

**PONTIFÍCIA UNIVERSIDADE CATÓLICA DE MINAS GERAIS**  
**Programa de Pós-Graduação em Direito**

**O STATUS DOS COMBATENTES ILEGÍTIMOS  
DIANTE DA TERCEIRA CONVENÇÃO DE GENEBRA  
DE 1949**

**Érika Louise Bastos Calazans**

**Belo Horizonte**  
**2007**

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DE 1949**

Dissertação apresentada ao Programa de Pós Graduação em Direito da Pontifícia Universidade Católica de Minas Gerais, como requisito parcial para obtenção do título de Mestre em Direito.

Orientador: Carlos Augusto Canêdo  
Gonçalves da Silva

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2007**

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Érika Louise Bastos Calazans

O status dos combatentes desprivilegiados diante da Terceira Convenção de Genebra de 1949

Dissertação apresentada ao Programa de Pós-Graduação em Direito da Pontifícia Universidade Católica de Minas Gerais,  
Belo Horizonte, 2007.

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## RESUMO

O conflito armado engajado entre Estados Unidos e Afeganistão trouxe de volta desafios enfrentados pelo Direito Internacional Humanitário desde o século 19: o conflito armado entre estados e atores não-estatais, o critério aplicado para a qualificação como combatente legítimo e o tratamento a ser conferido aos combatentes ilegais que não se qualificam para receber o status de prisioneiro de guerra. As Convenções de Genebra de 1949 estabelecem a proteção das vítimas de guerra e categoriza aqueles que se qualificam para sua proteção. O status dos rebeldes, insurgentes, beligerantes, movimentos de libertação nacional e terroristas foi analisado sob o artigo 4 da Terceira Convenção de Genebra de 1949 e dos Protocolos Adicionais de 1977. Para estabelecer o status desses participantes do conflito armado é necessário determinar a natureza do conflito, como internacional ou interno, e qual tratado internacional é aplicado. Rebelião é um desafio interno enfrentado pelos Estados, no qual, o artigo 3, comum as Convenções de Genebra, é aplicado e esses combatentes não tem o direito de receber o status de prisioneiro de guerra, a lei doméstica é usada no caso de julgamento dos atos cometidos durante as hostilidades; no caso de reconhecimento pelo Estado da insurgência e beligerância, o conflito ganha o caráter internacional e toda a normativa de direito internacional humanitário se aplica, o status de prisioneiro de guerra pode ser conferido à esses participantes. No caso do movimento de libertação nacional, um conflito armado internacional, as normas humanitárias são aplicadas e o Protocolo Adicional I de 1977 possui um papel específico para regular esse tipo de conflito, baseado no princípio da auto-determinação dos povos. O status de combatente legítimo ou ilegítimo no conflito armado entre Estados Unidos e Afeganistão no caso dos terroristas foi estudado. Após o 11 de setembro, os Estados Unidos declarou “guerra contra o terrorismo” e engajou-se em um conflito armado contra o Afeganistão sob o argumento de que esse país dava suporte aqueles criminosos e como consequência negou o status de prisioneiro de guerra para os soldados talibãs e membros da Al Qaeda capturados. Na análise desse conflito armado três situações distintas foram argumentadas: os soldados talibãs representavam a autoridade do país e por isso, o status de prisioneiro de guerra deveria ter sido conferido; os terroristas capturados durante as hostilidades, se, membros do exército talibã deveriam também ter recebido o status de prisioneiros de guerra, mas julgados pelos seus crimes terroristas, apesar da relação entre AL Qaeda e talibã não ter ficado clara. E a terceira situação relaciona-se com os terroristas capturados durante as operações dos Estados Unidos na “guerra contra o terrorismo” que não podem ser classificadas como conflito armado, não há que se falar em status de prisioneiro de guerra uma vez que as normas humanitárias não são aplicadas. Foi concluído que o artigo 4, da Terceira Convenção de Genebra é insuficiente para alcançar todas as necessidades emergentes dos conflitos armados contemporâneos com a participação de novos atores como os terroristas. Também foi observado que somente através da determinação do status de prisioneiro de guerra os combatentes não são punidos pela mera participação nas hostilidades ativas e recebem adequado tratamento humanístico, baseado em toda a normativa existente. Para os combatentes ilegais, incapazes de preencher as condições contidas no artigo 4; a Quarta Convenção de Genebra pode ser aplicada, se o critério da nacionalidade for preenchido, senão, podem ser alvos de julgamento pela participação nas hostilidades e receber a proteção dada pelos tratados de direitos humanos.

