UNIT 16 WHAT ARE THE RULES OF PROTECTION OF CIVILIANS?

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16.1 INTRODUCTION

Civilians often endure horrific ordeals in today's conflicts, sometimes as direct targets. Massacres, hostage taking, sexual violence, harassment, expulsion, forced transfer, looting, and the deliberate denial of access to water, food and health care, are some of the practices which spread terror and suffering among civilians.

Humanitarian Law is founded on the principle of the immunity of the civilian population. Persons not taking part in hostilities may under no circumstances be attacked; they must be spared and protected. In international armed conflicts, the Fourth Geneva Convention of 1949 and Additional Protocol I of 1977 contain specific provisions which protect civilians and civilian property. In non-international armed conflicts, the civilian population has the right to protection by virtue of Article 3 common to the four Geneva Conventions.

16.2 OBJECTIVES

After reading this unit you, should be able to:

- analyse the provision of Geneva conventions dealing with civilian protection;
- discuss the General protection available to populations under Geneva conventions;
- describe the Provisions common to the territory of parties to the conflict and to occupied territory;
- explain the position of Aliens in the territory of a party to the conflict; and
- explain the concept of the Occupied Territory.
16.3 THE GENEVA CONVENTIONS AND CIVILIAN PROTECTION

The 1949 Geneva Conventions represented one of the most significant legal advances for humanitarian protections during war. Universally ratified and almost universally recognized, they have become synonymous with the law of war in the popular understanding. Although they continued the preexisting Geneva Tradition of regulating the law of war, the 1949 Conventions were nothing less than revolutionary. First, although they built on previous Geneva guarantees of protection for recognized classes of war victims (the wounded and sick, the shipwrecked, and prisoners of war), the 1949 Conventions originated a system of enforcement that none of their predecessors, including treaties of the Hague Tradition, had managed. Second, the 1949 Conventions explicitly addressed the treatment of victims of armed conflict beyond the limited context of war between sovereigns. Finally, in recognition of their horrendous suffering in the Second World War, the 1949 Conventions added ‘Civilians’ to the Geneva Tradition’s classes of protected persons.

For the purpose of discussion it is useful to divide the international rules on the protection of the civilian population and of individual civilians during armed conflict into two groups, which in turn can be understood as the response to two distinct situations: (a) the need for protection of the civilian population or individual persons under the control of the adversary against violence or arbitrary acts; and (b) the need for protection of the civilian population against direct effects of military operations and other acts of hostility. The first case relates to the legal protection of human beings against violence and abuse of power. These rules are often called the Law of Geneva or Red Cross Law. Their affinity to international law on the protection of human rights is obvious. The second group of rules sets limits to the conduct of military operations itself. This law is called the Law of the Hague, as the 1907 Hague Regulations annexed to HC IV was the first comprehensive codification in this area.

This unit discusses the provisions of international law concerning the protection of civilians in international armed conflicts. This law is highly developed and extensively codified, yet its scope of application is limited to international conflicts, i.e. armed clashes between states. The law covering non-international armed conflicts has been codified mainly by Article 3 common to the four Geneva Conventions and developed in 1977 by AP II. Although these provisions are more summary in nature than the law on international armed conflicts, they contain important and binding rules on the protection of victims in civil war. In both cases the written law is supplemented by rules of international customary law. Customary law is particularly relevant with regard to legal limits on the conduct of military operations.

16.4 GENERAL PROTECTION OF POPULATIONS AGAINST CERTAIN CONSEQUENCES OF WAR

The Fourth Geneva Convention, which protects civilians, includes a provision outlining preconditions to the majority of its protections. Article 4, of the Fourth Convention, is the gateway to the most extensive and elaborate protections for civilians. Essentially,
any person finding himself or herself in the hands of his or her nation's enemy qualifies as a 'protected person' under the Fourth Convention. During international armed conflict, nationals of states parties that are either in enemy territory or find their own territory occupied by an enemy state party must be accorded protected status. The Convention leaves nationals of non-party states largely unprotected. Thus Article 4 sustains the condition of obligational reciprocity by denying protected person status to nationals of states not party to the Conventions. It provides further evidence that, while states were eager to rectify the humanitarian shortcomings of the preexisting law of war, they would only do so on the basis of reciprocal commitment.

Article 48 of Additional Protocol I sets forth the basic rule of distinction between civilians and military objects.

In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.

