

# The Protection of Women in International Humanitarian Law

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## I. INTRODUCTION

Since the number of women who actually participated in war was insignificant until the outbreak of World War I, the need for special protection for them was not felt prior to that time. This does not imply however that women had previously lacked any protection. From the birth of international humanitarian law, they had had the same general legal protection as men. If they were wounded, women were protected by the provisions of the 1864 Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field; if they became prisoners of war, they benefited from the Regulations annexed to the Hague Conventions of 1899 and 1907 on the Laws and Customs of War on Land.<sup>1</sup>

From 1929 onward, women have enjoyed special protection under international humanitarian law. In that year, the Powers which adopted the Geneva Convention relative to the Treatment of Prisoners of War<sup>2</sup> sought to take into account a new phenomenon: the participation of a relatively large number of women in the war of 1914-1918. This international legal instrument contained two provisions of particular interest: "*Women shall be treated with all consideration due to their sex*" (Art. 3). "*Differences of treatment between prisoners are permissible only if such differences are based on the military rank, the state of physical or mental health, the professional abilities, or the sex of those who benefit from them*" (Art. 4).

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<sup>1</sup> These Regulations, for the first time, granted prisoners of war a legal status which removed them from the arbitrary control of the Detaining Power.

<sup>2</sup> Taking advantage of the possibility provided by the Hague Regulations (Art. 15) for properly constituted relief societies to exercise their charitable efforts, the ICRC during World War I (1914-1918) sent delegates to visit internment camps. In the light of its experience in this conflict, the ICRC suggested two things: a revision of the Geneva Convention of 1864 and the drafting of a new Convention to clarify and supplement the Hague Regulations.

In World War II, women participated in hostilities in greater numbers, although they did not commonly bear arms. In addition, there were many more civilian victims than in the earlier conflict. Of the 50 million persons killed, it was estimated that 26 million were in the armed forces while 24 million were civilians, including many women. The adoption of new legal instruments taking such factors into account was essential. The "Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War", convoked by the Swiss Federal Council, depository of the Geneva Conventions, met from April to August 1949 in Geneva and drew up four Conventions which were adopted on 12 August of that year.<sup>3</sup> The Third Convention, relative to the treatment of prisoners of war, and the Fourth Convention, relative to the protection of civilian persons in time of war, contain some thirty articles of special concern to women. These will be studied in detail in the next chapter.

In armed conflicts which have taken place since the adoption of the four Geneva Conventions of 1949, statistics indicate, more men and more women died than during World War II. The proportion of civilians among the dead, in some instances, was as high as 90%. These terrible totals were primarily a result of new means and methods of warfare with indiscriminate effects. In addition, new types of conflict developed between regular armies and guerrilla forces. In such conflicts, it is difficult to distinguish combatants from civilians, which renders civilians more vulnerable. In view of this new situation, the Conventions had to be supplemented. The ICRC took the initiative and at the conclusion of the "Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law" (1974-1977), the Additional Protocols were adopted in 1977. These supplemented the Conventions and thus offered better legal protection, primarily to the civilian population and thus to women. In addition, the rules governing non-international armed conflicts, contained in Article 3 common to all four Conventions, were developed and expanded in Protocol II, applicable in these situations. The provisions in these two instruments which give particular protection to women are examined in the following pages of this paper.

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<sup>3</sup> The First Geneva Convention of 1864 has undergone three revisions, 1906, 1929 and 1949. The Second Geneva Convention took the place of the Tenth Hague Convention. The Third Convention replaced the 1929 Geneva Convention on the same subject and supplemented the Hague Regulations of 1899 and 1907. The Fourth Convention was new and supplemented Sections II and III of the Hague Regulations.

PART I:  
THE PROTECTION OF WOMEN IN THE GENEVA  
CONVENTIONS  
AND THEIR ADDITIONAL PROTOCOLS

The Conventions and Protocols protect women both as members of the civilian population not taking part in hostilities and also as combatants, fallen into the hands of the enemy. We shall examine the various aspects of this protection in the following paragraphs, giving particular emphasis to differentiated treatment accorded to women in the light of the following principles.

**I. Principles**

International humanitarian law gives expression in law to the fundamental principle of the equality of men and women, specifying this principle in clauses forbidding discrimination. Articles 12 of the First and Second Conventions, 16 of the Third Convention, 27 of the Fourth Convention and Article 75 of Additional Protocol I and Article 4 of Additional Protocol II (referred to below as C. I, C. II, C. III, C. IV, P. I and P. II) provide for treatment « *without any adverse distinction founded on sex...* » It is also specified that women “*shall in all cases benefit by treatment as favorable as that granted to men*” (Article 14, C. III). This means that women are entitled to all the rights and freedoms specified by the Conventions. Accordingly, any discriminatory measure which does not result from the application of the Conventions is prohibited. However, the prohibition of discrimination is not a prohibition of differentiation. It is for this reason that distinctions are prohibited only to the extent that they are unfavourable. Equality could easily be transformed into injustice if it were to be applied to situations

which are inherently unequal and without taking into account circumstances relating to the state of health, the age and the sex of protected persons.