## ABSTRACT

### **The Illegal Combatants status under the Third Geneva Convention of 1949**

Erika Louise Bastos Calazans

## ABSTRACT

The armed conflict engaged between United States and Afghanistan brought back challenges faced by International Humanitarian Law since the 19<sup>th</sup> century: the armed conflicts between states and non-states actors, the criteria applied for the qualification as a lawful combatant and the treatment to be conferred for illegal combatants that does not qualify to receive prisoner of war status. The Geneva Conventions of 1949 establish the protection of war victims and categorize those who qualify for their protection. The status of rebels, insurgents, belligerents, national liberation movements and terrorists were analyzed under article 4 of the Third Geneva Convention and Additional Protocols of 1977. In order to establish the status of these participants on the armed conflict is necessary to determinate the very nature of the conflict, if is an international or internal conflict and which international treaty is applied. Rebellion is a internal challenge faced by States on which common Article 3 of Geneva Conventions applies and these combatants are not entitled of prisoner of war status, the domestic law is used in case of trial for acts committed during hostilities; in case of the recognition by a State of insurgency and belligerency the conflict gains a international character and the hole international humanitarian normative applies and for this participants the prisoner of war status can be granted. In case of national liberation movements, an international armed conflict, the humanitarian normative is applied and Additional Protocol I of 1977 has a specific role to regulate this type of conflict based on self-determination principle. In order to establish terrorists as lawful combatants or illegal combatants in armed conflict between United States and Afghanistan were studied. After the September 11, United States declared “war against terrorism” and engaged on an armed conflict under the argument that Afghanistan supported those criminals and denied the prisoner of war status for Taliban soldiers and captured al Qaeda members. On the analysis of this armed conflict it has been argued three different situations: the Taliban soldiers represented the country authority and for that, the prisoner of war status should have been granted; the terrorists captured during the hostilities, if, members of Taliban army should also receive the prisoner of war status, but trialed for their terrorists crimes, although the relation between al Qaeda and Taliban was not clear. And the third situation is related to terrorists captured during United States operations on “war against terrorism” which was not an armed conflict; in that case, the prisoner of war could not be granted. It was concluded that article 4, of the Third Geneva Convention suffer from gaps and is insufficient to reach all the emerging necessities from current armed conflicts, and the participation of new actors such as terrorists. It was observed also that only through the determination of the prisoner of war status, combatants are not punished for mere participation in active hostilities and receive adequate humanistic treatment, based on the hole existing normative. To illegal combatants not capable of filling the conditions on article 4; the Fourth Convention applies, if the nationality criteria is filled, if not, can be target of

trial for the hostilities participation and .receives only the protection given by human rights treaties.

**Key-words:** Third Geneva Convention of 1949; Additional Protocols of 1977; international humanitarian law; prisoners of war; lawful combatants; illegal combatants.

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## 1 INTRODUÇÃO

A presente dissertação pretende discutir a situação jurídica dos combatentes legítimos e ilegítimos envolvidos nos conflitos armados e a importância da determinação do status de prisioneiro de guerra para garantir a proteção da Terceira Convenção de Genebra de 1949. Essa proteção impede que os combatentes legítimos sejam julgados e punidos pela mera participação nas hostilidades. Em contrapartida, os combatentes desprivilegiados são julgados e punidos pelos atos de beligerância cometidos. Os combatentes legítimos são aqueles que se enquadram nos critérios do artigo 4 da Terceira Convenção, já os ilegítimos ou desprivilegiados são incapazes de preencher esses critérios.

