Protection of Victims of Armed Conflict

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Outline of Presentation

- Focus on "defenceless"
- Persons entitled to protection under IHL
  - IACs
  - NIACs
Primary Goals of IHL

• to protect persons who are not or who are no longer taking part in the hostilities

• to restrict the means and methods of warfare employed
Persons Entitled to Protection under IHL

- IACs: different categories of "protected persons"
  - wounded, sick and shipwrecked
  - medical and religious personnel
  - prisoners of war
  - civilians in the power of the enemy

- NIACs: "persons taking no active part in the hostilities" (Common Art. 3); "all persons who do not take a direct part or who have ceased to take part in hostilities" (Art 4.1, AP II)
Wounded, Sick and Shipwrecked

• **IACs**
  – military wounded, sick and shipwrecked (Art. 12, GCs I and II)
  – military or civilian wounded, sick and shipwrecked (Art. 10, AP I)

• **NIACs**
  – "All the wounded, sick and shipwrecked, whether or not they have taken part in the armed conflict" (Art. 7, AP II)
Basic Principles

• IACs and NIACs:
  – respect and protection (Art. 12, GC I and II, Art. 10.1, AP I; Art. 7.1, AP II)
  – humane treatment (Art. 12, GC I and II, Art 10.2, AP I; Art 7.1, AP II)
  – the medical care and attention required by their condition (Art. 10.2, AP I; Art. 7.2, AP II)
  – distinction can only be based on medical grounds (Art 10.2, AP I; Art 7.2, AP II)
Missing and Dead Persons: IACs

• each party to conflict has obligation to search for and collect wounded, sick and shipwrecked, (Art. 15, GC I; Art. 18, GC II)

• information concerning missing persons must be transmitted to the adverse party (Art. 33.3, AP I)

• the remains of deceased persons and their gravesites must be respected (Art. 15, GC I, Art 18, GC II, Art 34, AP I)
Missing and Dead Persons: NIACs

- each party to conflict has obligation to search for and collect wounded, sick and shipwrecked, (Art. 8, AP II)

- the remains of deceased persons must be respected (Art 8, AP II)
Medical Personnel and Chaplains: IACs

- Protection of Medical Personnel and Chaplains (GCs)
  - permanent personnel and chaplains (permanent or auxiliary) integrated into the armed forces (GC I and GC II)
  - personnel of aid societies attached to the armed forces (GC I and GC II)
  - staff of civilian hospitals (GC IV)

- Protection of Civilian Medical and Religious Personnel (AP I)
Medical and Religious Personnel: NIACs

• Protection of Medical and Religious Personnel (Art. 9, AP II)
Protection of the Medical Mission: IACs & NIACs

- no punishment for carrying out medical activities compatible with medical ethics (Art. 10.1, AP II)

- persons engaged in medical activities may not be compelled to perform acts contrary to medical ethics or refrain from performing acts required by medical ethics (Art. 10.2, AP II)
Doctor-Patient Privilege: IACs

• medical personnel shall not be compelled to give anyone information concerning the wounded and sick who are or have been in their care if this information would be harmful to the patients or their families (Art. 16.2, AP I)

• regulations concerning the compulsory notification of communicable diseases must be respected (Art. 16.2, AP I)
Doctor-Patient Privilege: NIACs

- the professional obligations of medical personnel regarding information concerning the wounded and sick in their care must, subject to national law, be respected (Art. 10.3 AP II)

- subject to national law, medical personnel cannot be punished for refusing to give information concerning the wounded or sick who are or have been in their care (Art. 10.4, AP II)
Role of the Civilian Population: IACs

• must respect wounded, sick and shipwrecked, even if they belong to adverse party

• must be permitted to collect and care for wounded, sick and shipwrecked and shall not be harmed, prosecuted, convicted or punished for such acts

• the protection and facilities that one party grants to the civilian population caring for the wounded, sick and shipwrecked must also be granted by the adverse party
Protection of Medical Units and Transports: IACs

