Chapters 4 & 5

The Protection of *Hors de combat* and Civilians

Chapter 4: The Protection of Wounded, Sick, and Shipwrecked MAFs

- **Protection against the Effects of Hostilities**
- "Wounded and sick combatants to whatever nation they may belong, shall be collected and cared for." Art.6 of GC (1864)
- To this end, they must be shielded from the effects of hostilities and those who seek to help them must not come under fire.

Cont’d

- The principle of inviolability of wounded and sick military personnel and of medical personnel and equipment.
- There are two particular cases of implementation of the principle of inviolability of the wounded and sick:
- *Ratione loci:* hospital zones and localities; and
- *Ratione temporis*: truce and evacuations.

Cont'd

- Article 12 of the first Geneva Convention states that "*Members of the armed forces…. who are wounded or sick* ***shall be respected and protected*** *in all circumstances*."
- This principle imposes two kinds of obligations upon the belligerents: to respect and to protect.
- What is the difference between these obligations?

Cont’d

- **Respect** is the duty to refrain from certain acts;

It forbids attacks on, or other acts of violence against the wounded and sick.

- **Protection** is a duty to act.

It requires the belligerents to take all precautions in attack and defense so as to avoid exposing them gratuitously to danger; to remove them from the fighting and evacuate them; and to protect them from theft and pillage.

Protection Against Arbitrary Treatment

- Whenever circumstances permit and particularly after an engagement, each party to the conflict must, without delay, take all possible measures to search for, collect and evacuate the wounded, sick and shipwrecked without adverse distinction.
- The principle of non- discrimination …
- Common Article 3 of the Geneva Conventions.

Cont’d

- The wounded, sick and shipwrecked must receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition, without distinction other than medical ones.
- Each party to the conflict must take all possible measures to protect the wounded, sick and shipwrecked against ill-treatment and against pillage of their personal property.

Chapter 5: Protection of Civilians

- **Protection of Civilian Population against the Effects of Hostilities**
- The general principle that the civilian population shall be immune from the effects of the hostilities is above all based on Customary Law.
- Articles 25 to 28 of the Hague Regulations.
- In case of naval forces, Articles 1 and 2 the Hague Convention (IX) of 18 October 1970.

Protection of Civilians against Arbitrary Treatment

- Protection of civilians has always been at the heart of IHL in any armed conflict.
- This is reflected in Art.5 of GC IV & Art.75 of AP I. As per this provisions:
- The civilians concerned shall be treated humanely and shall have the right to a regular and fair judicial procedure.
- Hence, civilians shall be protected against any arbitrary treatment.

Protection of Refugees

- IHL provides protection to both displaced persons and refugees.
- IHL protects these individuals, as civilians affected by hostilities, only if they fled to a state taking part in an international armed conflicts, or if that state is beset by an internal armed conflict.
- *Do think there is a distinction between refugee from a neutral state & an enemy state?*

Cont'd

- IHL specifically protects refugees entering the territory of an enemy state against unfavorable treatment based on their nationality.
- Those considered refugees prior to the outbreak of hostilities, including those from neutral state, are always considered protected persons under IHL.
- GC IV Art 45(4) - non-refoulement