The principle of equal treatment is extended by the further principle that "*women shall be treated with all the regard due to their sex*" (Article 12, C. I and C. II, Article 14, C. III). This particular regard is not legally defined, but regardless of the status accorded to women, it covers certain concepts such as physiological specificity, honour and modesty, pregnancy and childbirth.<sup>4</sup>

International humanitarian law makes particular reservations concerning the female sex in various cases, either in general terms ("without prejudice to the provisions relating to their sex...") or in more specific terms (separate dormitories, separate places of detention). One should not deduce from this that the principle of differentiated treatment is not applicable in cases where it is not specifically mentioned (protection against insults and public curiosity, questioning, searches, food, clothing, intellectual, educational and recreational pursuits, sports and games, labour, conditions for transfer, prisoners' representatives, identification). An express reference tends to strengthen the scope of the principle, rather than to limit its application, and differentiated treatment is accorded to women even if it is not explicitly mentioned.<sup>5</sup>

It would also be wrong to draw conclusions about a lack of special protection through the following examples. With respect to the labour of prisoners of war, the principle of special treatment for women is referred to (Article 49, C. III), while it is not in the case of women internees (Article 95, C. IV). As to the searching of prisoners of war, differentiated treatment is not specifically mentioned (Article 18, C. III), whereas it is in the case of a woman internee (Article 96, C. IV). At the time of capture, a prisoner of war must be searched immediately, for obvious reasons of security. It is not always possible under these conditions to have a woman available to make the search, whereas in the slower procedure of civilian internment this can be arranged. With respect to work by civilian internees, this is optional and there is thus no need to refer to the principle of differentiated treatment.

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<sup>4</sup> *Commentary on the Third Geneva Convention*, ICRC, Geneva, 1960, Article 14, p. 147.

<sup>5</sup> *Ibid.*, Article 14, p. 147.

## II. Protection of women as members of the civilian population

Like all civilians, women are protected both against abusive treatment by the Party to the conflict in whose power she finds herself and against effects of hostilities: "*A civilian is any person who does not belong to the armed forces*" (Article 50, P. I).

### A. Protection against abuses by the Party to the conflict into whose power women have fallen

In an *international armed conflict*, women are among the persons protected by the Fourth Geneva Convention relative to the protection of civilian persons in time of war. Under these conditions, they benefit from all the provisions which state the basic principle of humane treatment, including respect of life and physical and moral integrity, particularly forbidding coercion, corporal punishment, torture, collective penalties, reprisals, pillage and the taking of hostages. Furthermore, in the event of infractions committed in relation to the conflict, women have the right to trial by an independent and impartial court established by law respecting the generally recognized principles of judicial procedure.

In addition to the general protection from which all civilians benefit, "*women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution or any form of indecent assault*" (Art. 27, para 2, C. IV; Art. 75 and 76, P. I). This provision was introduced to denounce certain practices which occurred, for example, during the last World War, when innumerable women of all ages, and even children, were subjected to outrages of the worst kind: rape committed in occupied territories, brutal treatment of every sort, mutilations, etc. In areas where troops were stationed or through which they passed, thousands of women were made to enter brothels against their will... Acts against which women are protected by Art. 27, para 2, C. IV are and remain prohibited in all places and in all circumstances, and women, whatever their nationality, race, religious beliefs, age, marital status or social condition have an absolute right to respect for their honour and their modesty, in short, for their dignity as women.<sup>6</sup>

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<sup>6</sup> *Commentary on the Fourth Geneva Convention*, ICRC, Geneva 1958, Art. 27, pp. 205-206.

The origin of Art. 76, P. I, entitled "Protection of women", is the resolution of the United Nations Economic and Social Council of April 1970 on "the protection of women and children in time of emergency, war, struggle for peace, national liberation and independence" which invites the U.N. Secretary-General to give special attention to this problem.<sup>7</sup>

This provision represents an advance for international humanitarian law as compared to Art. 27, para 2, C. IV, since it widens the circle of beneficiaries and also constitutes a substantial extension of the International Covenant on Civil and Political Rights which does not contain particular provisions protecting women.<sup>8</sup> In other words, the new rule refers to all women in the territories of the Parties to the conflict. While protection covers nationals of States which are not Parties to the Conventions and those of neutral and co-belligerent States, it does not extend to nationals of a Party to the conflict who are victims of offences against their honour committed on the territory of that Party under circumstances which have no relation to the armed conflict.<sup>9</sup>

In a *non-international armed conflict*, women are protected by the fundamental guarantees governing the treatment of persons not taking part in hostilities which are contained in Article 3, common to all four Conventions. However, this article does not provide special protection for women. Protocol II completes and develops this provision. Its Article 4 expressly forbids "*outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault*".

### 1. *Respect for preferential treatment of women*

In an *international armed conflict*, the situation of aliens in the territory of a Party to the conflict continues to be regulated, in principle, by provisions concerning aliens in time of peace. However, the state of war creates a situation which will inevitably have repercussions on the standing of aliens and does not always permit

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<sup>7</sup> *International Review of the Red Cross*, November-December 1980: "New code for the protection of civilian population and property during armed conflict" by Ionel Cloșcă.

<sup>8</sup> Article 10 (2) of the International Covenant on Economic, Social and Cultural Rights, which affords families protection, provides for special measures for the benefit of mothers.

<sup>9</sup> *Commentary on the Two 1977 Protocols Additional to the Geneva Conventions of 1949*, by Michael Bothe, K.J. Partsch, W. A. Solf, The Hague/Boston/London, 1982, Art. 76, p. 470.

their previous status to be wholly maintained. Protected persons are compelled to submit to various restrictions which, under these conditions, affect the population as a whole. Even in case of war, however, the special benefits accorded to pregnant women and mothers of children under the age of 7 years by national laws should be respected.

