or are no longer taking part in hostilities¹.

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- The first Geneva Convention: Protects wounded and sick soldiers on Land during war².

¹. Convention for the Amelioration of the condition of the wounded and sick in armed forces in the field 12 August 1949 in force 21 October 1950 (Google Scholar).

². Geneva Convention for the Amelioration of the conditions of the wounded and sick in armed forces in the field of 12 August 1949 (First Geneva Convention)

- The second convention protects wounded, sick and ship wrecked military personnel at sea³.
- Third Geneva Convention sets detailed rules for the humane treatment of prisoners of war⁴.
- Fourth Geneva Convention protects civilians including those in occupied territory⁵.

The core idea running through all four is humanity in war – that even during armed conflict, certain acts remain prohibited. For prisoners of war, this means the right to humane treatment, protection from violence, and intimidation, adequate living conditions, medical care and eventual repatriation. The convention bind 196 States making them universally applicable in International armed conflicts.

1. PRINCIPLES OF GENEVA CONVENTIONS

The four Geneva Conventions are built on four core principles of International humanitarian Law, plus specific rules that apply across all of them. The principles⁶ are:

- i. Distinction: Parties to a conflict must distinguish between combatants and civilians and between military objectives and civilian objectives. Only military targets may be attacked. The conventions protect those who are not, or are no longer fighting.
- ii. Humanity: suffering must be limited. Persons who are ‘hors de combat’ i.e wounded, sick, ship wrecked, POWs, or civilians must be treated humanely in all circumstances. Torture, cruel treatment and degrading acts are prohibited.
- iii. Military Necessity: Actions are lawful only if necessary to achieve a legitimate military purpose and are not otherwise prohibited by the conventions. This principle does not override the rules of humanity.
- iv. Proportionality: Expected incidental harm to civilian objects must not be excessive compared to the direct military advantage anticipated from an attack.

2. TREATMENT OF PRISONERS OF WAR

The right accorded to POWs can be divided into the following five major categories:

- i. Fundamental guarantee such as humane treatment

³. Geneva Convention for the Amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea of 12 August 1949 (Second Geneva Convention).

⁴. Geneva Convention Relatives to the treatment of Prisoners of war of 12 August 1949 (Third Geneva Convention).

⁵. Geneva Convention Relative to the Protection of Civilian persons in time of war of 12 August 1949 (Fourth Geneva Convention).

⁶. www.un.org/en/members/non_members.shtml. Accessed 30th May, 2023

- ii. General provision regarding treatment during captivity, including matters like quarters, food, clothing, hygiene and medical care, morale, and labour, including conditions, wages and types of employment.
- iii. Penal and disciplinary action, including judicial guarantees
- iv. Termination of captivity, including repatriation during/after hostilities.
- v. Relations with the exterior, including correspondence and relief shipments and relief agencies.
- vi. Rights of POWS**

One of the first provisions in the POW Convention (GC III) is that POWs have the right to humane treatment and respect for their person⁷. Humane treatment also comprises respect for prisoners, which includes respect for their person or honour⁸ and protection against public curiosity⁹. For example, when Saddam Hussien was captured in December 2003, footage of Husein's medical examination by US troops were broadcasted¹⁰, and photos of Hussein in his underwear were later published in the UK tabloid, The Sun¹¹. Both acts were denounced as violation of the GC III obligation to protect POWs from public curiosity¹².

Also prohibited are forcing POWs to undertake degrading or humillating labour or labour directly connected with war operations, failing to provide separate quarters for women and men, insulting a prisoner's person, flag, country, religion or beliefs, forcing prisoners to wear their enemy's uniform and measures or reprisal against prisoners of war. As a final overarching protection, POW's are prohibited from renouncing their right sunder the Convention and Protocol I. The intent behind this provision is to protect POWs from any agreement made under duress between their states/power of origin and the Detaining Power.

vii. Rules on condition of captivity

It is the responsibility of the Detaining power to protect and care for the POWs in its care. The Detaining Power must evacuate POWs from the field of engagement as soon as

⁷. Memorandum for Alberto Gonzalez, Counsel to the President and William j. Haynes i, General Counsel of the Department of Defense from US Department of Justice, office of legal Counsel, 22 January 2002, in Greenberg and Dratel, The torture papers (Google scholar).