• Definitions:
  – medical units: (Art. 8(e), AP I)
    • establishments and other units, whether military or civilian, fixed or mobile, permanent or temporary, organised for medical purposes
      – eg, hospitals, blood transfusion centres, preventive medicine centres, medical depots
  – medical transports: (Art. 8(g), AP I)
    • any means of transport, whether military or civilian, permanent or temporary, assigned exclusively to medical transportation duties under the control of a party to the conflict
Protection of Medical Units and Transports: IACs

- respected and protected at all times and must not be object of attack (Art. 12.1 and .2, Art. 21, AP I)

- must not be used to shield military objectives from attack (Art. 12.4, AP I)
Protection of Medical Units and Transports: NIACs

- must be respected and protected at all times and must not be object of attack (Art. 11.1, AP II)
Loss of Protection: IACs

• protection for civilian medical units will cease if they are used to commit acts harmful to the enemy, but only after a warning is given and remains unheeded (Art. 13.1, AP I)

• the following are not "acts harmful to the enemy" (Art. 13.2, AP I):
  – personnel equipped with light weapons for defensive purposes
  – unit is guarded
  – small arms and ammunition taken from wounded and sick and not yet handed in are found in the units
  – members of armed forces or other combatants are in unit for medical reasons
Loss of Protection: NIACs

• protection for medical units and transports will cease if they are used to commit acts harmful to the enemy, but only after a warning is given and remains unheeded (Art. 11.2, AP II)
Recognised Emblems
Uses of the Emblem

indicative use

protective use
Misuses of the Emblem

Imitation

Usurpation
Grave Misuse of the Emblem

Perfidy
Prisoners of War: IACs

- two conditions:
  - fall within the categories of persons specifically listed
  - fall in the power of the enemy
Categories of Persons = Prisoners of War

- Members of the armed forces
- Authorised persons who accompany the armed forces
  - Civilian members of military aircraft crews
  - War correspondents
  - Supply contractors
  - Members of labor units or of services responsible for the welfare of the armed forces
- Members of merchant marine crews and civil aircraft crews of the parties to the conflict
- Levée en masse
Combatants =

- All persons who have a right to participate directly in the hostilities (Art. 43.2. AP I)
- Members of the armed forces of a party to a conflict, except medical and religious personnel (Art. 43.2, AP I)
Combatant Requirements

• be a member of an organised armed force

• be under responsible command

• respect the rules of the law of armed conflict

• [and for members of other militia and volunteer corps not forming part of the armed forces of a party to the conflict, to have a fixed, distinctive sign and to carry arms openly]

Art. 4, GC III; Art. 43, AP I
Loss of Combatant Status

• combatant loses that status (and thus prisoner of war status upon capture) if he does not:
  – distinguish himself from the civilian population

  ► while engaged in an attack or a military operation preparatory to an attack

(Art. 44.3, AP I)
Limitation on Loss of Combatant Status

• But, recognising that there are some situations in armed conflicts where, owing to the nature of the hostilities an armed combatant cannot so distinguish himself, he retains his status as a combatant provided he carries his arms openly

  – During each military engagement, and

  – During such time as he is visible to the adversary while engaged in a military deployment preceding the launch of an attack in which he is to participate
## Distinction Between Civilians and Combatants

<table>
<thead>
<tr>
<th>CIVILIANS</th>
<th>COMBATANTS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Behaviour</strong></td>
<td><strong>Participate in the hostilities</strong></td>
</tr>
<tr>
<td>Do not participate in the hostilities</td>
<td></td>
</tr>
<tr>
<td>Do not have the right to take up arms</td>
<td><strong>Rights</strong></td>
</tr>
<tr>
<td>Can be pursued and punished for taking up arms</td>
<td>Have the right to kill (within the limits of IHL)</td>
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<tr>
<td><strong>Responsibilities</strong></td>
<td><strong>Cannot be pursued for using force conforming to IHL</strong></td>
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<tr>
<td>Must not be attacked</td>
<td></td>
</tr>
<tr>
<td>Must be respected and treated with humanity</td>
<td><strong>Protection Against Attack</strong></td>
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<tr>
<td></td>
<td>Can be attacked; are military objectives</td>
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<td></td>
<td><strong>Treatment by the Enemy</strong></td>
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<td></td>
<td>In case of capture, benefit from PoW status</td>
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Determination of Prisoner of War Status

• Presumption of Prisoner of War Status

  "Should any doubt arise as to the status of persons who have committed belligerent acts and have fallen into the hands of the enemy, such persons will enjoy the protection of the third Geneva Convention until such time as their status has been determined by a competent tribunal."