A Quarta Convenção de Genebra de 1949, relativa à população civil nos conflitos armados, desempenha um papel subsidiário na proteção desses combatentes ilegítimos, pois se preencherem o critério da nacionalidade, qual seja, se não forem nacionais do Estado que os mantém cativos, serão protegidos, mas ainda sim, julgados. Aos indivíduos que não preenchem nenhum dos critérios, um conjunto limitado de normas é aplicado para garantir sua proteção, dentre eles os tratados internacionais de direitos humanos. Um dos fatores que motiva a presente pesquisa é o debate sobre a dificuldade em determinar claramente aqueles que se enquadram nos critérios de legitimidade e aqueles que não se enquadram, demonstrando a importância da presunção do status de prisioneiro de guerra para todos aqueles sujeitos a dúvida, nos termos do artigo 5 da Terceira Convenção de Genebra.

Este trabalho divide-se em quatro partes: a primeira apresenta alguns aspectos gerais sobre a limitação dos conflitos armados e o desenvolvimento da lei relativa aos prisioneiros de guerra; a segunda parte expõe a estrutura normativa referente à proteção dos indivíduos envolvidos nos conflitos armados, em especial a Terceira Convenção de Genebra de 1949; a terceira parte discute a condição legal necessária para o status de prisioneiro de guerra e a quarta parte busca analisar os conflitos armados do Vietnã e do Afeganistão, dois casos que contam com a presença dos Estados Unidos, com posturas divergentes no que se refere à situação jurídica dos combatentes.

A primeira parte expõe alguns aspectos gerais da limitação da guerra: desde motivações sociológicas, econômicas e políticas até as limitações legais contidas nos tratados internacionais, elaborados ao longo da evolução do direito dos conflitos armados. As normas reguladoras da guerra refletem a dicotomia de duas forças conflitantes: o princípio da necessidade militar e o princípio da humanidade. Um exemplo é o conflito entre a necessidade de extrair informações sobre o inimigo dos combatentes capturados e a importância de garantir um tratamento digno, sem a prática da tortura. Este capítulo discute o desenvolvimento do *ius in bello* e do *ius ad bellum* e seu reflexo na proteção dos envolvidos nos conflitos armados, notadamente, os prisioneiros de guerra.

A segunda parte discute o aparato legal responsável por regular os conflitos armados e proteger as vítimas da guerra. As Convenções de Genebra de 1949, elaboradas com base na dura experiência vivida na Segunda Guerra Mundial, são responsáveis por declarar costumes consolidados na comunidade internacional e por protegerem as vítimas dos conflitos armados. Os I e II Protocolos Adicionais de 1977 inspiraram-se nos diversos conflitos ocorridos no cenário do pós-guerra e na necessidade de ampliação das normas contidas nas Convenções. Além da estrutura normativa, discute a importância do *ius cogens* e dos princípios que tem o caráter peremptório (o princípio da distinção, da proporcionalidade e o princípio da humanidade) no âmbito do direito humanitário.

A terceira parte analisa três dicotomias essenciais para a determinação do status dos combatentes desprivilegiados ou ilegítimos: a existência de um conflito armado e as relações de paz; a dicotomia entre os conflitos armados internacionais e internos e a condição jurídica dos combatentes legítimos e ilegítimos. Para que as normas humanitárias possam ser aplicadas não há a necessidade da declaração de guerra, nem o seu reconhecimento pelos Estados envolvidos. As normas contidas nas Convenções de Genebra tradicionalmente são aplicadas aos conflitos armados internacionais entre dois ou mais Estados, mas existem outras organizações participantes desses conflitos que também possuem legitimidade para tal, como a ONU e os governos ou autoridades legítimas.

Em relação aos conflitos armados internos aplica-se o artigo 3, comum às quatro Convenções de Genebra, e o II Protocolo Adicional de 1977, contudo, existem certos conflitos internos que possuem o caráter internacionalizante, como as guerras de libertação

nacional e as guerras civis em larga escala. Para que estes conflitos sejam internacionalizados é fundamental definir a gravidade das hostilidades, e é necessário estabelecer se os combatentes são: revoltosos, insurgentes, beligerantes e ou guerrilheiros. A revolta trata-se de uma desordem interna, aplicando-se apenas a legislação de cada Estado; para os insurgentes, devido ao nível do conflito, aplicam-se as provisões relativas aos conflitos armados internos; com o reconhecimento da beligerância, todo o aparato normativo do direito humanitário atinge o conflito. Já a guerrilha trata-se de uma tática que pode ser aplicada pelos beligerantes, ou seja, os guerrilheiros são beligerantes protegidos pelas quatro Convenções.