From the definition of 'civilians' follows that of the 'civilian population', as in Article 50:

1) A civilian is any person who does not belong to one of the categories of persons referred to in Article 4 (A) (1), (2), (3) and (6) of the Third Convention and in Article 43 of this Protocol. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian.

2) The civilian population comprises all persons who are civilians.

3) The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character.

Furthermore, the General provisions of Part II of GC IV cover 'the whole of the populations of the countries in conflict' without discrimination, and 'are intended to alleviate the sufferings caused by war' (Article 13). Yet they do not seek to provide general or complete protection. Rather, they offer specific forms of protection or assistance to specified categories of persons.

Provision is made, first, for the establishment of two types of protective zone: 'hospital and safety zones and localities' (Article 14) and 'neutralised zones' (Article 15). Hospital and safety zones and localities are meant 'to protect from the effects of war, wounded, sick, and aged persons, children under fifteen, expectant mothers and mothers of children under seven': categories of persons in other words, who are not expected to make a material contribution to the war effort. For such 'zones and localities' to become effective requires their recognition by the adversary, if possible be the conclusion of an express agreement to that effect between the belligerents (see also the hospital zones and localities of the First Convention discussed in Unit I.)

The drafters of Article 14 visualised the hospital and safety zones as fairly large areas, situated at a considerable distance from any battle area. To this day, the concept has remained a mere theoretical possibility: history provides no examples of the establishment of such zones, and the idea appears extremely difficult to realize in any densely populated and highly industrialized region- unfortunately precisely the regions whose populations might need this kind of protection.
What are the Rules of Protection of the Different Categories of Protected Persons?

The neutralized zones of Article 15, designed to be established in the regions of the actual fighting, are ‘intended to shelter from the effects of war the following persons without distinction:

a) wounded and sick combatants or non combatants;

b) civilian persons who take no part in hostilities, and who, while they reside in the zones, perform no work of a military character’.

Here too, an agreement between the belligerents is required and the article specifies that such agreements must be concluded in writing. Both the term ‘neutralised’ and the description of the persons admitted for shelter reflect the essentially undefended character of these zones.

Equally important, in view of the experiences of numerous armed conflicts, are the provisions of Part II relating to measures for the protection of children under fifteen ‘who are orphaned or are separated from their families as a result of the war’ (Article 24); the exchange of family news (Article 25), and the restoration of contact between members of dispersed families (Article 26). An important role is attributed in this regard to the Central Information Agency for protected persons, whose creation ‘in a neutral country’ is provided for in Article 140. The article stipulates that the Agency may be the same as the one provided for in the Third Convention. In practice, the Central Tracing Agency operated in Geneva by the ICRC performs its functions for civilians and combatants alike.

Self Assessment Question

1) Who are the protected persons? What are the standards of protection guaranteed under the convention to the protected persons.

16.5 PROVISIONS COMMON TO THE TERRITORY OF PARTIES TO THE CONFLICT AND TO OCCUPIED TERRITORY

Part III of the Fourth Convention deals with the protected persons in a strict sense: i.e., those civilians who find themselves ‘in the hands of a Party to the conflict or Occupying Power of which they are not nationals’. Thus Article 4, which goes on to exclude from the category of protected persons ‘nationals of a State which is not bound by the Convention’, nationals of a neutral state who find themselves in the territory of a belligerent state and nationals of a co-belligerent state, the latter two as long as their state ‘has normal diplomatic representation in the State in whose hands they are’.

The common provisions of Section I deal with respect of fundamental rights of the human person, and of women in particular (specifically prohibiting ‘rape, enforced
prostitution, or any form of indecent assault’) (Article 27, 28); the responsibility of a party to the conflict for the treatment of protected persons in its hands (Article 29); and the right of protected persons to apply to supervisory bodies and relief organizations (Article 30).

Prohibited forms of ill treatment include ‘physical or moral coercion... in particular to obtain information’ (Article 31), as well as ‘any measure of such a character as to cause they physical suffering or extermination of protected persons’. Measures in the latter category include notably ‘murder, torture, corporal punishments, mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person’, and ‘any other measures of brutality whether applied by civilian or military agents’ (Article 32).

According to Article 33 no one ‘may be punished for an offence he or she has not personally committed’. The same article also prohibits collective penalties as well as ‘reprisals against protected persons and their property’ and any other ‘measures of intimidation or terrorism’. Article 34, finally, making short work of the notorious problem of the taking and eventual killing of hostages, simply and radically prohibits any ‘taking of hostages’.