⁸. Article 14 (1) of the GCII

⁹. Article 13(2) *ibid*

¹⁰. www.theguardian.com/world/2003/dec/14/irasiraal assessed on 30 May 2023
cnews.bbc.co.uk/2/hi/middle-east/4565505.stm-accessed on 30 May 2023

¹¹. cnews.bbc.co.uk/2/hi/middle-east/4565505.stm-accessed on 30 May 2023

¹². <Edition crin.com/2005/WORLD/meast/05/20/saddam.photos/accessed on 30 May 2023

possible after capture; furthermore, POW camps are not to be located in or near active hostilities. In caring for POWs, the Detaining Power must observe basic standard regarding quarters, clothing, food and medical attention. For example, during the Ethiopia-Eritrea conflict both sides attempted to provide adequate conditions for POWs in their custody with attempts to ensure humane evacuation conditions and some attempts to provide appropriate (if not adequate) food supplies. However, violations of the law are also found, with examples of detainees being denied footwear before evacuation marches, and Eritrean POWs being subjected to programmes of forced indoctrination. Prisoners are entitled to keep personal effects and articles. POWs should also have access to recreational facilities, including sports, games and study and be allowed to exercise their religious beliefs.

POWs may be put to work by the Detaining Power; however, such work is subject to a number of conditions including limits on a place and type of work. POWs should also be given a monthly wage. Equality of treatment of POWs must be observed, with no adverse distinction based on race, colour, language, belief, political or other opinion, nation or social origin, wealth, birth or any other status or criteria. However, special treatment is accorded to officers, sick POWs, and women, with consideration to be given to a POW's age or professional qualifications.

viii. Rules on penal and disciplinary proceedings

In matters of discipline, POWs are to be treated in the same manner as the armed forces of the Detaining Power. Orders are to be given in a language which the POW will understand. Restrictions exist on the types of discipline that may be employed against POWS. POWS may be tried only by a military Court offering guarantees of independence and impartiality. The accused must be afforded the rights and means of defense with the entitlement to choose their own Counsel, to call witnesses and to obtain the services of a competent interpreter. No coercion is to be used against a POWs to induce a confession regarding the crime of which they are accused. POWS retain the right to appeal or petition. Furthermore, the accused captive is entitled to have a representative of the Protecting Power present at their trial and is permitted to receive assistance from the Protecting Power. If the death penalty is pronounced on the POW, the sentence can only be carried out after a six-month waiting period¹³.

¹³. Emily Crawford and Alison Pert *International Humanitarian Law*, Cambridge, University Printing House, 2015, 117

iv. Obligation for detaining authorities regarding transmission of information, monitoring by protecting Powers and the ICRC and repatriation of prisoners of war.

Convention III safeguards POW relations with the exterior. POWs should be able to contact family members, as well as the Central Prisoners of War Agency. POWs are also entitled to remain in correspondence with family on a regular basis; POWs are also entitled to receive relief and care packages, both from family and relief agencies. All parties to the conflict must establish an official Information Bureau for POWs, responsible for the management of all information regarding POWs, such as transfers, releases, repatriations, escapes, admissions to hospital and deaths. The Bureau are also responsible for dealing with any inquiries regarding POWs currently within their state's power. With regards to relief agencies, Convention III also provides that representatives of the Protecting Power and the ICRC have the right to visit POWs in places of internment, imprisonment and labour, and to interview POWS regarding the conditions of their captivity¹⁴.

Finally, POWs retain the right to be repatriated at the end of the hostilities, unless they are seriously wounded or sick, in which case they are entitled to be repatriated and following the Iran-Iraq War, with both sides delaying repatriation of POWs, allowing only small numbers of sick or wounded POWs to be repatriated during the conflict and holding over 100,000 POWs nearly a year after cessation of hostilities. The UN Security Council called for the return of POWS urging "that prisoners-of-war be released and repatriated without delay after the cessation of active hostilities in accordance with the Third Geneva Conventions". The rationale behind the repatriation requirements is connected to the fundamental rationale underlying POW captivity on the whole- that such captivity is not punishment but rather a means to prevent combatants from returning to active participation in hostilities.

3. TREATMENT OF THE INJURED, SICK AND SHIPWRECKED SOLDIERS.

One of the fundamental principles of the law of armed conflict is the notion that those hors de combat- persons who do not or no longer take active part in the hostilities - are to be protected "from the horrors of war". This can only be achieved if those hors de combat, as well as the personnel and equipment needed to care for and protect them, are respected and protected, and not subject to attack. The provision that relate to care of the wounded, sick and shipwrecked in international armed conflict are more comprehensive than those in non-international armed conflict.