Art. 5, GC III; see also Art. 45, AP I
Exceptions:

- Spies – act under false pretences or deliberately in a clandestine manner
  - do not have the right to PoW status (Art. 46, AP I)

- Mercenaries – specially recruited to fight in an armed conflict, motivated by the desire for private gain (material compensation superior to that given to combatants of the regular armed forces)
  - do not have the right to be a combatant or a PoW (Art 47, AP I)
Treatment of Prisoners of War

• protection and humane treatment (Arts. 12 – 16, GC III)
• questioning (Art. 17, GC III)
• conditions of detention (Arts. 21 – 48, GC III)
• labor (Arts. 49 – 57, GC III)
• relations with the exterior (Arts 69 – 77, GC III)
• right to ICRC visits (Art. 126, GC III)
• relations with the authorities (Arts. 78 – 109, GC III)
End of Captivity

- repatriation for medical reasons during the conflict (Arts. 109 – 117, GC III)

- release and repatriation without delay after the cessation of active hostilities (Arts. 118 - 119, GC III)
Captured Persons: NIACs

- no PoW status

- can be pursued for the simple fact of having taken up arms...even if he respected IHL
Definition of Civilians: IACs

• general definition – every person who is not a combatant

• persons benefiting from a special protection according to GC IV: persons who find themselves in the hands of a party to the conflict or an occupying power of which they are not a national (Art. 4, GC IV)

  – aliens in the territory of a party to the conflict

  – civilians in occupied territories
Basic Principles

- humane treatment

- entitled to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs

- entitled to protection against all acts and threats of violence and against insults and public curiosity

(Art. 27, GC IV)
Protection of the Civilian Population

• general protection against certain consequences of war (Arts. 13 – 26, GC IV):
  – fundamental guarantees
  – protection of hospital and safety zones
  – protection of hospitals
  – humanitarian assistance
  – family news and separated families

• special protection for certain categories of civilians:
  – women
  – children
  – journalists
Aliens

• Can leave the territory, except if contrary to the national interests of the state (Art. 35, GC IV)

• If they remain in the territory, regulated by provisions concerning aliens in time of peace Arts. 38 -40, GC IV)
  – right to individual/collective relief and social assistance
  – right to medical treatment
  – right to practice religion
  – right to work (but cannot be compelled to carry out activities directly related to the conduct of military operations)

• Can be interned if the security of the state makes it "absolutely necessary" (Art. 42, GC IV)
Occupied Territory =

- territory under the control of a hostile army
Focus on *Status Quo Ante*

- occupation is only a temporary and limited administrative substitution
- population must be respected and its autonomy preserved
- occupier cannot modify the status of occupied territory
- occupier must maintain economic and social structures
Rights of the Occupying Power

• can change the laws and regulations in force to the extent necessary (Art. 64, GC IV):
  – to permit it to fulfill its obligations under GC IV
  – to enable it to administer the territory
  – for its own security

• can intern the civilian population "for imperative reasons of security" (Art. 78, GC IV)

• can force the civilian population to work…but only in limited circumstances (Art. 51, GC IV)
Duties of the Occupying Power

- cannot carry out deportations, transfers, or forced evacuations (Art. 49, GC IV)
- cannot transfer part of its own civilian population into the territory (Art. 49, GC IV)
- cannot force civilians to serve in its armed forces (Art. 51, GC IV)
- must ensure the food and medical supplies of the population (Art. 55, GC IV)
- must facilitate the delivery of humanitarian assistance (Art. 59, GC IV)
- must maintain medical services (Art. 56, GC IV)
Protection of the Civilian Population: NIACs

• persons who do not participate in the hostilities must be treated with humanity (Common Art. 3, GC I – IV; Arts. 4 – 6, AP II)