**Women and War**

Women and girls predominantly experience armed conflict as civilians and as such are often exposed to acts of violence, including:

- death and injury from indiscriminate military attacks and the prevalence of mines;
- lack of basic means of survival and healthcare;
- limitations on their means to support themselves and their families.

Although women are frequently portrayed solely as victims, this does not reflect reality. Women also take an active part in war, in direct combat or in supporting their men folk who are fighting. As combatants captured by the enemy, women are afforded protection equal to that of men under humanitarian law. The law recognizes women’s need for special protection according to their specific needs.

**16.6 ALIENS IN THE TERRITORY OF A PARTY TO THE CONFLICT**

Article 35 lays down the right of those aliens who are protected persons (that is, first of all, enemy nationals) ‘to leave the territory... unless their departure is contrary to the national interests of the State’. If permission is refused they are ‘entitled to have such refusal reconsidered by an appropriate court or administrative board’

Protected persons who do not leave the territory retain a number of fundamental rights (e.g.: to receive relief and medical attention, to practice their religion, and to move from ‘an area particularly exposed to the dangers of war... to the same extent as the nationals of the state concerned’; Article 38). They must be granted the opportunity to support themselves; alternatively, the state is obliged to ensure their support and that of their dependants (Article 39).

The above system of protection of enemy nationals and other protected persons in the territory of a party to the conflict is significantly weakened by Article 5, which
What are the Rules of Protection of the Different Categories of Protected Persons?

provides that if the state concerned 'is satisfied that an individual protected person is definitely suspected of or engaged in activities hostile to the security of the State, such individual person shall not be entitled to claim such rights and privileges under the present Convention as would, if exercised in the favour of such individual person, be prejudicial to the security of such State'. One right that immediately comes to mind is that of communication (with one's family, a lawyer, etc.).

The threefold repetition of 'individual' in the quoted text emphasizes the point that Article 5 may never be applied as a collective measure. For example, this means that collective internment of persons of a particular nationality is prohibited and instead it must be shown that each person interned is suspected of activities hostile to the security of the state. This article specifies moreover that any person submitted to this special regime must 'nevertheless be treated with humanity'; that in case of trial must be given a 'fair and regular trial' in conformity with the Rules laid down in the Convention; and that the special regime must come to an end 'at the earliest date consistent with the security of the State.'

Self Assessment Question

2) What are the rights available to aliens under the conventions.

16.7 OCCUPIED TERRITORY

Apart from Part III, Section III, of the Fourth Convention, rules relating to occupied territory are also found in the Hague Regulations on land warfare. Article 42 of the Regulations states the principle that for a territory to be 'considered occupied' and for the relevant rules therefore to be applicable, the territory must be 'actually placed under the authority of the hostile army'. Clarifying the matter further, paragraph 2 adds that 'The occupation extends only to the territory where such authority has been established and can be exercised'. Article 43 draws from this situation of fact a twofold obligation: on the one hand, the Occupying Power 'shall take all measures in his power to restore, and ensure, as far as possible, public order and safety'; and on the other, in doing so it must respect, 'unless absolutely prevented, the laws in force in the country'.

Furthermore, the Regulations contain provisions on such diverse matters as the collection of taxes, requisition of property and services, and the fate of movable and immovable property belonging to the state.

Section III opens with an important statement of principle: it is forbidden to deprive protected persons in occupied territory, 'in any case or in any manner whatsoever', of the benefits of the Convention, whether by a change in the institutions of the territory; an agreement between the local authorities and the occupying power; or complete or partial annexation of the territory (Article 47).

Measures specifically prohibited 'regardless of their motive' include forcible transfers, whether of individual persons or groups, as well as deportations from the occupied
Article 51 provides that protected persons over the age of 18 may be compelled to work but only in the occupied territory where they are located, and 'only on work which is necessary either for the needs of the army of occupation, or for the public utility services, or for the feeding, sheltering, clothing, transportation or health of the population of the occupied territory.' The construction of fortifications, artillery emplacements etc. does not fall under this permissible labour, as not being 'necessary for the needs of the army of occupation.

Further, the Occupying Power must devote special care to the well being of children (Article 50). It shall 'to the fullest extent of the means available to it' ensure the food and medical supplies of the population (Article 55), as well as public health and hygiene in the territory (Article 56). Article 57 limits the requisitioning of civilian hospitals by the occupant to 'cases of urgent necessity for the care of military wounded and sick', and then only temporarily and 'on condition that suitable arrangements are made in due time for the care and treatment of the patients and for the needs of the civilian population for hospital accommodation'. Also, the occupant 'shall permit ministers of religion to give spiritual assistance to the members of their religious communities' (Article 58).