Countries at war generally take some measures for the benefit of persons whose weakness in one respect or another warrants special care. These measures are varied in scope and application: they may cover the granting of supplementary ration cards, facilities for medical and hospital treatment, special welfare treatment, exemption from certain forms of work, protective measures against the effects of war, evacuation, transfer to a neutral country, etc.<sup>10</sup> “*Pregnant women and mothers of children under seven years shall benefit by any preferential treatment to the same extent as the nationals of the State concerned*” (Art. 38, C. IV). Likewise, “*The Occupying Power shall not hinder the application of any preferential measures... which may have been adopted prior to the occupation in favour of children under fifteen years, expectant mothers, and mothers of children under seven years*” (Art. 50, C. IV).

## 2. Interned women

### *General*

A Party to an *international armed conflict* is authorized by international law to take strict control measures over protected persons, on the condition that its security renders these measures absolutely necessary. A belligerent, for example, may intern people if it has serious and legitimate reason to think that they are members of organizations whose object is to cause disturbances, or that they may seriously prejudice its security by other means, such as sabotage or espionage.<sup>11</sup> In addition, an Occupying Power may charge protected persons with infractions of penal laws which it has promulgated for its own protection. Like other protected persons, women may be interned or charged for carrying out acts endangering the security of the Occupying Power. Special provisions are made in international humanitarian law<sup>12</sup> for the benefit of women in such situations.

<sup>10</sup> *Commentary Fourth Convention*, Art. 38, p. 248.

<sup>11</sup> *Ibid.*, Art. 42, pp. 257-258.

<sup>12</sup> Other instruments (human rights, national legislation etc.) also provide for special treatment for the benefit of detained women.

Under the terms of Protocol I, "*Women whose liberty has been restricted for reasons related to the armed conflict shall be held in quarters separated from men's quarters. They shall be under the immediate supervision of women. Nevertheless, in cases where families are detained or interned, they shall, whenever possible, be held in the same place and accommodated as family units*" (Art. 75, para 5).

The Fourth Convention states, "*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, the provision of separate sleeping quarters and sanitary conveniences for the use of such women internees shall be obligatory*" (Art. 85). This paragraph is a case of a particular application of the general principle laid down in Article 27, paragraph 2, concerning the respect due to women's honour.<sup>13</sup> For the same reasons, "*A woman internee shall not be searched except by a woman*" (Art. 97, para 4).

Protocol I provides a further guarantee for the benefit of interned women: "*They shall be under the immediate supervision of women*" (Art. 75, para 5).

With respect to disciplinary penalties, the Fourth Convention also refers to the principle of differentiated treatment, in general terms. "*Account shall be taken of the internee's age, sex and state of health*" (Art. 119). Women accused of offences and those serving sentences "*shall be confined in separate quarters and shall be under the direct supervision of women*" (Arts. 76 and 124, C. IV and Art. 75, para 5, P. I).

There is nothing to prevent the Detaining Power arranging for women a system of disciplinary detention less harsh than that for men and in less uncomfortable premises.<sup>14</sup> Such a distinction between the sexes is not regarded as contrary to the general principle of international humanitarian law forbidding all discrimination.

In *non-international armed conflicts*, Protocol II provides similar rules. It specifies that women who are arrested, detained or interned "*shall be held in quarters separated from those of men and shall be under the immediate supervision of women except when members of a family are accommodated together*" (Art. 5, para 2a). In the event that it is not possible to provide separate quarters it is essential in

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<sup>13</sup> *Commentary Fourth Convention*, Art. 85, p. 388.

<sup>14</sup> *Ibid.*, Art. 124, p. 494.

any event to provide separate sleeping places and conveniences. It should be noted that the foregoing provisions refer both to civilians deprived of their freedom and to captured combatants.<sup>15</sup>

### *Pregnant women and maternity cases*

In an *international armed conflict*, these women benefit from supplementary protection. Protocol I specifies that "*pregnant women and mothers having dependent infants who are arrested, detained or interned for reasons related to the armed conflict, shall have their cases considered with the utmost priority*" (Art. 76, para 2). This is intended to make sure that pregnant women are released as rapidly as possible.

In 1949, a similar provision was included in the Fourth Convention urging the Parties "*to conclude agreements during the course of hostilities for the release, the repatriation, the return to places of residence or the accommodation in a neutral country of interned pregnant women*" (Art. 132, C. IV). This Article does not specify an obligation to reach such agreements but it does constitute an urgent recommendation based on experience. During World War II, numerous repatriations of internees took place by the belligerents. In this connection, emphasis should be laid on the role which can be played by the Protecting Power or by the ICRC in suggesting and inspiring such agreements. The Protecting Power is well placed, especially when it acts simultaneously on behalf of both parties, to understand the deplorable seriousness of certain situations. The argument of reciprocity can be invoked to further, and sometimes even almost to compel, the conclusion of special agreements concerning, for instance, exchanges of internees. Naturally, the International Committee of the Red Cross can also play a role in this. It goes without saying that the ICRC can and does on occasion play a similar role.<sup>16</sup>

This category of women also benefits from other forms of differentiated treatment.

The Fourth Convention provides that "*expectant and nursing mothers in occupied territories shall be given additional food, in proportion to their physiological needs*" (Art. 89). This clause was designed to avoid deficiency diseases which would be particularly regrettable among these women, as they would affect future gener-

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<sup>15</sup> *Commentary on the Two Protocols...*, Art. 5, p. 645.

<sup>16</sup> *Commentary Fourth Convention*, Art. 132, pp. 510-514.

ations.<sup>17</sup> Since internment is not a punishment but a precautionary measure adopted in the interest of the Detaining Power, it cannot be allowed to cause serious prejudice to the persons subjected to it.<sup>18</sup> Thus, “*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*” (Art. 91).

