

Summary III

Special protection of women and children

by J. de Preux

Basic principle

One of the basic principles of the Geneva Conventions and of Protocol I is that the persons protected shall be treated without any adverse distinction, in particular one founded on sex (C. I and II, art. 12; C. III, art. 16; C IV, art. 27; P. I, art. 75) and that women shall in all cases benefit by treatment as favourable as that granted to men (C. III, art. 14).

Complementary principle

A complementary principle to the basic principle is that women must be treated with all consideration due to their sex (C. I and II, art. 12; C. III, art. 14) and that privileged treatment may be accorded by reason of age (C. III, art. 16; C. IV, art. 27).

I. ARMED CONFLICT OF AN INTERNATIONAL CHARACTER

Women

General protection

Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault (C. IV, art. 27; P. I, art. 75, 76).

A. Internment camps

Prisoner-of-war camps

In all cases where women prisoners of war are quartered at the same time as men prisoners, separate dormitories (C. III, art. 25), or separate facilities (P. I, art. 75), especially sanitary conveniences (C. III, art. 29) shall be provided for them. Women prisoners shall be under the immediate supervision of women (P. I, art. 75).

The work that women are asked to do shall take their sex into account (C. III, art. 49).

Sanctions against women prisoners of war

A woman prisoner of war shall not be sentenced to a punishment more severe, or whilst undergoing punishment be treated more severely, than a woman member of the armed forces of the Detaining Power dealt with for a similar offence (C. III, art. 88). In no case may a woman prisoner of war be sentenced to a punishment more severe, or treated whilst undergoing punishment more severely, than a male member of the armed forces of the Detaining Power dealt with for a similar offence (C. III, art. 88).

Women prisoners of war shall be confined in separate quarters from male prisoners of war and shall be under the immediate supervision of women (C. III, art. 97, 108; P. I, art. 75).

Civilian internee camps

Whenever it is necessary, as an exceptional and temporary measure, to accommodate women internees who are not members of a family unit in the same place of internment as men, they shall be provided with separate quarters (P. I, art. 75), in particular separate sleeping quarters and sanitary conveniences (C. IV, art. 85; P. I, art. 75). Women internees shall be under the immediate supervision of women (P. I, art. 75).

Sanctions against women internees

Disciplinary punishments shall take the internee's sex into account (C. IV, art. 119). Women accused of offences or undergoing punishment shall be confined in separate quarters and shall

be under the immediate supervision of women (C. IV, art. 76, 124; P. I, art. 75).

B. Protection of expectant mothers and mothers of young children

General protection for expectant mothers

Expectant mothers or maternity cases who abstain from any acts of hostility benefit from the protection granted to the wounded and sick (P. I, art. 8; C. IV, art. 21, 22). They shall be admitted in hospital zones and localities (C. I, art. 23), or in hospital and safety zones and localities (C. IV, art. 14) which have been established to protect certain categories of the population from the effects of war. They shall at all times be entitled to priority relief, in particular foodstuffs, clothing and tonics (C. IV, art. 23) and to benefit from special treatment (P. I, art. 70). They shall at all times be the object of particular protection and respect (C. IV, art. 16). Endeavours shall be made to conclude local agreements for their removal from besieged or encircled areas (C. IV, art. 17).

Expectant mothers or maternity cases who are interned

Expectant mothers who have been arrested, detained or interned for reasons related to the armed conflict shall have their cases considered with the utmost priority. (P.I, art. 76). Endeavours shall be made to conclude agreements for their release, repatriation, return to places of residence or hospitalization in a neutral country (C. IV, art. 132).

In occupied territory, expectant mothers and maternity cases shall be given additional food, in proportion to their physiological needs (C. IV, art. 89).

Maternity cases must be admitted to any institution where adequate treatment can be given and shall receive care not inferior to that provided for the general population (C. IV, art. 91). They shall not be transferred if the journey would be seriously detrimental to them, unless their safety imperatively so demands (C. IV, art. 127).

General protection of mothers with small children

Mothers of children under seven shall be admitted to hospital and safety zones and localities which have been established to protect certain categories of the population from the effects of war (C. IV, art. 14). Nursing mothers shall at all times be entitled to benefit from relief priority, in particular foodstuffs, clothing and tonics (C. IV, art. 23) and special treatment (P. I, art. 70).

