

Battlefield Status and Protected Persons

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Categories of Persons



Non-Combatants



Combatants



Hors de Combat



Prisoners of War



Reporters
And others



Armed Groups



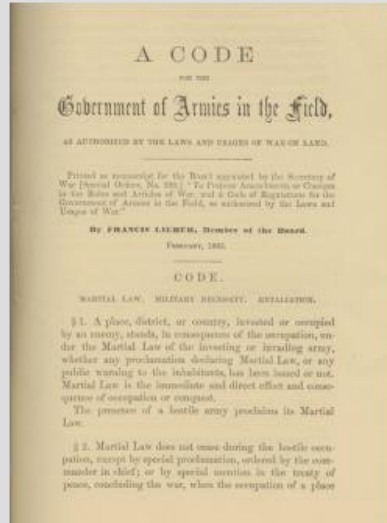
Merchant Marine
/Civil Aircraft



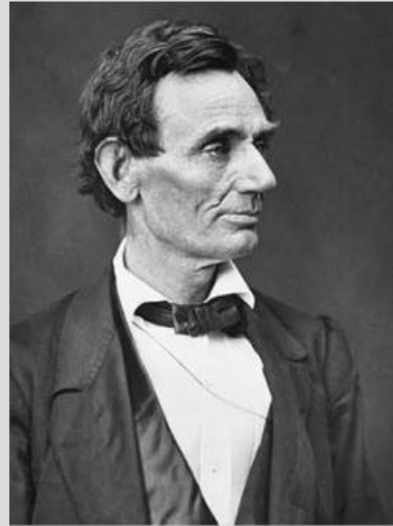
Civilians

The Hague Rules

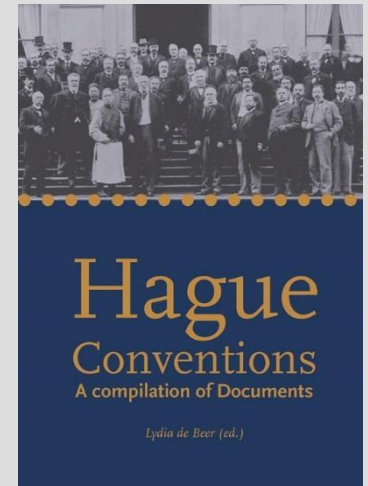
Means and methods of armed Conflict



Lieber Code



Combatants



Hague Conventions

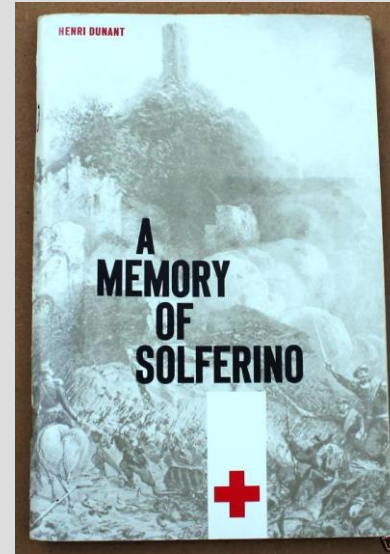


The Geneva Tradition

Non-Combatants



Hors de Combat



Henri Dunant, 1862
(Battle of Solferino June 24, 1859)

The law of Geneva serves to provide protection for all those who, as a consequence of an armed conflict, have fallen into the hands of the adversary. The protection envisaged is, hence, not protection against the violence of war itself, but against the arbitrary power which one party acquires in the course of an armed conflict over persons belonging to the other party.

~ Frits Kalshoven and Liesbeth Zegveld, Constraints on the Waging of War

The Geneva Rules

Protections given to those not taking part or no longer taking part in hostilities

- **1864 Geneva Convention**
 - 10 articles protecting wounded & sick in armies in the field
 - More articles added in 1868
- **1906 Geneva Convention**
 - 33 articles, some of which discussed transfer of info on wounded POWs
 - 1907 Hague Regulation discussed POWs
- **1929 Geneva Conventions**
 - POW Convention added (supplementing Hague)
 - Amended to incorporate Hague articles in 1939
- **1949 Geneva Conventions**
- **1977 Additional Protocols to the Geneva Conventions**
 - Updates and expands protection of Geneva Conventions
 - Adds “Hague law”

The Geneva Rules

Major Documents

- **Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (GC I)**
- **Geneva Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea (GC II)**
- **Geneva Convention Relative to the Treatment of Prisoners of War (GC III)**
- **Geneva Convention Relative to the Protection of Civilian Persons in Time of War (GC IV)**
- **Additional Protocol I to the Geneva Conventions (AP I)**
- **Additional Protocol II to the Geneva Conventions (AP II)**

Two Threshold Questions

1) What type of conflict?

- **International armed conflict**
- **Non-international armed conflict**

2) What type of person?