“*Maternity cases must not be transferred if the journey might be seriously detrimental to them, unless their safety imperatively so demands*” (Art. 127). As we see, it is the safety of the internee which is decisive, not the military situation. The latter concept, which existed in the 1929 Convention with respect to sick and wounded prisoners of war, was too often interpreted as granting permission to the Detaining State to transfer them when it appeared that military operations might enable them to escape from its power.<sup>19</sup>

### *Mothers of young children*

Protocol I, as in the case of expectant or nursing mothers, asserts that “*mothers having dependent infants who are arrested, detained or interned for reasons related to the armed conflict shall have their cases considered with the utmost priority*” (Art. 76, para 2). The term “mothers having dependent infants” has a wider meaning than “nursing mothers”, the wording which had been previously proposed.<sup>20</sup> The authors of the Protocols were unable to agree on the age when children cease to be dependent on their mothers. Since various provisions in the Fourth Convention refer to mothers of children under the age of 7 years (preferential treatment in Art. 50 and safety zones in Art. 14), we can consider 7 years to be the age below which the application of Art. 76, para 2 of Protocol I is imperative.

As in the case of pregnant women and maternity cases, the Fourth Convention provides that *the Parties to the conflict shall endeavour during the course of hostilities to conclude agreements for the release, the repatriation, the return to places of residence or the accommodation in a neutral country of interned mothers of young children* (Art. 132).

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<sup>17</sup> *Ibid.*, Art. 89, p. 395.

<sup>18</sup> *Ibid.*, Art. 91, p. 399-400.

<sup>19</sup> *Ibid.*, Art. 127, p. 500.

<sup>20</sup> Vol. XV, p. 464, CDDH/407/Rev. 1.

### 3. *Women and the death penalty*

Nothing is said about this subject in the Conventions. Protocol I makes up for this deficiency, drawing inspiration from the International Covenant on Civil and Political Rights which entered into effect on 23 March 1976. Its Art. 6, para 5, provides that a death penalty must not be executed on pregnant women. It was not possible however for the authors of the Protocols to prohibit absolutely in the event of an *international armed conflict*, the pronouncement of the death penalty on pregnant women and the mothers of young children. Such a prohibition would run counter to specific provisions in the national legislation of a number of countries. Nevertheless, international humanitarian law recommends that such pronouncements be avoided to the utmost possible extent. With regard to the actual execution of the sentence, it was relatively easy for the authors to agree to forbid the execution of pregnant women. The fact is that many national legal codes which still provide for the death penalty also recognize this restriction. The barbarous practice of postponing an execution until the birth of the child has been abandoned almost universally, both in law and in fact.<sup>21</sup> *"To the maximum extent feasible, the Parties to the conflict shall endeavour to avoid the pronouncement of the death penalty on pregnant women or mothers having dependent infants, for an offence related to the armed conflict. The death penalty for such offences shall not be executed on such women"* (Art. 76, para 3, P. I).

In *non-international armed conflicts*, Protocol II also makes up for the previous absence of such a protective clause. The Protocol goes even farther than the International Covenant on Civil and Political Rights. It specifies that *"the death penalty shall not be carried out on mothers of young children"* (Art. 6, para 4, P. II).

#### **B. Protection of women against the effects of hostilities**

In an *international armed conflict*, women as members of the civilian population benefit from rules in international humanitarian law which impose limits on the conduct of hostilities. These rules, whose sources go back to the Hague Conventions of 1899 and 1907 and which have to a great extent become a part of customary law, are specifically reaffirmed and developed in Protocol I. They pro-

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<sup>21</sup> *Commentary on the Two 1977 Protocols ...*, Art. 76, pp. 472-473.

vide notably that the Parties to a conflict “shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives” (Art. 48, P. I).

In relation to *non-international armed conflict*, the essential elements of these provisions are also set forth, in simplified form. Article 13 of Protocol II stipulates that “the civilian population as such, as well as individual civilians, shall not be the object of attack.”

### 1. *Pregnant women or maternity cases*

In an *international armed conflict*, this category of women benefits from special protection. Protocol I stipulates that “maternity cases and pregnant women, who refrain from any act of hostility, shall enjoy the same general protection as that accorded to the sick and wounded” (Art. 8).

Such women are not necessarily in need of medical care but their condition is such that they may need such care rapidly.

The principle of assimilating pregnant women or maternity cases to the sick and wounded was already implicit in the Fourth Convention, which states, “The wounded and sick, as well as the infirm and expectant mothers, shall be the object of particular protection and respect” (Art. 16). It adds, “The parties to the conflict shall endeavour to conclude local agreements for removal from besieged or encircled areas of wounded, sick, infirm, and aged persons, children and maternity cases...” (Art. 17).

Maternity cases, along with the wounded, sick, and infirm, are among those whose transport by land, sea or air must be respected and protected (Arts. 21 and 22).

### 2. *Pregnant women or maternity cases, nursing mothers and mothers of young children*

In certain circumstances, nursing mothers and mothers of young children, in the event of an *international armed conflict*, benefit from other forms of differentiated treatment. Like other categories of the civilian population whose relative weakness renders them incapable of strengthening the military potential of their country, “expectant mothers and mothers of children under seven may be placed in hospital and safety zones” (Art. 14, C. IV), provided, of course, that they do not contribute directly to the war effort.

