

Synopsis IX

Respect for the human being in the Geneva Conventions

by Jean de Preux

The persons protected by the Geneva Conventions must be accorded respect in the first place because they are human beings. But they also are entitled to a certain degree of respect in their capacity as individuals, soldiers, nationals of a foreign State and, to a certain extent, as combatants.

A. RESPECT FOR THE HUMAN BEING

The persons protected under the Geneva Conventions are protected against murder (C. I-IV, Art. 3; C. I and II, Art. 12; C. III, Art. 13; C. IV, Art. 27; P. I, Art. 10, 51, 75).¹ They are entitled to respect for their persons and their honour (C. III, Art. 14; C. IV, Art. 27) and must be treated humanely (C. III, Art. 13; C. IV, Art. 27) and protected from outrages upon personal dignity (C. I-IV, Art. 3; P. I, Art. 75). The wounded, the sick and the dead must be identified (C. I, Art. 16; C. II, Art. 19; C. III, Art. 120; C. IV, Art. 130). The dead must receive a proper burial (C. I, Art. 17; C. II, Art. 20; C. III, Art. 120; C. IV, Art. 130).

Non-discrimination

This respect must be shown without any adverse distinction founded on sex, race, religion, political or other opinion, colour, language,

¹ The Roman numerals refer to the First (I), the Second (II), the Third (III) and the Fourth (IV) Geneva Conventions (C). The abbreviation P. I stands for Additional Protocol I. The articles are indicated by Arabic numbers.

belief, national or social origin, wealth, birth or other status, or any other similar criteria (C. I and II, Art. 12; C. III, Art. 16; C. IV, Art. 27; P. I, Art. 75).

Health

Wounded, sick and shipwrecked persons must be treated humanely and receive, to the greatest extent possible and with the minimum of delay, the medical care required by their condition. There must be no distinction among them founded on any grounds other than medical ones (C. I and II, Art. 12; P. I, Art. 10). The dead must be respected (C. I, Art. 17; C. II, Art. 20).

Differences in treatment

Vulnerable categories of persons, such as women, expectant mothers, maternity cases, children,² the infirm and the aged, must receive preferential treatment (C. I and II, Art. 12; C. III, Art. 14; C. IV, Art. 14, 17, 23, 27; P. I, Art. 76, 77).

Proper living conditions

Protected persons are entitled to proper living conditions which are not prejudicial to their health, specifically as regards quarters (C. III, Art. 25; C. IV, Art. 85), food (C. III, Art. 26; C. IV, Art. 89), clothing (C. III, Art. 27; C. IV, Art. 90), hygiene and medical care (C. III, Art. 29-31; C. IV, Art. 91-92).

Relief

When in need, persons protected under the Geneva Conventions are entitled to receive relief.³ They can contact relief societies and other organizations, in particular the International Committee of the Red Cross (C. III, Art. 79, 125 and 126; C. IV, Art. 30 and 143). They are entitled to talk without witnesses with representatives of the Protecting Power and the ICRC (C. III, Art. 126; C. IV, Art. 143).

² See Synopsis III: "Special protection of women and children", *International Review of the Red Cross (IRRC)*, No. 248, September-October 1985, pp. 292-302.

³ See Synopsis VI, "Relief", *IRRC*, No. 254, September-October 1986, pp. 268-278.

Ill-treatment

Physical or mental torture, corporal punishment, mutilations, medical or scientific experiments not necessitated by medical treatment, and any other measures of brutality, violence, intimidation or terrorization are prohibited (C. III, Art. 13, 87; C. IV, Art. 32, 33; P. I, Art. 11, 51, 75; C. I-IV, Art. 3; C. I, Art. 50; C. II, Art. 51; C. III, Art. 130; C. IV, Art. 147).

Outrages against personal dignity

Humiliating and degrading treatment, enforced prostitution or any form of indecent assault, insults and exposure to public curiosity, humiliating and degrading work and physical or moral threats, pressure or coercion, such as those intended to obtain information, are prohibited (Hague Regulations,⁴ Art. 44; C. III, Art. 13, 17, 52, 99; C. IV, Art. 27, 31; P. I, Art. 75; C. I-IV, Art. 3). Identification by tattooing or other markings on the body are prohibited (C. IV, Art. 100).