Interned mothers with small children

Utmost priority shall be given to the consideration of cases involving mothers who have dependent small children and who have been arrested, detained or interned for reasons related to the armed conflict (P. I, art. 76). Endeavours shall be made to conclude agreements for the release, repatriation, return to places of residence or hospitalization in a neutral country of mothers with infants (C. IV, art. 132).

Sanctions

Whenever possible, the parties to a conflict shall endeavour to avoid pronouncing the death penalty, for an offence committed in relation with the armed conflict, against expectant mothers or mothers with infants. A death sentence against this category of women for such an offence shall not be executed (P. I, art. 76).

Protection of foreigners

Expectant mothers and mothers of children under seven years shall benefit by preferential treatment to the same extent as the nationals of the State concerned (C. IV, art. 38).

Occupied territories

The Occupying Power shall not hinder the application of any preferential measures in regard to food, medical care and protection against the effects of war, which may have been adopted prior to the occupation in favour of expectant mothers and mothers of children under seven years (C. IV, art. 50).

Children

A. General protection

Basic principles

Children must be the object of special respect and must be protected against any form of indecent assault. Parties to a conflict shall provide them with the support and the aid that they need by reason of their age or any other reason (P. I, art. 77).

Children who are orphaned or separated from their families

The necessary measures must be taken to ensure that children who are orphaned or are separated from their families as a result of the war, are not left to their own resources, and that their maintenance, the exercise of their religion and their education are facilitated in all circumstances. Their education shall, as far as possible, be entrusted to persons of a similar cultural tradition (C IV, art. 24). Under these conditions, the reception of such children in a neutral country shall be facilitated. In principle, however, only children who are nationals of the transferring Power should be so evacuated (C. IV, art. 24; P. I, art. 78).

Newborn children

Newborn children shall benefit from the same protection that is granted to the wounded and sick (P. I, art. 8).

Reuniting of dispersed families

Enquiries made by members of families dispersed by the war, with the object of renewing contact with one another and of reuniting, if possible, shall be facilitated. The work of organizations engaged on this task shall be encouraged (C. IV, art. 26, P. I, art. 74).

Relief

When distributing relief consignments of essential foodstuffs, clothing and tonics (C. IV, art. 23), priority shall be given to children (P. I, art. 70), especially those under fifteen. Children shall be

enabled to give news of a strictly personal nature to members of their families, wherever they may be, and to receive news from them (C. IV, art. 25).

Identification

Endeavours shall be made to ensure that children under fifteen are identified (C. IV, art. 24).

In the event of evacuations, a card with photographs shall be issued for every child evacuated. Whenever possible and insofar as this is not detrimental to the child, this card shall bear the following information:

- a) the child's surname(s);
- b) the child's first name(s);
- c) the child's sex;
- d) the place and date of birth (or the approximate age if this date is not known);
- e) the father's full name;
- f) the mother's full name and her maiden name;
- g) the child's next of kin;
- h) the child's nationality;
- i) the child's native language and any other language he speaks;
- j) the address of the child's family;
- k) any identification number that the child has been given;
- l) the child's state of health;
- m) the child's blood group;
- n) any distinguishing features;
- o) the date on which and the place at which the child was found;
- p) the date on which and the place at which the child left his country;
- q) the child's religion, if any;
- r) the child's address in the host country;
- s) if the child died before returning to his country, the date, place and circumstances of his death and the place of burial.

This card must be transmitted to ICRC's Central Tracing Agency (P. I, art. 78).

Sanctions

A death sentence for an offence tied to the hostilities shall not be carried out against a person who was under eighteen years of age at the time of the offence (P. I, art. 77).

B. Protection of children against the effects of hostilities

Interdiction on recruiting

Children under fifteen must not be enlisted in the armed forces and all possible measures should be taken in practice to ensure that they do not take part in the hostilities. When enlisting persons over fifteen but under eighteen, an endeavour should be made to give priority to the oldest persons (P. I, art. 77).

Safety zones

Children under fifteen shall be admitted in hospital and safety zones and localities which have been established to protect certain categories of the population from the effects of war (C. IV, art. 14).

Besieged or encircled areas

Endeavours shall be made to conclude agreements for the removal of children from besieged or encircled areas (C. IV, art. 17).

C. Protection of children in occupied territory

General protection

The Occupying Power shall not hinder the application of any preferential measures in regard to food, medical care and protection against the effects of war, which may have been adopted prior to the occupation in favour of children under fifteen. It may not, in any case, change their personal status (C. IV, art. 50).