With regard to the shipment of relief for the civilian population, the Fourth Convention provides for "*the free passage of medical and hospital stores and objects necessary for religious worship, along with special consignments of essential foodstuffs, clothing and tonics for expectant mothers and maternity cases*" (Art. 23). That should be understood to mean basic foodstuffs, necessary to the health and normal physical and mental development of the persons for whom they are intended e.g. milk, flour, sugar, fats, salt.<sup>22</sup>

Additional Protocol I constituted an undeniable advance in international humanitarian law in comparison with Article 23 of the Fourth Convention, by enlarging the circle of beneficiaries. The civilian population as a whole now has the right to receive essential foodstuffs, clothing and tonics. This widening of the circle was attended by a reminder that certain persons should have priority in the distribution of relief. To pregnant women and maternity cases, a new category was added, that of nursing mothers. These groups have the right at all times to priority in receiving relief, in particular foodstuffs, clothing and tonics, and to benefit from special treatment (Art. 70).

### III. Women taking part in hostilities

#### A. Historical note

Participation by women in hostilities is not a new development, for many of them have taken a more or less active part in war throughout the centuries.<sup>23</sup> A great many female canteen-keepers followed armies from the 17th to the 19th centuries to sell food and drink to the soldiers. Other women, behind the front, devoted themselves to the care of wounded soldiers. The image of the young English nurse Florence Nightingale, bringing aid and comfort to soldiers in the Crimean War (1854-1855), is unforgettable. Participation by women in hostilities remained exceptional however until the 20th century.

It was only in World War I that women began to take part in hostilities more systematically. In Germany for example, though not directly incorporated into combat units, women contributed to the war effort in World War I. In addition to their work in arms

<sup>22</sup> *Commentary Fourth Convention*, Art. 23, p. 180.

<sup>23</sup> Along with such well-known historical characters as Queen Christina of Sweden, Empress Catherine II of Russia and Queen Elizabeth I of England, who were both rulers and military commanders, many other women distinguished themselves in combat. A well-known example of a woman-warrior is Joan of Arc.

factories, they carried out numerous tasks close to the front, in supply services and munitions depots. In March 1917, 67,877 women were replacing men sent to the front.<sup>24</sup>

In England, women also took part in that war, either as paid or unpaid civilians or auxiliaries, 80,000 in female military units, the WAAC, WRNS and WRAF<sup>25</sup>, while others worked as nurses.

Russian women, though in smaller numbers, took part in combat.<sup>26</sup>

In World War II, women took a more active part in the hostilities. In Germany, from 1943 onward, more than a million women worked in arms factories, while 300,000 served as army reservists, with 20,000 in the navy and 130,000 in the air force.<sup>27</sup>

In England, at the end of 1943, female military units (ATS, WAAF and WRNS)<sup>28</sup> had a total of 450,000 women, 9.37% of the country's armed forces. During the war, their units had 624 dead, 98 disappeared, 744 wounded and 20 captured.<sup>29</sup>

Soviet women participated directly in the fighting in World War II, in all services and units, as snipers, riflemen, air pilots, bombardiers, artillerymen, etc. It is estimated that about a million Soviet women took part in the fighting, 800,000 in the armed forces and 200,000 in resistance movements, constituting 8% of the total armed forces.<sup>30</sup>

French women in World War II did not commonly fight in the maquis, but performed many services essential to the existence and survival of the resistance, providing supplies, carrying out liaison missions, producing and distributing newspapers and tracts, hiding and transporting arms, etc.<sup>31</sup>

## B. Status of women prisoners of war

Like men, women who take part in hostilities are protected by international humanitarian law from the moment they fall into the

<sup>24</sup> *Frauen ans Gewehr*, by Renate Janssen, Köln, 1980, pp. 11-19.

<sup>25</sup> WAAC: Women's Auxiliary Army Corps, 1917. WRNS: Women's Royal Navy Service, 1917. WRAF: Women's Royal Air Force, 1918.

<sup>26</sup> *Great Britain and the World Wars*, by Nancy Loring Goldman and Richard Stites, Greenwood Press, 1982, pp. 24-29.

<sup>27</sup> *Frauen ans Gewehr*, pp. 19-27.

<sup>28</sup> ATS: Auxiliary Territorial Services, 1938. WAAF: Women's Auxiliary Air Force.

<sup>29</sup> *Great Britain and the World Wars*, pp. 30-35.

<sup>30</sup> *Ibid.*, pp. 35-36.

<sup>31</sup> *Les femmes dans la résistance*, l'Union des Femmes Françaises, éditions du Rocher, 1977, p. 15.

power of the enemy. It is essential for them to be members of the armed forces of a Party to the conflict if they are to be considered as combatants entitled to the status of prisoners of war, once captured.

The armed forces of a Party to a conflict are recognized as such if they are organized and placed under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party. In addition, these armed forces must be subject to an internal disciplinary system which, *inter alia*, enforces compliance with the rules of international law applicable in armed conflicts. In particular, this compliance requires combatants to distinguish themselves from civilians, by a uniform or other distinctive sign, visible and recognizable at a distance, or, at least, they must carry their arms openly while taking part in an attack. Violation by a combatant of the rules applicable in armed conflict is punishable but he is not deprived of his right to the status of prisoner of war in case of capture. In case of doubt, this status must be presumed, until the question has been decided by a competent authority.<sup>32</sup>

The drafting of women into the armed forces, as combatants, has generally been marginal up to the present, with the Soviet Union as an exception. As we saw earlier, many Soviet women took part in fighting during World War II. With recognition of the principle of equality of the sexes, at least in the western and socialist countries, it is not excluded that women will participate in combat to a greater extent in the event of new conflicts. We may note nevertheless that Israel, the only country with compulsory military service for women, does not oblige them to take part directly in combat. In case of war, women staff officers at the battalion and brigade levels are withdrawn to the rear.<sup>33</sup>

On the other hand, participation by women as non-combatant auxiliaries is relatively high. In England and the Soviet Union, in World War II, they constituted about one tenth of the total of the armed forces. They perform administrative functions, serve as liaison agents and work in such branches as supplies, motor transport, communications and air control.<sup>34</sup>

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<sup>32</sup> *Basic rules of the Geneva Conventions and their additional Protocols*, ICRC, Geneva, pp. 21-22.