A proteção dos indivíduos envolvidos nas hostilidades é determinada pela condição de combatente legítimo ou ilegítimo. Os combatentes legítimos são aqueles que têm o direito de participar das hostilidades ativas e possuem a licença para matar. Estes combatentes enquadram-se nas categorias de prisioneiros estipuladas no artigo 4 da Terceira Convenção de Genebra. Os ilegítimos são aqueles que não preenchem os requisitos do parágrafo 2 do artigo 4 da Terceira Convenção, quais sejam: estar sob um comando responsável, usar sinais distintivos fixos, carregar as armas abertamente e atuar em conformidade com as leis e costumes de guerra em suas operações militares.

No que tange aos conflitos armados do Vietnã e do Afeganistão, apresentados e discutidos na quarta parte, verifica-se os posicionamentos divergentes dos Estados Unidos sobre a condição jurídica dos combatentes. Na Guerra do Vietnã, os Estados Unidos realizaram uma interpretação liberal do artigo 4 da Terceira Convenção, conferindo o status de prisioneiro de guerra aos guerrilheiros e membros irregulares de forças armadas ou milícias do Vietnã do Norte. Esse país apoiava o Governo de Saigon que entrou em colapso com o fim da Guerra da Indochina contra a França e conferiu o status de prisioneiro de guerra aos indivíduos capturados. Essa atitude demonstrou sua preocupação em garantir legitimidade a esse governo, já que o Vietnã do Norte possuía a simpatia e apoio da população civil. Em contrapartida, o governo dos Estados Unidos impôs uma interpretação restritiva para os soldados talibãs e os membros da al Qaeda, negando-lhes o status de prisioneiro de guerra. Percebe-se no caso do Afeganistão dois conflitos distintos: um entre Estados Unidos e Afeganistão, com duas forças armadas regulares, sendo os talibãs soldados

do governo *de facto* do Afeganistão e a “guerra contra o terror”, dos Estados Unidos e a al Qaeda, que na verdade não se trata de um conflito armado internacional, mas uma operação contra-terrorista, sem limites territoriais.

O estudo do presente tema justifica-se uma vez que busca compreender o conjunto normativo referente à proteção das vítimas dos conflitos armados internacionais e internacionalizados; bem como verificar a real abrangência dessas normas diante da assimetria dos conflitos armados contemporâneos. Para isso, analisam-se os textos normativos e a jurisprudência pertinente, com base na doutrina contemporânea, utilizando-se como exemplos, dois casos envolvendo um mesmo Estado, com posturas distintas sobre o status e o tratamento das pessoas envolvidas nas hostilidades.

Não apenas atores estatais participam desses conflitos armados, mas também a própria população civil, causando desequilíbrio e a ruptura da noção doutrinária tradicional da guerra. Assim, devido à volta da participação direta desses atores nos conflitos, é necessário verificar se as normas humanitárias existentes tornaram-se obsoletas e incapazes de abranger as necessidades trazidas por estes participantes, ou se ainda conseguem regular todas as situações conflituosas protegendo adequadamente os indivíduos afetados. Através do estabelecimento do status dos envolvidos nos conflitos armados, a norma humanitária adequada de proteção é aplicada, pois se um indivíduo é considerado prisioneiro de guerra não pode ser julgado e condenado pela mera participação nas hostilidades. Em contrapartida, se classificado como civil, ao preencher o critério da nacionalidade, recebe a proteção contida na Quarta Convenção de Genebra, garantindo-se em ambos os casos um tratamento digno e humano. Contudo, se a condição jurídica desses indivíduos não é estabelecida contam com garantias limitadas no âmbito do direito internacional humanitário e as proteções existentes nos tratados internacionais de direitos humanos.

## 2 ASPECTOS GERAIS DA LIMITAÇÃO DA GUERRA

### 2.1 A guerra e sua regulamentação legal

#### 2.1.1 Aspectos sociológicos da limitação da guerra

A guerra sempre existiu em todas as épocas e civilizações. Os homens sempre lutaram entre si impulsionados pela ganância, ódio, vingança, política ou simplesmente pelo desejo de impor sua vontade soberana (ARON, 1986).