Education and care

The Occupying Power shall, with the co-operation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children.

Should the local institutions be inadequate for the purpose, it shall make arrangements for the maintenance and education, if possible by persons of their own nationality, language and religion, of children who are orphaned or separated from their parents as a result of the war and who cannot be adequately cared for by a near relative or friend (C. IV, art. 50).

Identification

All necessary steps shall be taken to facilitate the identification of children and the registration of their parentage (C. IV, art. 50). A special section of the official Information Bureau shall be responsible for taking all necessary steps to identify children whose identity is in doubt (C. IV, art. 50, 136).

Enlistment

The Occupying Power may not in any case enlist children in formations or organizations subordinate to it (C. IV, art. 50). It may not compel persons under eighteen to work (C. IV, art. 51).

Sanctions

In any case, the death penalty may not be pronounced against a person who was under eighteen years of age at the time of the offence. (C. IV, art. 68).

Evacuation

The Occupying Power may not evacuate children who are not its own nationals toward a foreign country unless this is a temporary evacuation made necessary by imperative reasons relating to the children's health or medical treatment. Such cases shall require the consent of the parents or guardians or the written consent of the persons to which the law or custom gives the principal responsibility for the children. The Protecting Power shall supervise the evacuation.

A complete card shall be established for every child evacuated (see "General protection", "Identification") and sent to ICRC's Central Tracing Agency.

The education of every child evacuated, including his religious and moral education in accordance with his parents' wishes, should be handled in such a way so as to ensure the greatest possible continuity (P. I, art. 78).

Transfers

In case of transfer within the bounds of the occupied territory or in case of evacuation, members of the same family shall not be separated (C. IV, art. 49).

D. Internment

Basic principles

Whenever families are arrested, detained or interned, they shall be lodged together whenever possible (P. I, art. 75; C. IV, art. 82).

If children are arrested, detained or interned for reasons related to the armed conflict, even if they are detained as prisoners of war, they shall be accommodated in quarters separate from adults, except in cases of families lodged together as a family unit (P. I, art. 77).

Education

The education of children and young people must be ensured; they shall be allowed to attend schools either within the place of internment or outside. Special playgrounds shall be set aside for sports and outdoor games (C. IV, art. 94).

Food

Children under fifteen shall be given additional food, in proportion to their physiological needs (C. IV, art. 89).

Release

Endeavours shall be made, during the course of hostilities, to conclude agreements for the release, repatriation, return to places of residence or hospitalization in a neutral country of children (C. IV, art. 132).

E. Foreign children on the territory of a party to a conflict

Preferential treatment

Children under fifteen years shall benefit by any preferential treatment to the same extent as the nationals of the State concerned (C. IV. art. 38).

II. ARMED CONFLICT NOT OF AN INTERNATIONAL CHARACTER

In the case of armed conflict not of an international character, special guarantees, in addition to the general provisions contained in art. 3 of all four Conventions, are also provided for. Women and children are expressly protected against rape, enforced prostitution or any form of indecent assault and shall be treated without any adverse distinction (P. II, art. 4).

Special protection of women

In the case of internment or detention, except when men and women belonging to the same family are lodged together, women must be accommodated in separate quarters from men and must be under the immediate supervision of women (P. II, art. 5). The death penalty shall not be carried out against expectant mothers and mothers of small children (P. II, art. 6).

Special protection of children

Children must be given the care and the aid which they need (P. II, art. 4).

This applies also to *education*, including the religious and moral education that their parents wish them to receive, or, in the absence of their parents, the persons to whose care they have been entrusted (P. II. art. 4). All appropriate measures must be taken to facilitate the *reuniting* of momentarily separated *families* (P. II, art. 4).

The *enlistment* of children under fifteen in armed forces or groups is forbidden. Nor may children be authorized to take part in hostilities. If, however, they do take part directly in hostilities and are captured they shall continue to benefit from these guarantees (P. II, art. 4).

Whenever possible or necessary, and subject to the consent of the parents or persons who have been entrusted with the principal responsibility by virtue of the law or custom, children shall be temporarily *evacuated* from the sector where hostilities are taking place to a safer sector of the same country. They shall be accompanied by the persons responsible for their safety and well-being (P. II, art. 4).

The *death penalty* shall not be carried out against a person who was under eighteen years of age at the time of the offence (P. II, art. 6).

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