<sup>33</sup> *La participation de la femme à la défense générale*, by A. Weitzel, Département militaire fédéral, Berne, 1979, p. 148.

<sup>34</sup> *Ibid.*, pp. 67 and 129.

International humanitarian law also extends the right to the status of prisoner of war to those taking part in a *levée en masse* — the inhabitants of a non-occupied territory which spontaneously take up arms at the approach of the enemy to resist the invasion, without having had time to organize themselves — if they carry their arm openly and respect the laws and customs of war. The same right is accorded to various categories of persons who are not combatants, such as:

- persons authorized to follow the armed forces without being directly part of them;
- crews of the merchant marine and civil aviation;
- members of military personnel serving in civil defence organizations.<sup>35</sup>

Women may obviously be included in any of these categories.

There are other persons who, although they are not given the status of prisoner of war in the event of capture, nevertheless have the right to corresponding treatment. They include:

- persons arrested in occupied territory because they belong to the armed forces of the occupied country;
- military internees in a neutral country;
- members of the non-combatant medical and religious personnel who are part of the armed forces.<sup>36</sup>

The medical personnel of the armed forces includes many women, nurses in particular.

### C. Treatment of women combatants and prisoners of war

#### 1. *General protection*

Inasmuch as women “*shall in all cases benefit by treatment as favourable as that granted to men*” (Art. 14, C. III), they have the right to the same protection. Among the numerous provisions in the Third Convention and the two Additional Protocols, we shall refer only to the most important and note the principles involved.

In an *international armed conflict*, it is forbidden to declare that no quarter shall be given, to threaten the adversary therewith and conduct hostilities on such a way that there are no survivors.

<sup>35</sup> *Basic rules of the Geneva Conventions and their additional Protocols*, ICRC, Geneva, 1983, pp. 21-22.

<sup>36</sup> *Ibid.*, p. 22.

Furthermore, the enemy who is *hors de combat*, who has surrendered or who shows his intention to surrender, as well as one who has parachuted from an aircraft in distress, shall not be the object of attack.

In addition, the Third Convention provides in general that prisoners of war must be treated humanely at all times and it is forbidden to subject them to physical mutilation or to medical or scientific experiments which are not justified by the medical treatment of the prisoner concerned and which are not in his interest.

It is specified that prisoners of war shall not be unnecessarily exposed to danger while awaiting their evacuation from a fighting zone.

Finally, anyone who has taken part in the hostilities but has not been granted the status of prisoner of war must in principle benefit from the provisions of the Fourth Convention unless he is detained as a spy or saboteur (Art. 5, C. IV). In the latter cases, such persons must nevertheless be treated humanely and must benefit from the fundamental guarantees provided in Art. 75, P. I.<sup>37</sup>

In a *non-international armed conflict*, captured combatants do not have the status of prisoners of war but must benefit from the fundamental guarantees of Article 3 common to the four Geneva Conventions and of Art. 4, P. II.

## 2. *Special protection*

Apart from the general protection from which women benefit on the same basis as men, they enjoy special protection resulting from the principles previously stated.

In an *international armed conflict*, Protocol I specifies that "*pregnant women and mothers having dependent infants who are arrested, detained or interned for reasons related to the armed conflict, shall have their cases considered with the utmost priority*" (Art. 76, para 2). This is the principle we considered earlier with respect to the protection of women as members of the civilian population. The authors of the Protocol thus sought to assure that pregnant women and mothers of young children would be released as rapidly as possible.

A comparable concern was the basis of a Model Agreement on direct repatriation and accommodation in neutral countries of wounded and sick prisoners of war, annexed to the Third Conven-

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<sup>37</sup> *Ibid.*, p. 23 and 26.

tion. This proposed agreement has two clauses of particular interest to us:

1. Paragraph 7 of Section B provides for accommodation in neutral countries of women prisoners of war who are pregnant or mothers with infants and small children.

2. Paragraph 3 f of Section A provides for repatriation in cases of normal pregnancy and of prisoners suffering from chronic and serious gynecological and obstetrical disorders, when it is not possible to accommodate them in neutral countries.

The Third Convention contains various provisions based on the principle in Article 14, para 2, stipulating that "*women shall be treated with all the regard due to their sex*". Article 25, para 4 states that "*in any camps in which women prisoners of war, as well as men, are accommodated, separate dormitories shall be provided for them*". The introduction of this paragraph was due to the presence of a number of women in the armies of belligerents in World War II. The interpretation that has been given to this provision is that the separation must be effective, in other words that male prisoners must not have access to the dormitories of women prisoners whether or not the women consent. The Detaining Power is responsible for the effective application of this provision. Strictly speaking, this paragraph refers only to dormitories and the quarters as a whole need not necessarily be separated; the Detaining Power is, however, at liberty to provide separate quarters if it deems fit and in order more easily to fulfil the other requirements of the Convention with regard to women prisoners.<sup>38</sup>

Furthermore, under the terms of Article 29, para 2, "*in any camps in which women prisoners of war are accommodated, separate conveniences must be provided for them*". The question of sanitary conveniences is of the utmost importance for the maintenance of cleanliness and hygiene in camps. These conveniences should be so constructed as to preserve decency and cleanliness and must be sufficiently numerous. It goes without saying that the most elementary rules of decency require that separate conveniences should be provided for women prisoners of war.<sup>39</sup>

Art. 49, para 1, specifies that the Detaining Power "*may utilize the labour of prisoners of war who are physically fit, taking into account their age, sex, rank and physical aptitude, and with a view*

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<sup>38</sup> *Commentary Third Convention*, Art. 25, p. 195.