- **Must be within a category of protected persons**

Categories of Conflict

International Armed Conflict – declared war or other armed conflict between two or more of the High Contracting Parties

- GC I, II, III, IV and AP I

Non - International Armed Conflict – armed conflict occurring in the territory of one of the High Contracting Parties

- Common Article 3 and AP II

Categories of Protected Persons in International Armed Conflict

GC I – Persons who are sick or wounded in the field

GC II – Persons at sea who are sick, wounded or shipwrecked

GC III – Prisoners of War

Who are:

- Members of the armed forces and militias to parties to the conflict
- Other militias that meet four requirements
 - Under responsible commander
 - Have a fixed distinctive sign
 - Carry arms openly
 - Follows the laws and customs of war
- Persons who accompany armed forces (contractors and reporters)
- Members of crews of merchant marines and civil aircraft
- Levee en masse

GC I & II

**Protection for the
Wounded and Sick
(GC I – in the field)
(GC II – at sea)**

GC I & II

Treatment of the
Wounded & Sick



Protection of Personnel
Giving Aid



Distinctive Symbols



Treatment of W&S

Relevant Articles

- **Article 12: “Keystone”**
 - “Respect and protect”
 - Humane treatment = standard of care
 - Order of treatment
 - Abandonment
- **Article 15: Search and provide adequate care**
- **Articles 16-17: Protections for the dead**

Protection of Medical Personnel, Transports, Facilities

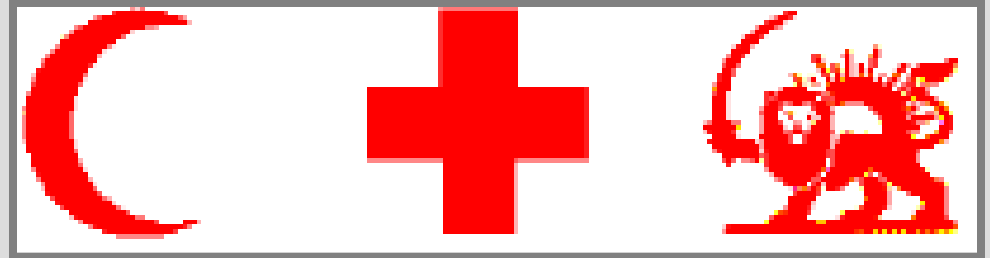
Relevant Articles

- **Article 24: “exclusively engaged” personnel**
 - **Note: Retained persons upon capture (Art 28)**
- **Article 25: “auxiliary” personnel**
- **Article 19, 33: Fixed / Mobile medical units**
- **Articles 21-22: Loss of protection**
- **Article 35: Vehicles (ambulances etc.)**
- **Article 36: Aircraft (see *also* AP I, Arts 25-27)**

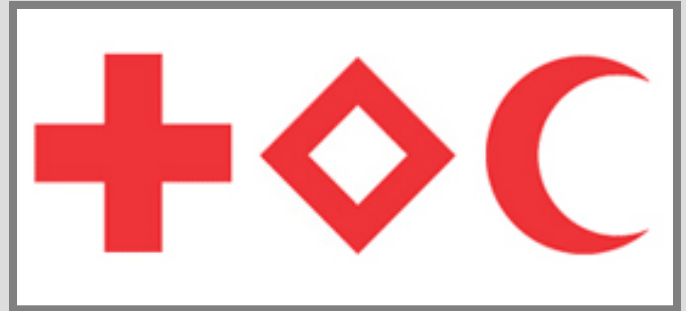
Distinctive Symbols

Relevant Articles

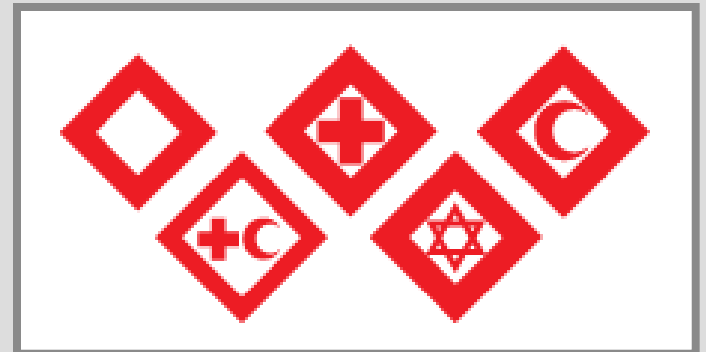
- **Article 38**
 - 3 symbols



- **Additional Protocol III**
 - Adds Red Crystal



- **Articles 40-43**
 - Armlet and ID card





GC III

Protection for Prisoners of War (POW)

GC III

POW / Combatant Status

- **Art 4: specifies categories of persons entitled to POW status if detained**
 - **Article 4(a)(1)(2)(3) and (6) = combatants**
 - **Article 4(a)(4) and (5) = civilians who merit POW status if detained**
- **Art 5: if the person is suspected of committing a belligerent act then must treat as POWs if “doubt” as to status. Doubt can be resolved by a “competent tribunal”**
 - * **but see AP I, Art 50(1) requiring presumption that the person is a civilian**

GC III

Substantive Protections for POWs

- **Protection and humane treatment (art 12-16)**
- **Questioning (art 17)**
- **Conditions of detention (art 21-48)**
- **Labor (art 49-57)**
- **Relations with the exterior (art 69-77)**
- **Relations with the Detaining Authority (art 78-108)**
- **Termination of captivity:**
 - **Repatriation for medical reasons during the conflict (art 109-117)**
 - **Release and repatriation for all, without delay, after the cessation of active hostilities (art 118-119)**