Hostages

The taking of hostages is prohibited (C. IV, Art. 34; P. I, Art. 75).

Collective punishment

Collective penalties are prohibited (C. III, Art. 87; C. IV, Art. 33).

Judicial procedure

Any person charged with a penal offence must be presumed innocent until proven guilty. That person is entitled to legal counsel for his defence and, if convicted, must be informed of his right to appeal or seek other recourse against his conviction or sentence and of the time limit within which he may do so (C. III, Art. 99, 105, 106; C. IV, Art. 71, 72, 73; P. I, Art. 75). The basic rules of judicial procedure must be respected (C. I-IV, Art. 3; C. III, Art. 82-108; C. IV, Art. 71-76; P. I, Art. 75).

⁴ Regulations respecting the laws and customs of war on land. — Annex to the Hague Convention No. IV of 18 October 1907.

B. RESPECT FOR THE INDIVIDUAL

Respect for personal convictions

Protected persons are entitled to respect not only for their persons and their honour but also for their religious convictions and practices (C. IV, Art. 27; P. I, Art. 75).

Spiritual assistance

The individual must enjoy complete latitude in the observance of his religion, whatever it may be. Adequate premises must be provided where religious services may be held (C. III, Art. 34; C. IV, Art. 76 and 93). Protected persons must be allowed to have the devotional articles required to meet their needs (C. III, Art. 72; C. IV, Art. 108).

Respect for habits and customs

The individual is entitled in all circumstances to respect for his habits and customs (C. III, Art. 22; C. IV, Art. 27). In providing food, account must be taken of the individual's customary diet (C. III, Art. 26; C. IV, Art. 89). The clothing provided to protected persons and the outward markings placed on their own clothes must not be ignominious or expose them to ridicule (C. III, Art. 27; C. IV, Art. 90). Work required of protected persons must correspond to the individual's age, sex, aptitudes and capacities (C. III, Art. 49; C. IV, Art. 51).

Personal effects

The individual may not be deprived of identity documents or articles for personal use or having personal or sentimental value (C. III, Art. 17, 48, 119; C. IV, Art. 97). Pillage is prohibited (C. IV, Art. 33).

Civil capacity

The individual must retain his full civil capacity. He may execute legal documents, powers of attorney and wills, submit complaints and requests and institute legal proceedings (Hague Regulations, Art. 23 [h]; C. III, Art. 14, 77, 78; C. IV, Art. 113, 129).

Respect for the individual's own language

The individual is entitled to be communicated with in a language which he understands, if necessary through an interpreter (C. III, Art. 17, 41, 96, 105, 107; C. IV, Art. 65, 71, 72).

Respect for family ties

Families are entitled to be informed of what has happened to their members (P. I, Art. 32). The individual is entitled to correspond with his family (C. III, Art. 70, 71; C. IV, Art. 25, 107) and to be reunited with it (C. IV, Art. 26, 85; P. I, Art. 74, 77).

Respect for children

Children may not be recruited and must receive preferential treatment (see footnote 2).

Respect for women

Women must be treated with due consideration for their sex (see footnote 2).

Respect for personal volition

The individual may not be forced to give information which he does not wish to divulge (C. III, Art. 17; C. IV, Art. 31). Latitude must be given to his personal tastes in his intellectual, educational, recreational, and athletic pursuits (C. III, Art. 38; C. IV, Art. 94). He may not be repatriated without his consent (C. III, Art. 109; C. IV, Art. 45).

C. RESPECT FOR THE SOLDIER

Loyalty

Members of the armed forces who fall into the hands of the enemy and thus become prisoners of war remain soldiers of their own armed forces and therefore are not bound by any duty of allegiance to their captors (C. III, Art. 87, 100). They are, in principle, entitled to attempt to escape (C. III, Art. 91, 92). They are not obliged to give any information other than their identity (C. III, Art. 17).