<sup>39</sup> *Ibid.*, Art. 29, p. 207.

*particularly to maintaining them in a good state of physical and mental health*". This is an instance of the application of Art. 16 (See First Part, I: Principles).

With regard to penal and disciplinary penalties, the Third Convention is consistent with the principle of equality of treatment.

The Convention states that *"a woman prisoner of war shall not be awarded or sentenced to a punishment more severe, or treated whilst undergoing punishment more severely, than a woman member of the armed forces of the Detaining Power dealt with for a similar offence.*

*In no case may a woman prisoner of war be awarded or 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"* (Art. 88, paras 2 and 3).

Other provisions result from the principle of differentiated treatment. Articles 97 and 108 provide in particular that *"women prisoners of war, undergoing disciplinary or penal punishments, respectively, shall be confined in separate quarters from male prisoners of war and shall be under the immediate supervision of women"*.

Protocol I has a rule analogous to that in Articles 25, 97 and 108 of the Third Convention: *"Women whose liberty has been restricted for reasons related to the armed conflict shall be held in quarters separated from men's quarters. They shall be under the immediate supervision of women"* (Art. 75, para 5).

In a *non-international armed conflict*, Protocol I also specifies that women arrested, detained or interned *"shall be held in quarters separated from those of men and shall be under the immediate supervision of women except when families are united"* (Art. 5, para 2, a). However, persons captured do not have prisoner of war status.

## PART II:

### ICRC ACTION IN FAVOUR OF WOMAN VICTIMS OF ARMED CONFLICTS

#### I. Activity during World War II

It must not be forgotten that at the outbreak of this war only the prisoners of war were under legal protection with respect to internment, thanks to the Geneva Convention of 27 July 1929 relative to the treatment of prisoners of war. Civilians had no legal protection in that respect, which did not facilitate matters for the ICRC.

At the beginning of the conflict, the ICRC had no occasion to intervene on behalf of women prisoners of war, either because their treatment was in conformity with the provisions of the Convention or because intervention was impossible.

On 2 October 1944, the Polish army of General Bor-Komorowski <sup>40</sup> laid down its arms. The terms of the capitulation recognized the status of prisoners of war of all the combatants who surrendered to the German forces, including the army's female auxiliary personnel. Unfortunately, the German authorities did not respect these clauses of the capitulation, and the ICRC delegates who visited the camps where the women were held could do nothing but corroborate the complaints of these prisoners: the overcrowding and discomfort of the quarters, the lack of heat, clothing and food, the imposition of heavy work, etc. Upon making representations to the German authorities, the ICRC received assurances that there would be no more forced labour for the women auxil-

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<sup>40</sup> The underground Polish army loyal to the Polish Government in exile in London, which was uselessly sacrificed in the Warsaw insurrection.

iaries and that they would be interned in separate camps where they would receive treatment appropriate to their sex and state of health. Despite these assurances, the ICRC delegates did not observe any particular improvements in subsequent visits.

In view of the importance of the problem, the ICRC on 9 January 1945 addressed a general appeal to the German, British, French and American governments drawing attention to Articles 3 and 4 of the Convention (see Introduction) and laying stress on the appropriate differentiated treatment which should be accorded to women prisoners of war.

The replies of the American and French governments disclosed that only very few women belonging to the German Army were in the hands of these Powers, and that such prisoners were accommodated in special camps or in compounds set apart for them in ordinary PW camps. These two governments further stated their intention to repatriate women PWs without delay, beginning with expectant mothers and the sick, and without making it a condition that the German Government should take similar action. The repatriation of German women PWs was effected in part by way of Switzerland; the Committee approached the Swiss authorities to allow their passage through Swiss territory.

In February 1945, acting on a request from the Polish Red Cross in London, the ICRC began negotiations to secure the accommodation in Switzerland of women prisoners from General Bor-Komorowski's army. The German and Swiss governments had signified their agreement in principle to the transfer when, with the fall of the Reich, it became unnecessary.<sup>41</sup>

## 2. ICRC activity after World War II

Since 1949, with the adoption of the Fourth Geneva Convention relative to the protection of civilian persons in time of war, the ICRC has had legal grounds to act for them as well as for prisoners of war. The activity of the ICRC in protecting and assisting civilian populations has steadily increased in recent years as conflicts have multiplied. Among the many tasks of protection carried out, some repatriations deserve attention, to the extent that they shed light on

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<sup>41</sup> ICRC records and *Report of the ICRC on its Activities during the Second World War (1 September 1939 — 30 June 1947)*, ICRC, Geneva, 1948, 3 Vol. — See Vol. I, pp. 295-297.

the special protection which benefits women victims of armed conflicts.

In Cyprus in November 1974, the ICRC was active in transferring from the north to the south, and vice-versa, various categories of especially vulnerable persons: the wounded, sick, elderly, pregnant women and their children.

In June 1977, after capturing the Bardai Oasis in northern Chad, the Frolinat movement requested the intervention of the ICRC to evacuate various families of prisoners of war from the combat zone. Due to numerous technical problems, and a resumption of hostilities in the region, the operation was delayed and could not take place until 5 December 1978. The wives of 15 prisoners and 22 children were returned to the capital of Chad by the ICRC.

In Uganda in 1980, the ICRC made several approaches to the authorities asking them to investigate the situation of civilian detainees and to release various categories among them: minors, old and sick persons and women. This request was granted by the authorities.