GC IV

Protection for Civilians



Civilians

GC IV

“Protected Person” Status

- **Article 4: “those who . . . 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”**
- **Does NOT include:**
 - **Nationals of a neutral state in belligerent (not occupied) territory***
 - **Nationals of a co-belligerent state***
 - **Persons protected by other Geneva conventions**

**Note: must be normal diplomatic representation*

GC IV

Substantive Protections for Protected Persons

- **All civilians get limited protection of “Part II”**
- **More robust protections for protected persons.
Nature of protection depends on whether:**
 - **Conflict or occupation?**
 - **Interned or not?**

“Humane Treatment”

Common Article 3 to GC I – IV Provides Baseline for Humane Treatment

Non - International Armed Conflict – armed conflict occurring in the territory of one of the High Contracting Parties



Armed Groups



Members of Armed
Forces



Persons held or
detained



Civilians

Protected Persons

Humane Treatment Baseline

- **“Article 3 ... defines certain rules to be applied in [NIAC]. There is no doubt that, in the event of international armed conflicts, these rules also constitute a minimum yardstick, in addition to the more elaborate rules which are also to apply to IAC; and they are rules which in the Court’s opinion, reflect ... ‘elementary considerations of humanity.’”**
~ ICJ in Nicaragua Case (1986)

Protected Persons

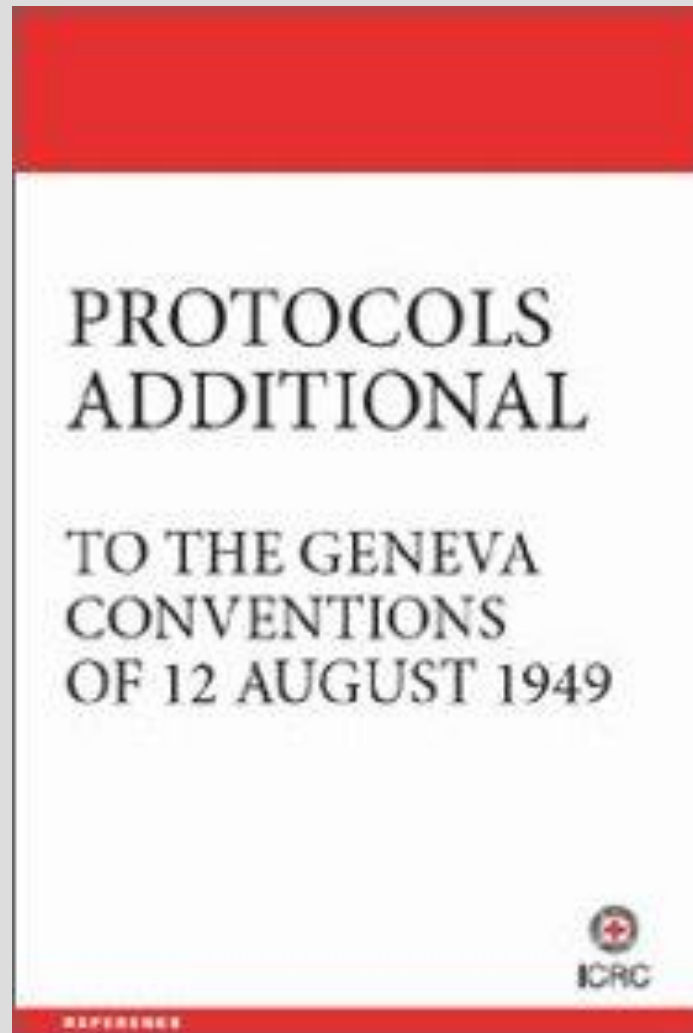
Humane Treatment Baseline

- It is DOD Policy that:
- 4.2. All persons subject to this Directive shall observe the requirements of the law of war, and shall apply, without regard to a detainee's legal status, at a minimum the standards articulated in Common Article 3 to the Geneva Conventions of 1949 . . .

~ DODD 2310.01E, DOD Detainee Program

19 Aug 2014

Additional Protocols I and II 1977



Additional Protocol I

- **Expands on the protections in GC I-IV**
- **Merges the previously distinct “Geneva” rules and “Hague” rules**
- **U.S. signed, but has not ratified**
 - **Objects to inclusion of reasons for conflict (fighting against colonial domination, alien occupation and racist regimes in the exercise of the right of self-determination) Art 1(4)**
 - **Objects to granting non-State groups the same combatant privileges granted to State armed forces in international armed conflict Art 44 (3)**

Additional Protocol II

- **Expands on the protections of common Article 3 of GC I-IV**
- **Conveys limited protections and obligations of the GCs and AP I to non-international armed conflict**
- **U.S. signed, but has not ratified**

Protected Persons

Key Takeaways

- **“Geneva Law” protects persons in the hands of the enemy as a consequence of armed conflict**
- **Status determines treatment**
- **Humane treatment is the baseline – may be entitled to better treatment based on category of person**

Categories of Persons



Non-Combatants



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