With respect to armed resistance in occupied territory, resistance fighters qualify as 'protected persons' only when it is obvious, or is found by a competent tribunal, that they do not meet the conditions for prisoner of war status spelled out in the Third Convention. Although then entitled to treatment as civilians, they are particularly liable to being subjected to the special security regime of Article 5 and deprived of their rights of communication under the Convention. Moreover, they may be punished for any acts of armed resistance they carried out before capture. At the same time, like any other accused, in any criminal proceedings against them they are entitled to protection as is provided by the rules guaranteeing a fair trial.

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**Self Assessment Question**

3) What is the definition of 'Occupied Territory' under the Fourth Convention?

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### 16.8 INTERNMENT

Section IV contains 'Regulations for the Treatment of Intemees', whether within the territory of a party to the conflict or in occupied territory (Articles 79 et seq.). It may suffice to note here that the regime laid down in these articles is very similar to the regime for the internment of prisoners of war, laid down in the Third Convention.

**Protection of detainees**

In *International armed conflicts*, the Geneva Conventions recognize the right of the ICRC delegates to visit prisoners of war and civilian internees. Preventing them from carrying out their mission would amount to a violation of humanitarian law.
In non-international armed conflicts and situations of internal violence, Article 3 common to the four Geneva Conventions and the Statutes of the Movement authorize the ICRC to offer its services to visit detainees, and many governments accept its proposal to do so.

### 16.9 INFORMATION BUREAU AND TRACING AGENCY

Section V of Part III deals with the establishment and functioning of national information bureaux and a Central Information Agency. The Central Agency, provided for in Article 140, has become the Central Tracing Agency, organized and maintained by the ICRC. The Agency functions both for civilians and prisoners of war, as far as the latter category is concerned in accordance with Article 123 of the Third Convention.

### 16.10 SUMMARY

- 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. (Article 4)

- Any Party to the conflict may propose to the adverse Party to establish, neutralized zones intended to shelter from the effects of war (a) wounded and sick combatants or non-combatants; (b) civilian persons who take no part in hostilities, and who, while they reside in the zones, perform no work of a military character. (Article 15)

- Persons regularly and solely engaged in the operation and administration of civilian hospitals, including the personnel engaged in the search for, removal and transporting of and caring for wounded and sick civilians, the infirm and maternity cases shall be respected and protected. (Article 20)

- Regulations for the Treatment of Internees’, in Articles 79 et seq, regime laid down in these articles is very similar to the regime for the internment of prisoners of war, laid down in the Third Convention.

### 16.11 TERMINAL QUESTIONS

1) Discuss the protection available to civilians during hostilities under the fourth Geneva Convention.

2) Define the term alien. How they are protected under IHL.

3) what is occupied territory? Discuss the protection available to civilians of occupied territory under IHL.
Self Assessment Questions

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2) The Fourth Geneva Convention, which protects civilians, includes a provision outlining preconditions to the majority of its protections. Article 4, of the Fourth Convention, is the gateway to the most extensive and elaborate protections for civilians. Essentially, any person finding himself or herself in the hands of his or her nation's enemy qualifies as a 'protected person' under the Fourth Convention. During international armed conflict, nationals of states parties that are either in enemy territory or find their own territory occupied by an enemy state party must be accorded protected status. The Convention leaves nationals of non-party states largely unprotected. Thus Article 4 sustains the condition of obligational reciprocity by denying protected person status to nationals of states not party to the Conventions. It provides further evidence that, while states were eager to rectify the humanitarian shortcomings of the preexisting law of war, they would only do so on the basis of reciprocal commitment.

3) Article 35 lays down the right of those aliens who are protected persons (that is, first of all, enemy nationals) 'to leave the territory...unless their departure is contrary to the national interests of the State'. If permission is refused they are 'entitled to have such refusal reconsidered by an appropriate court or administrative board' Protected persons who do not leave the territory retain a number of fundamental rights (e.g.: to receive relief and medical attention, to practice their religion, and to move from 'an area particularly exposed to the dangers of war...to the same extent as the nationals of the state concerned'; Article 38). They must be granted the opportunity to support themselves; alternatively, the state is obliged to ensure their support and that of their dependants (Article 39).

Terminal Questions

1) Refer to Section 16.3 and 16.4

2) Refer to Section 16.6

3) Refer to Section 16.7