Saluting

With the exception of officers, prisoners of war must salute and show to all officers of the Detaining Power the external marks of respect provided for by the regulations applying in their own armed forces.

Officers held prisoner of war are required to salute only officers of a higher rank of the Detaining Power. However, whatever their own rank, they are required to salute the camp commander (C. III, Art. 39).

Rank

Prisoners of war must be treated with due consideration for their rank and age (C. III, Art. 44 and 45). The wearing of badges of rank and nationality, as well as decorations, is permitted (C. III, Art. 40). These insignia and decorations may not be taken away (C. III, Art. 17).

Pay

Prisoners of war must receive their pay (C. III, Art. 60).

Work

Prisoners of war may not be compelled to do work which is unhealthy or dangerous, or assigned to labour of a military nature or purpose (C. III, Art. 50, 52). They must be paid a fair rate of pay for their work (C. III, Art. 62).

Conscription

Prisoners of war may not be compelled to serve in the forces of the enemy power (C. III, Art. 130).

Punishment

- If any law, regulation or order of the Detaining Power declares acts committed by a prisoner of war to be punishable, whereas the same acts would not be punishable if committed by a member of the armed forces of the Detaining Power, such acts may entail disciplinary punishments only (C. III, Art. 82).
- In undergoing punishment, prisoners of war may not be subject to more severe treatment than that applied in respect of the same punishment to members of the armed forces of the Detaining Power (C. III, Art. 88).
- Prisoners of war must under no circumstances be transferred to penitentiary establishments to undergo punishment (C. III, Art. 97). Officers and persons of equivalent status must not be lodged in the same quarters as non-commissioned officers or men (C. III, Art. 97).

- A prisoner of war given disciplinary punishment may not be deprived of the prerogatives attached to his rank (C. III, Art. 98). Sentences pronounced on prisoners of war must be served under the same conditions as in the case of members of the armed forces of the Detaining Power (C. III, Art. 108).

Repatriation

Prisoners of war must be released and repatriated without delay after active hostilities have ended (C. III, Art. 118).

D. RESPECT FOR A PERSON'S CITIZENSHIP

Nationals of a neutral country enjoy no special protection while on the territory of a belligerent State if the State of which they are nationals has normal diplomatic representation in the State in whose hands they are (C. IV, Art. 4). Conversely, those persons who find themselves, in the event of conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals, do enjoy protection (C. IV, Art. 4).

1. Aliens in the territory of a Party to a conflict

Right of departure

All protected persons who desire to leave the territory of a State at war are entitled to do so unless their departure is contrary to the national interests of the State (C. IV, Art. 35). If any such person is refused permission to leave the territory, such refusal must be reconsidered as soon as possible (C. IV, Art. 35).

Non-repatriated persons

The situation of non-repatriated persons must continue to be regulated, in principle, by the provisions concerning the treatment of aliens in time of peace (C. IV, Art. 38). In any case, minimum rights must be granted to them (C. IV, Art. 38-43).

Exceptions for refugees

In applying the measures of control which may prove to be necessary, the Detaining Power must not treat as enemy aliens, exclusively on the basis of their nationality *de jure* of an enemy State, refugees who do not, in fact, enjoy the protection of any government (C. IV, Art. 44).

Cancellation of restrictive measures

Any restrictive measures taken regarding protected persons or their property must be cancelled as soon as possible after the close of hostilities (C. IV, Art. 46).