“A guerra é um ato de violência através do qual, nosso oponente é compelido a realizar nossa vontade” (CLAUSEWITZ, 1979, p.101). A partir dessa afirmativa, compreende-se a guerra como meio de submissão compulsória do inimigo, em busca da resolução violenta de um conflito de interesses.

A teoria de Clausewitz (1979) confere à guerra o caráter dualista: os Estados possuem motivações, justas ou injustas para lutar; e os meios adotados no conflito, também podem ser justos ou injustos. A idéia das guerras justas e injustas surgiu na Idade Média com o desenvolvimento do cristianismo. O *jus ad bellum* (fim) significa a justiça do guerrear, o direito de agredir ou de se defender e o *jus in bello* (meio) é a justiça no guerrear, o cumprimento ou a violação das normas costumeiras e positivas de combate (WALZER, 2003). É possível a realização de uma guerra justa, sem qualquer preocupação em agir de modo justo, assim como, é possível uma guerra injusta travada em absoluta conformidade com as normas.

A dialética de Clausewitz (1979) discute a lógica da guerra. Defende a ausência de limites, não importando as restrições fáticas observadas dessa ou daquela sociedade. Imaginando-se uma guerra sem qualquer influência de fatores “acidentais”, esta seria absoluta, sem qualquer restrição quanto às armas utilizadas, os métodos, às táticas adotadas, às pessoas atacadas ou qualquer outro aspecto.

Então a lógica da guerra, para Clausewitz (1979), pode ser descrita da seguinte forma: cada adversário força o outro a agir, gerando uma ação recíproca, numa escalada contínua, na qual nenhum dos dois lados pode ser culpado, mesmo o primeiro a agir, pois cada ato pode ser considerado preventivo. A idéia de guerra absoluta tende para o máximo emprego das forças em uma escala crescente de brutalidade.

Walzer (2003, p.37) afirma que a lógica da guerra “consiste simplesmente num impulso constante na direção dos limites da moral”. A realidade se sujeita ao arbítrio humano e o comportamento do indivíduo, mesmo na guerra, é influenciado por argumentos morais para o estabelecimento de limites (SASSÒLI; BOUVIER, 2003). As pressões reais no sentido da intensificação da guerra podem ter um maior ou menor grau, conforme as diversas civilizações. No entanto, os limites podem estar na própria força dos Estados, no desejo de dar continuidade à política dos tempos de paz e na necessidade de proteger a existência dos diversos Estados para garantir o funcionamento da sociedade internacional (ROSAS, 2005).

As condições sociais e históricas influenciam a guerra e não podem ser ignoradas nem consideradas acidentais ou exteriores, pois a própria guerra é uma criação social e em cada momento histórico adota uma forma específica. Também, sob este aspecto, ela é limitada, pois “as pessoas embutiram na própria idéia de guerra, certas noções sobre quem pode lutar, que táticas são aceitáveis, quando o combate tem de ser interrompido e quais prerrogativas acompanham a vitória” (WALZER, 2003, p.38-39).

A possibilidade de sofrer o mesmo tipo de violência empregada é outro fator limitador da violência, por isso, mesmo que a guerra tenha a tendência inerente de se intensificar, também tende a se restringir. A necessidade da obtenção do consentimento social limita as ocasiões de guerra, pois quando inexistente o consentimento, os atos de força praticados pelo Estado perdem toda e qualquer justificativa anterior e passam a ser alvo de constante condenação moral. A opinião pública nacional e internacional influencia a realização e o modo do conflito (SASSÒLI; BOUVIER, 2003).

O estabelecimento de regras e normas para a condução das hostilidades expressa o interesse dos Estados beligerantes de protegerem seus objetivos políticos, o bem público e a humanidade. No entanto, os recentes avanços políticos, tecnológicos e legais colocaram a função da guerra como mecanismo para a resolução de conflitos em uma posição

questionável, pois o grau e a forma de limitação da guerra podem variar consideravelmente, dependendo do nível de desenvolvimento econômico, militar, cultural e dos objetivos políticos dos beligerantes, que podem levá-los a subjugação total do inimigo por uma mínima vantagem política.