¹⁴. Ibid

i. In international Armed Conflicts

Under the law of armed conflict, parties to a conflict are obliged to respect and care for the wounded, sick and shipwrecked. Article 12 of GC I states that "members of the armed forces and other persons" who are protected under the conventions: ...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 attempt 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 or infection be created. This provision applies to all persons wounded, sick and shipwrecked. The only distinctions that may be drawn regarding the treatment of the wounded, sick and shipwrecked are medical ones; the Convention affirms that "only urgent medical reasons will authorize priority in the order of treatment to be administered." Thus, parties to the conflict may not give preferential treatment to their own personnel if personnel of the adverse party under their control require more urgent medical attention. If it becomes necessary for a party to the conflict to abandon the wounded and sick then the party must "as far as military consideration permit, leave with (the wounded and sick) a part of its medical personnel and material to assist their care." These provisions are reaffirmed, almost verbatim, in Article 12 of Geneva Convention II with regards to Shipwrecked personnel; logically excluded is reference to leaving medical personnel with "abandoned" wounded and sick. The Conventions do not define the parameters of "wounded and sick". No attempt has ever been made in the Geneva Convention to define what is meant by a "wounded or sick" combatant nor has there ever been definition of the degree of severity of a wound or a sickness entitling the wounded or sick combatant to respect. That is as well; for any definition would necessarily be restrictive in character, and would thereby open the doors to every kind of misinterpretation and abuse. The meaning of the words "wounded and sick" is a matter of common sense and good faith. The commentary goes on to state that this "common sense and good faith" approach is meant to cover "combatants who have fallen by a reason of a wound or sickness of any kind, or who have ceased to fight and laid down their arms as a consequence of what they themselves think about their health." As such, it is made clear that the illness (or wound, injury or act of being shipwrecked) is not the determinative factor in marking someone as *hors de combat*; rather "it is the fact of falling or laying down

of arms which constitutes the claim to protection". Thus, it is the sickness or wounding, as determined by the person suffering the debilitation, in conjunction with the act of laying down their arms, which combine to create the protected status of the wounded, sick and shipwrecked.

When the Protocols were debated during the 1970s, the question of whether to define the parameters of the wounded, sick and shipwrecked" arose ultimately, an entire article dedicated to terminology and definitions was included in Article 8 of AP 1, which defined the wounded, sick and shipwrecked as follows:

(a) "Wounded" and "sick" means persons whether military or civilians, who because of trauma, disease or other physical or mental disorder or disability, are in need of medical assistance or care and who refrain from many act of military. These terms also cover maternity cases, new born babies and other persons who may be in need of immediate medical attention;

(b) "Shipwrecked" means persons, whether military or civilians, who are in peril at sea or in other waters as a result of misfortune affecting them or the vessel or aircraft carrying them and who refrains from any act of hostility.....

Reprisals against the wounded, sick and shipwrecked are prohibited under the conventions and protocols 1. Acts of violence committed against the wounded, sick or shipwrecked, whether in reprisal or not, are grave breaches under the Conventions and Protocols 1 and prosecutable as war crimes under the statue of the ICC.

ii. In Non-International Armed Conflicts

The wounded, sick and shipwrecked are protected under the law of Non-International Arned Conflicts, in common Article 3 of the Conventions, which protects all persons who have been rendered hors de combat, due to factors including "sickness, wounds, detention, or any other cause". Common Article 3 provides that all persons rendered hors de combat are to be protected, and that prohibited "at all times and in any place whatsoever" are the following acts:

(a) Violence to life of a 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 the carrying out of execution without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

Common Article 3 also affirms that the "wounded and sick shall be collected and cared for". More detailed provision regarding the wounded and sick is contained in protocol II. Article 7 of Protocols II provides that:

(1) All the wounded, sick and shipwrecked, whether or not they have taken part in the armed conflict, 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.

CONCLUSION

The four Geneva Convention of 1949 remains the universally recognized foundation of International Humanitarian Law. By codifying the principles of distinction, humanity, military necessity and proportionality, they set a minimum standard of conduct that applies in all armed conflicts, regardless of cause or reciprocity. The third Geneva Convention in particular ensures that prisoners of war are not objects of revenge or coercion, but persons entitled to humane treatment, protection from violence, adequate living conditions, medical care and eventual repatriation.

SUMMARY

The four Geneva Convention of 12 August 1949, ratified by 196 states, form the core of International Humanitarian Law. Each convention are universally binding in an international armed conflict. The convention protects persons not or no longer fighting, wounded / sick on Land, wounded / sick/shipwrecked at sea, prisoners of war and civilians.

FINDINGS

The legal standards are comprehensive and universally accepted. The central challenge is implementation: ensuring rules are trained, enforced, and respected in practice. Compliance preserve lives, supports post-conflict reconciliation, and protects the legal and moral standing of parties to conflict.

RECOMMENDATIONS

1. The work recommends binding obligations on parties to a conflict, and that compliance is monitored by the International Communities.

2. Military Education to integrate IHL and the Geneva Conventions into basic training for all ranks.
3. To promote public awareness of IHL in schools, universities and the media.
4. To ensure post-conflict measures in timely release and repatriation of prisoners of war.

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