2. Inhabitants of occupied territory

General protection

Inhabitants of occupied territory enjoy extensive protection both under the Hague Regulations (Section III, Art. 42-56) and by the Fourth Geneva Convention, which lay down guarantees for their protection as such by the Occupying Power and specifically prohibit the following:

- compulsion to swear allegiance to the hostile power (Hague Regulations, Art. 45);
- compulsion to provide information. This prohibition already exists under the basic protection of the individual (Hague Regulations, Art. 44);
- deportation (C. IV, Art. 49);
- work connected with military operations (C. IV, Art. 51);
- violations of private property (Hague Regulations, Art. 46);
- compulsion to serve in the Occupying Power's armed or auxiliary forces or to take part in military operations (C. IV, Art. 51, 68);
- modification of the status of public officials or judges (C. IV, Art. 54);
- the arbitrary suspension of the laws in force (Hague Regulations, Art. 43; C. IV, Art. 64);

- the arbitrary suspension of tribunals in an occupied territory (C. IV, Art. 64);
- prosecution or conviction for acts committed or opinions expressed before an occupation, or during a temporary interruption thereof, with the exception of breaches of the laws and customs of war (C. IV, Art. 70).

Penalties

In passing sentence, the courts or authorities must take as far as possible into account the fact that the defendant is not a national of the Detaining or Occupying Power (C. IV, Art. 68, 118).

3. Aliens in occupied territory

Aliens in occupied territory may avail themselves of the right to leave that territory in the same way as if they were aliens on the territory of a Party to a conflict (C. IV, Art. 48).

Nationals of the Occupying Power who, before the beginning of hostilities, were considered as refugees under the law applicable in the territory meanwhile occupied, have the same prerogatives (P. I, Art. 73). Moreover, they may be transferred to the territory of the Occupying Power only in accordance with the law of the occupied territory relating to extradition (C. IV, Art. 70-72).

E. RESPECT FOR COMBATANTS

Basically, it is only when a combatant surrenders⁵ or is rendered *hors de combat* that he is protected by the Conventions. However, he may not be punished for hostile acts which do not violate law applicable to armed conflict (C. III, Art. 99).

In any case combatants, too, are entitled to a certain degree of respect during the fighting.

Prohibition of acts causing superfluous injury and unnecessary suffering

It is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury and unnecess-

⁵ See Synopsis V: "Capture", *IRRC*, No. 251, March-April 1986, pp. 89-100.

ary suffering (Hague Regulations, Art. 23 [e]; P. I, Art. 35). This rule primarily concerns weapons which are expressly prohibited: explosive and dum-dum bullets, projectiles which explode into undetectable fragments, poison, gas, serrated edges and certain booby-traps. It also governs the way in which unprohibited weapons must be used, such as the use of napalm only against combatants who are out in the open. This rule states implicitly that the object of war would be exceeded by the employment of arms which uselessly aggravate the sufferings of disabled men, or render their death inevitable (Declaration of St. Petersburg, 1868).

Quarter

It is prohibited to order that there shall be no survivors, to threaten an adversary therewith or to conduct hostilities on that basis (Hague Regulations, Article 23 [d]; P. I, Art. 40).

Reprisals

Reprisal must not be graver than the violations which have given rise to them and must be stopped as soon as that violation has ceased. Moreover, reprisals are a last resort and must be undertaken only on orders from government authority.

Perfidy

It is prohibited to kill, injure or capture an adversary by resort to perfidy, i.e. by acts inviting the confidence of an adversary to lead him to believe that he is entitled to, or is obliged to accord, protection under the rules of international law applicable in armed conflict, with intent to betray that confidence (for example the feigning, without the use of a protective sign, of a surrender or of an intention to negotiate) (P. I, Art. 37). It is prohibited to kill or wound treacherously (Hague Regulations, Art. 23 [b]).

Ruse

It is prohibited to make use in an armed conflict of the flags or military emblems, insignia or uniforms of adverse Parties while engaging in attacks or in order to shield, favour, protect or impede military operations (Hague Regulations, Art. 23 [f]; P. I, Art. 39).

Protective signs

It is prohibited to make improper use of protective signs (red cross, flag of truce, etc.) (Hague Regulations, Art. 23 [f]; P. I, Art. 37).

Search for casualties

After an engagement, an armistice or a cease-fire, local arrangements must be made whenever circumstances permit for the removal, exchange and transport of the wounded left on the battlefield (C. I, Art. 15; C. II, Art. 18).

Jean de Preux

Former Legal Adviser at the ICRC
