

Chapter 2: **Combatants and Civilians**

IHL

- Who is Combatant?
- Who is Civilian?
- The Basis for Distinction
- Duty of Combatants to Distinguish themselves from the Civilian Population
- The Concept of Distinction in Modern Conflicts

The Content of IHL is **PROTECTION** of

1) Combatants

2) Non-combatants

- Soldiers *hors de combat* (Sick, wounded, surrendered, POWs)
- Civilians

Who is a Combatant?

AP 1 GC define all members of **armed forces** except medical and religious personnel

- Members of a State's armed forces, Soldiers/officers, Others (participants in hostilities), Militia and Volunteer corps, *levee en masse* (spontaneously take up arms)

Armed force full conditions:

- ✓ Command-subordinate and subject to an internal disciplinary system
- ✓ Distinctive emblem recognizable at a distance
- ✓ Carry arms openly
- ✓ Conduct their operations in accordance with the laws and customs of war.

Why for defining combatants?

- ❖ **Only Combatants Protected under GC3- right to participate directly in hostilities**
 - ❖ **Lack of combatant status, deprive to acquire the secondary status of prisoner of war and entail criminal responsibility**
 - ❖ **To impose duty to distinguish themselves from civilians:** carries his arms openly, wearing an appropriate uniform,
 - ❖ **Failure to discharge their duties: prosecuted and punished under the national criminal law of the detaining power, breach of the duty of distinction, perfidy**
- Q. Is there any protections for non combatant warriors?**

levee en masse

- Defn: The inhabitants of a territory which has not yet been occupied who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to form themselves into armed units.
- 4 Requirements to obtain the primary status of combatants: (1)only in territory which is not occupied,(2)take up arms 'spontaneously' on the approach of the enemy,(3)principle of authorization, (4) respect the laws and customs of war

Who is a Civilian?

- ❖ The law of war is based on the very simple idea that hostilities should take place **exclusively** between the armed forces of the conflicting parties.
- ❖ Military operations against civilians are not and never have been a permissible method of winning the war
- ❖ **Civilians: All non combatants or all those who are not members of the armed forces. (art.50 of AP1, ICTY in Blaskic case)**
- ❖ Protected by IHL, from the law of humanity and from the dictates of public conscience, as the Martens clause so appropriately states-so long as they may not take part in hostilities

Martens clause

“This agreement shall be governed by the laws of the State of New York, and the parties hereby irrevocably and exclusively submit to the jurisdiction of the courts of the State of New York for the purpose of settling by arbitration all disputes which may arise out of or in connection with this agreement.”

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**Vulnerable civilians :Refugees,
stateless person, children, women**

GC 4

- ❑ Prohibits the use of civilians **as a shield** to protect certain areas of installations of military importance, from enemy attack.
- ❑ Forbids collective punishment of civilians and measures aimed at intimidating or terrorizing the civilian population, pillage, hostage-taking and reprisals against civilians

Con...

- ❖ **civilian who participates directly in hostilities loses protection against attack-**
- ❖ **Exception *levee en masse*(Lieber Code and the Brussels Declaration, Hague Regulations and the Third Geneva Convention)**
- ❖ **In case of doubt as to whether a person is a civilian or not, that person shall be considered to be a civilian**



The Basis for Distinction

- ❖ Distinction shall be made between civilians and combatants(AP 1)
- ❖ “the only legitimate object which states should endeavor to accomplish during war is to weaken the military forces of the enemy”(St. Petersburg Declaration)
- ❖ directing attack against civilians is prohibited (Amended protocol II and protocol III to the convention on Certain Conventional Weapons and in the Ottawa Convention banning anti-personnel landmines, ICJ in Nuclear Weapons case, ICC in *Tadic case*, *Martic case* and *Kupreskic case*,)

Duty of combatants to distinguish themselves from the civilian population

Chapter 3: Protection of Prisoners of War

Chapter outline

- **Who is prisoner of war(POW)?**
- **Protection and treatment of POW**
- **Duties of POW**
- **Repatriation of POW**

Who is prisoner of war(POW)?

- Members of the armed forces or combatants who fall into the hands of the adverse party during an international armed conflict
- Categories of persons listed under GC3:
 - Members of a resistance movement belonging to a party to the conflict
 - Civilian members of ship and aircraft crews, war correspondents
 - *levee en masse*

The advantage of having POW status

- They are allowed to wear their uniforms,
- They continue to be subordinate to their own officers who are themselves prisoners war
- At the end of hostilities they have to be returned to their own country without delay.
- If combatants fail to distinguish themselves from the civilian in a military operation, they do not have the right to POW status-do not benefit from more favorable treatment in accordance with the 4th GC

Cont....

- Espionage have not POW status(*CIL, Lieber Code, Brussels Declaration, and The Hague Regulations and AP1*)
- Who is espionage? Spay who gather information wearing civilian's attire or who wear the uniform of the adversary
- mercenaries– do not have POW status

Q. If some one denied the status of POW, how should s/he be treated?

AP1 defines a mercenary as:

- Specially recruited locally or abroad in order to fight in an armed conflict;
- Does, in fact, take a direct part in the hostilities;
- Motivated by desire for private gain and is promised, by or on behalf of a party to the conflict
- Is neither a national nor resident of territory controlled by a party
- Not a member of armed forces of a party to the conflict
- Has not been sent by a state which is not a party to the conflict on an official duty as a member of its armed forces.
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Protection and Treatment of POW

- GC 3 – “Prisoners of war shall at all times be treated humanely”
- Being a prisoner of war should, in no way be taken to be a form of punishment.
- Keep their legal status from the time they are captured until they are repatriated
- ❑ They can not be compelled to provide further information except name, military rank, date of birth and serial number only

cont

- ❑ Torture and other severe ill-treatment are considered war crimes
- ❑ Entitled immediately upon capture, to complete- a capture card
- ❑ Must be transferred as soon as possible out of the danger zone
- ❑ Not compelled to perform dangerous jobs, entitled to correspond with their relatives, receive aid
- ❑ Reprisal against prisoners of war are forbidden without exception

Duties of POW

- in all circumstances, are duty bound to comply with all the orders they are given by their superior who are themselves prisoners of war.

Repatriation of POW

Repatriation of POWs is a complex process involving multiple stakeholders and legal frameworks. The primary goal is to ensure the safe and dignified return of individuals who have been held captive in conflict zones.

The process typically involves several key steps: identification, verification, and coordination with relevant authorities. This includes working with international organizations like the International Committee of the Red Cross (ICRC) and national governments.

Legal considerations are paramount, ensuring that repatriation complies with international law, including the Geneva Conventions. This often involves navigating complex legal and diplomatic challenges.

Support services are crucial for the well-being of repatriated individuals. This includes medical care, psychological support, and assistance with reintegration into their home communities.

Transparency and communication are essential throughout the process. Regular updates and clear communication with the individuals and their families help manage expectations and build trust.

Successful repatriation efforts require a collaborative approach, involving government agencies, international organizations, and local community groups. Each case is unique, and tailored support is often necessary.

THANK YOU