

Protection of Persons and Objects under IHL

Gentian Zyberi
Norwegian Centre for Human Rights

Systems of Protection under IHL

- General Protection (civilians and civilian objects – principle of distinction);
- Special Protection (categories of protected persons and objects);
- Enhanced Protection (world cultural heritage).

Categories of Protected Persons

- Civilians;
- Wounded, sick and shipwrecked;
- Persons *hors de combat*;
- Prisoners of war (POWs);
- Religious personnel (chaplains etc.);
- Medical personnel;
- Red Cross personnel;
- Peacekeeping forces.

Categories of Protected Objects

- Civilian objects: undefended, or open, towns or non-defended localities (AP I, arts. 48 and 59);
- Hospital and safety zones, demilitarized zones (GC I, art. 24; GC IV, art. 14; AP I, art. 60);
- Neutralized zones (temporary, small, near the frontline; GC IV, art. 15; AP I, art. 60);
- Cultural property (AP I, art. 53; and, specific conventions);
- Objects indispensable for the survival of the civilian population (water/energy supply system; AP I, art. 54);
- Works and installations containing dangerous forces (dams, dykes, nuclear power plants; AP I, art. 56);
- The natural environment (widespread, long-term and severe damage; AP I, art. 55).

Geneva Conventions of 12 August 1949

I. Geneva Convention

Amelioration of the condition of the *wounded and sick* in the armed forces in the field

II. Geneva Convention

Amelioration of the condition of the *wounded, sick and shipwrecked* members of armed forces at sea

III. Geneva Convention Treatment of *prisoners of war* (POW)

IV. Geneva Convention Protection of *civilians* in time of war

Common Article 3, 1949 GCs

Part of customary law

Applies specifically to non-international armed conflicts

Protects every individual not or no longer actively involved in hostilities (including wounded and sick)

Prohibits violence to life and persons, including cruel treatment and torture; taking of hostages; degrading treatment; passing of sentences and carrying out of executions without previous judgment by a court

Applies at all time in all places without exception in armed conflict

Additional Protocols of 8 June 1977

- I. Additional Protocol I: Relating to the protection of victims of **international** armed conflicts

- II. Additional Protocol II: Relating to the protection of victims of **non-international** armed conflicts

Application of IHL

The 4 Geneva
Conventions and
Additional
Protocol I



International
conflicts

Additional Protocol
II



“Intensive” non-
international
conflicts

Common Article 3
to the 4 Geneva
Conventions



Non-international
conflicts

IHL Protection for Children

Children are granted **special protections**

- Children shall be the object of special respect and shall be protected against any form of indecent assault ... Parties to the conflict shall provide them with care and aid they require...(GC IV)

Prohibits recruitment of child soldiers and participation in hostilities; child combatants entitled to privileged treatment (Art 77-API)

IHL Protection for Women

Special protections for women, expectant mothers, mothers of small children

GC IV & API:

- Attack on honour, rape, enforced prostitution, or assault forbidden

GC III, GC IV & API:

- Special considerations while in detention
- No death penalty

Protected Places in Times of War

Are there places that you think should not be attacked?



Which Places?

WHY?



Protected Places in Times of War

Is it ever acceptable to attack hospitals or medical facilities?



Is it ever acceptable to attack religious places?



WHEN ?

WHY OR WHY NOT ?

Protected Places in Times of War

Is it ever acceptable to destroy people's homes, towns or infrastructure?



WHY OR WHY NOT?



WHEN ?

Why Worry About the Protection of Cultural Property in Armed Conflict?

- War is also the worst enemy of art, culture, monuments and cultural heritage
- Preserving cultural property helps in the reconstruction of destroyed communities and facilitates the return to peace
- Cultural property reflects the identity of a people, its culture and its heritage

Legal Basis for Protection

- 1954 Hague Convention for the Protection of Cultural Property in Armed Conflict
- Protocol 1 of 1954 concerning cultural property in situations of occupation
- Articles of the 1977 Protocols Additional to the 1949 Geneva Conventions
- 1999 Second Protocol to the 1954 Convention
- Customary International Law

Grave Breaches of the Geneva Conventions

- Willful killing
- Torture or inhuman treatment
- Willfully causing great suffering or serious injury to body or health
- Extensive destruction and appropriation of property...
- Compelling a POW or civilian to serve in the forces of a hostile power
- Willfully depriving a prisoner of war or protected civilians of the rights of a fair and regular trial
- Unlawful deportation or transfer of a protected civilian
- Unlawful confinement of a protected civilian; and
- Taking of hostages

Grave Breaches Additional Protocol I

- Certain medical experimentation
- Making civilians and non-defended localities the object or inevitable victims of attack
- The perfidious use of the red cross or red crescent emblem
- Transfer of an occupying power or parts of its population to occupied territory
- Unjustifiable delays in repatriation of POWs
- Apartheid
- Attack on historic monuments and
- Depriving protected persons of a fair trial.

Concluding Remarks

- General protection, special protection, enhanced protection;
- Principle of distinction – civilians and civilian objects vs. military objectives;
- Principle of precautions in attack;
- Command responsibility – promoting a culture of compliance with IHL;
- Responsibility for violations of IHL (State responsibility and individual criminal responsibility);
- The system of grave breaches (1949 GCS and 1977 APs).