With respect to assistance, women were among those who received priority in relief actions undertaken by the ICRC for the benefit of civilian populations. Among these actions were the following:

In Bangladesh in 1972, many totally destitute Pakistani civilians, mostly women and children, were refugees in a camp at Dacca. The ICRC gave them articles of most urgent necessity, such as clothing, blankets, soap, cooking pots and powdered milk.

Following disorders which broke out in February 1979 in the frontier zone between the Yemen Arab Republic and the People's Democratic Republic of Yemen, many civilians sought refuge in the central area of the Yemen Arab Republic. About 45,000 persons, among them a high proportion of women and children, benefited from ICRC assistance.

The ICRC has very often had occasion to act for the benefit of women deprived of their freedom. Intervening at all levels, it has insisted upon differentiated treatment for women, such as separate quarters and supervision by women, and has drawn the attention of authorities to the cases of pregnant women and the mothers of young children. To cite a few recent examples:

ICRC delegates made visits twice a month to a number of women arrested in Lebanon, until their release on 24 November 1983. Originally detained in Israel following their capture in 1982,

these women were transferred to southern Lebanon in March 1983.<sup>42</sup>

At the request of the ICRC, four young Iranian women, captured in October 1980, were transferred by the Iraqi authorities to a prisoner-of-war camp, and were subsequently released on 29 January 1984.

Both in connection with conflicts and with internal disorders or tensions, ICRC delegates continue to visit the following places of detention:

*Union of South Africa:* Sections reserved for women in prisons in Pretoria and Kroonstad.

*Israel:* Women's prison at Neve Tirza.

*Argentina:* Women's prison at Ezeiza.

*Chile:* Several centres reserved for women, known as "Centro de orientación feminino", in different parts of the country.

*Colombia:* "Cárceles de mujeres del Buen Pastor" at Cali, Medellín and Popayán.

*Paraguay:* "Casa del Buen Pastor" at Asunción.

*Peru:* Penal establishments for women at Arequipa, Cuzco and Lambayeque.

*El Salvador:* Rehabilitation centre for women at Ilopango.

*Uruguay:* "Punta rieles (EMR 2)" at Montevideo.

## CONCLUSION

International humanitarian law undoubtedly gives extensive protection to women. They benefit not only from all the provisions which protect the victims of armed conflicts in general. In addition, among the approximately 560 articles in the Geneva Conventions of 1949 and the Additional Protocols of 1977, about 40 are of specific concern to women.

If women in real life are not always protected as they should be, it is not due to the lack of a legal basis. Despite adoption of the Fourth Geneva Convention and the two Additional Protocols, women as members of the civilian population continue to be the first victims of indiscriminate attacks against civilians, since the men are usually engaged in the fighting. Article 27 of the Fourth Convention, which provides special protection for women against any attacks on their honour and in particular against rape, enforced prostitution or any form of indecent assault, did not

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<sup>42</sup> ICRC Annual Reports, from 1965 to 1983.

prevent the rape of countless women in the conflict in Bangladesh in 1971, for example.<sup>43</sup> This was one of the reasons why the authors of Protocol I considered it necessary to repeat in Article 76, para 1, the contents of the earlier article. The same rule is found again in Protocol II. Although these new provisions have been adopted, crimes against honour continue to be committed, with women as the principal victims. We need only think of the tragedy of the "boat people", even though this is outside the specific framework of armed conflicts. With particular regard to women deprived of their freedom, the ICRC has found that women are in the greatest danger of such assaults at the time of their arrest or capture and during the interrogation which follows, assaults ranging from the threat of rape to obtain "confessions" to the act itself.

The international community will not succeed in remedying this situation merely by adopting new rules. Most of all, it must see that the rules already in force are respected. The responsibility to apply the provisions giving special protection to women, and for that matter all the rules of international humanitarian law, is a collective one. It rests first and foremost with the States party to the Geneva Conventions of 1949 and the Additional Protocols of 1977, which have undertaken to respect and ensure respect for these rules. The ICRC can certainly also help to render the protection accorded to women more effective through its own activities, whether by visiting women held as prisoners of war or in civilian detention or internment, by providing material assistance or by making enquiries into the whereabouts of missing persons. Finally, the dissemination of knowledge of these rules by the National Red Cross and Red Crescent Societies, or by organizations such as the World Veterans Federation, can strengthen the existing law. Every effort made in this respect undoubtedly facilitates the task of those who bear the prime responsibility for the implementation of international humanitarian law, and encourages them in their endeavours.

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<sup>43</sup> *Dignity and Honour of Women as Basic and Fundamental Human Rights*, by Yougindra Khushalani, The Hague, Boston, London, 1982.

**Provisions of international humanitarian law  
according special protection to women**

**Geneva Convention of 1929:** Articles 3, 4

**Geneva Conventions of 1949** <sup>1</sup>

Convention I: Articles 3, 12

Convention II: Articles 3, 12

Convention III: Articles 3, 14, 16, 25/4, 29, 49, 88/2, 3, 97/4,  
108/2

Convention IV: Articles 3, 14/1, 16, 17, 21, 22/1, 23/1, 27/2, 38/5,  
50/5, 76/4, 85/4, 89/5, 91/2, 97/4, 98/2, 119/2,  
124/3, 127/3, 132/2

**Additional Protocols of 1977**

Protocol I: 8,a; 70/1; 75/1 and 5; 76

Protocol II: 4/2,e; 5/2,a; 6/4

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<sup>1</sup> «Index of the Geneva Conventions for the Protection of War Victims of 12 August 1949», by Jiri Toman.

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