International Committee of the Red Cross
International Humanitarian Law Workshop

Battlefield Status & Protected Persons
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Agenda

• Introduction

• Setting the stage

• Battlefield Status under GC 3 and GC 4
The Intersection between International Human Rights and Humanitarian law.

- Human Rights
- Peace
- Internal disturbance and riot
- Non-international armed conflict
- International Armed Conflict
- Derogations
- Duty to disseminate IHL
- Non-derogable Human Rights
- Common ART 3
- Hamdan
- Tadic
- AP II
- 1949 Geneva Conventions and Additional Protocol I
- IHL
- Duty to disseminate IHL
Battlefield Status

Why does it matter?
Battlefield Status

• Big picture
  – POW → GC 3
    • Level of protection and immunity
  – Civilian → GC 4
    • Level of protection

• Is there a gap between the two conventions?
  – Terms → combatant, belligerent
Initial Treatment of Captives

• Search for and treat enemy military wounded & sick
• Initially treat all captives as prisoners of war
• Doubt as to prisoner of war status resolved by competent tribunal
  – What is a “competent tribunal”?
Prisoner of War Status

• regular armed forces
  – Does citizenship matter?
  – Does recognition of govt matter?

• militia & volunteer units with armed forces

• militia & other partisans not with armed forces who:
  – have responsible commander
  – have uniform or distinctive sign
  – carry arms openly
  – follow law of armed conflict
Prisoner of War Status (cont)

• authorized persons accompanying armed forces (but NOT members)
  – Contractors
  – Embedded journalists

• merchant marine & civil air crews

• inhabitants resisting invasion
  – Levee en masse

• for AP I States: combatants who carry arms openly in deployment & combat
Retained Personnel

- Medical personnel and chaplains
  - Members of the armed force but noncombatant
- Exclusively performing duties
  - Medics towards weapons and self defense
- Treatment that of POW
- Need for services?
Prisoner of War Status (cont)

What if the individual doesn’t meet the criteria for POW status?
Civilians

• GC 4

• Definition?
  – A negative one → those who don’t belong to or fall under another convention
GC 4 Parts and Sections

• Part II, General Protection of Populations Against Certain Consequences of War

• Part III, Treatment of Protected Persons
  • Section I – Provisions Common to Territories of Parties to Conflict and Occupied Territories
  • Section II - Aliens in Territory of Party to Conflict
  • Section III – Protections in Occupied Territory
  • Section IV – Regulations for the Treatment of Internees
When and to what extent does GC 4 apply?

• Threshold Questions: 4 Prongs
  – PRONG 1: Right Type of Conflict?
    • CA2 - International Armed Conflict – All of LOAC applies
    • CA3 – Internal / Non-International Armed Conflict – Only CA3 protections apply
  – PRONG 2: Right Type of Person?
    • Is the person a “Protected Person”? - Article 4
  – PRONG 3: Right territory or stage of hostilities?
    • Active conflict?
    • Is territory occupied?
  – PRONG 4: Is the person Interned?
The ICJ held CA3 applies serves as “minimum yardstick” in all conflicts; the ICTY extended CA3 to “any armed conflict”. The U.S. Supreme Court concluded CA3 applies to conflicts “not of an international character” (between two high contracting parties). Hamdan v. Rumsfeld, 126 S. Ct. 2749, 2796 (U.S. 2006). DoDD 2310.01E (5 SEP 06) states that all DoD detainees shall be treated “humanely.”
Right Conflict?

- CA 2 Conflict vs. CA3 Conflict?
  - If CA2 conflict, Part II Protections Apply
    - Part II covers “the whole of the population of the countries in conflict” – GCIV, Art 13
    - Part II provides very general protections (safety zones; civilian hospitals)
  - CA3 is a **minimum standard** even in CA2 conflicts
    - CA3 represents the minimum which must be applied, even in Armed Conflicts - PICTET, GCIV Commentary, at page 38
      - ICJ and ICTY; *Hamdan v. Rumsfeld*; DoDD 2310.01E -DoD LOW Program
        - Requires HUMANE TREATMENT!!
Captives Not Prisoners of War

- Detained until end of hostilities
- Fairly tried for law of armed conflict violations
- Treatment: Geneva Conventions - humanely
- Treatment: AP I - fundamental humanitarian guarantees
International Armed Conflict

2003: Coalition invades Iraq

What type of Conflict?  CA2

Who’s covered?  the whole Population of Iraq

What Protection?  GC IV, Part II
Right Person?

• Are they a protected person?
ARME Ged CONFLICT?

NO

Not a LOW Issue

INTERNATIONAL

INTERNATIONAL

CA2,*

GC, Part II (general pop.)

PROTECTED PERSON? **

YES

NO

GC, Part II Only

PART III

CONTACT

SECTION I

SECTION II

SECTION III

SECTION IV

GCIV (GC)

Geneva Convention
Relative to the Protection of
Civilian Persons in Time of War
Protected Person

• Subcategory of civilians, turns on NATIONALITY & LOCATION, and receives more protection
  – Persons “who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict of occupation, in the hands of a party to a conflict or Occupying Power of which they are not nationals”

  – Pictet outlines 2 main classes of protected persons:

    “enemy nationals within national territory of each of the Parties to the conflict” (in the hands of your nation’s enemy);

    the whole population of occupied territories (excluding nationals of the Occupying Power)”.

  – Lt Col Solis → civilian who finds himself/herself in the hands of the other side
NOT Protected Person

• Nationals of a State not bound by GCs;

• Nationals of a neutral state finding themselves in belligerent state (non-occupied state) if the State of which they are nationals has normal diplomatic relations with the belligerent State in which they find themselves; consequently, nationals of a neutral state become protected persons in an occupied state;

• Nationals of co-belligerent (ally) State while State of which they are nationals has normal diplomatic representation in the State whose hands they are; consequently, the whole population of an occupied territory are protected persons except nationals of occupying power;

• Persons protected by other GCs (i.e, lawful combatants, contractors accompanying the force (see GPW, Art. 4).
Protected Persons?

2003: Coalition invades Iraq

• U.S. civilian working in Iraq:
• Iraqi civilian in Kuwait:
• Iraqi in college in U.S.:
• Iraqi soldier visiting U.S.:
• Brazilian civilian in Kuwait:
• Iraqi Civilian in Iraq:
2003: Coalition invades Iraq

- U.S. civilian working in Iraq: Pro Pers
- Iraqi civilian in Kuwait:
- Iraqi in college in U.S.:
- Iraqi soldier visiting U.S.:
- Brazilian civilian in Kuwait:
- Iraqi Civilian in Iraq:
Protected Persons?

2003: Coalition invades Iraq

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Protected Persons?

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- Iraqi Civilian in Iraq: Not Pro Pers
What “Protections” Does a Protected Person Receive?

Provisions Common to Territories of Parties to Conflict and Occupied Territories

• All Protected Persons get these: Articles 27-34

• Honor, family rights, religious convictions

• Access to Protecting Powers and ICRC

• No coerced interrogation

• No collective punishments, pillaging, reprisals
Right Territory or Stage of hostilities?

• If a person is a “protected person” under Article 4, they may be entitled to additional protections.

• Protections are cumulative

• Protections vary between:
  – “conflict” territory (Part III, Section II) and
  – “occupied” territory (Part III, Section III)
ARMED CONFLICT?

YES

International
- CA2;*
  GC, Part II (general pop.)

Internal
- CA3

PROTECTED PERSON? **

YES
- Part III, Section I
  INTERNED
  Part III, Section IV

NO
- GC, Part II Only

NOT A LOW ISSUE

PART III

GCIV (GC)
Geneva Convention Relative to the Protection of Civilian Persons in Time of War
GC IV, Part III, Section II

Civilians in Their Enemy’s Territory

• **All** protected persons in the territory of a party to a conflict get these; Articles 35-46

• **Additional** to Part III, Sect 1 and Part II

  – Right to leave if security permits
  – Right to receive relief supplies
  – Right to employment or State support
  – Assigned residence or internment only if security considerations make it absolutely necessary
GC IV, Part III, Section III

Civilians in Occupied Territory

• **All** protected persons in occupied territory get these; Articles 47-78

• **Additional** to Part III, Sect 1 and Part II

  • Protected persons not nationals of occupied territory may leave
  
  • No individual or mass forcible transfers, or deportations, from occupied to territory of occupying power or other country.
  
  • Cannot compel to serve in occupying armed or auxiliary forces
  
  • Penal laws remain in force unless threat to security or convention
Is the Person Interned?

• If a person is a “protected person” under Article 4, and is also interned, they may be entitled to more additional protections.

• Protections are cumulative

• Protections for internment are the same regardless of the type of territory or stage of the conflict
ARMED CONFLICT?

YES

- International
  - CA2,*
    - GC, Part II (general pop.)
  - PROTECTED PERSON? **
    - YES
      - Part III
        - Section I
        - TYPE OF TERRITORY?
          - Conflict
            - Part III, Section II
              - Interned
                - Part III, Section IV
          - Occupied
            - Part III, Section III
              - Interned
                - Part III, Section IV
    - NO
      - GC, Part II Only
      - Not a LOW Issue

NO

- Internal
  - CA3

GCIV (GC)
Geneva Convention
Relative to the Protection of
Civilian Persons in Time of War
GC IV, Part III, Section IV

Regulations for the Treatment of Internees

- **All** protected persons who are interned get these; Articles 79-135

- **Additional** to Part II; Part III, Sect 1; Part III, Sect II or III

  - Most severe form of non-penal restraint permitted by GC IV
  - Subject to periodic review (6 months) by a competent body
  - Internees must be separate from POWs
Occupation

Late 2003: Iraq Occupied

**Who:** Iraqi Citizen

**Status:** Civilian/Protected Person/Interned

**Protections:**
- GC IV, Part II (CA2)
- GC IV, Part III
  - Section I (protected person)
  - Section III (occupied territory)
  - Section IV (interned)