A guerra é um ato de tirania. A força é usada contra homens e por homens, seja como membros leais ou forçados de Estados e não como indivíduos que escolhem suas próprias atividades. O extremo da tirania é: “[...] os que resistem à agressão são forçados a imitar, e talvez mesmo a ultrapassar, a brutalidade do agressor.” (WALZER, 2003, p.49)

### *2.1.2 Limitações legais da guerra*

Além dos limites de caráter histórico, moral, político, social, econômico e militar, a guerra sofre limites contidos nas normas de tratados e dos costumes praticados na sociedade internacional. “[...] Os próprios Estados que recrutam os peões da guerra estipulam o caráter moral de sua matança mútua.” (WALZER, 2003, p.69). Em outras palavras, os Estados criam as leis que irão regular a guerra, conforme suas necessidades.

A teoria da escalada da guerra e a idéia de guerra absoluta, admite certos limites, mas desconsidera a relevância das limitações legais da guerra (CLAUSEWITZ, 1979). Coadunando com o ceticismo de Clausewitz (1979), existem aqueles que observam certa discrepância entre as limitações estabelecidas na lei de regulamentação da guerra e a sua prática. No entanto, algumas considerações devem ser formuladas sobre as limitações legais da guerra.

A guerra é uma criação social (WALZER, 2003) e como tal sofre a limitação da sociedade através das normas sociais. Estas normas refletem os aspectos políticos, sociais, econômicos, morais e militares; sua aplicação tem o poder de influenciar e remodelar a realidade, caracterizando a constante interação entre as limitações legais e as extra-legais (ROSAS, 2003). Os Estados beligerantes limitam a guerra segundo seus diversos objetivos e,

inquestionavelmente, a existência e aplicação do direito internacional deriva da necessidade de protegê-los.

Na medida em que as relações estatais se desenvolvem, certas regras de comportamento com caráter legal são formuladas, gerando certo equilíbrio entre os diferentes tipos de interesses e valores humanitários. A história mostra que a partir da ocorrência de uma realidade na sociedade, seja ela altamente organizada ou não, surgem as leis aplicáveis a tal realidade.

Os Estados se preocupam com as repercussões na sociedade internacional da violação das normas relativas aos conflitos armados. Tais como, a atitude de outros Estados em relação à norma violada, a opinião pública nacional e internacional (BUGNION, 2002; SASSÒLI; BOUVIER, 2003), as sanções específicas (represálias, bloqueios econômicos) e as sanções penais (julgamento de indivíduos que cometem crimes de guerra).

As normas reguladoras da guerra refletem a dicotomia de duas forças conflitantes: o princípio da necessidade militar e o princípio da humanidade. O princípio da necessidade militar relaciona-se aos objetivos políticos e militares dos Estados beligerantes, realizando uma conexão entre a conduta na guerra e a política internacional. O princípio da humanidade baseia-se nos valores humanitários, desenvolvidos pela sociedade para regular e proteger as relações humanas. Um exemplo da dicotomia entre esses princípios é a situação dos prisioneiros de guerra. Os prisioneiros de guerra geralmente representam diretamente valores militares, econômicos e políticos para o Estado que os detém. Eles constituem a principal fonte de informação sobre o inimigo, por isso a Potência Detentora tem um interesse em mantê-los vivos, prevenindo as mortes no campo de batalha; além disso, os prisioneiros de guerra constituem também uma força de trabalho, devendo ser mantidos em condições físicas e mentais de exercer o trabalho.

A lei da guerra surgiu em um momento no qual o uso da força era lícito nas relações internacionais, quando os Estados não eram proibidos de realizar a guerra para resolver seus conflitos. Assim, era perfeitamente natural formular normas que regulassem o comportamento dos beligerantes, criando limites aos meios e métodos utilizados para definir o comportamento dos soldados em campanha (BUGNION, 2002). Atualmente, o uso da

força entre Estados é ilegal. Essa limitação do uso da força passou a vigorar com o advento da Carta das Nações Unidas em 1945.

As normas relativas ao uso da força conferem equilíbrio ao conflito partindo do princípio da necessidade militar e do princípio da humanidade, pois os conflitos armados, apesar de proibidos são uma realidade da vida internacional. Dessa forma, a sociedade internacional formulou um ordenamento jurídico, não apenas para combater<sup>1</sup>, mas para regular esse fenômeno.

O ordenamento jurídico internacional estabelece a distinção entre o direito dos conflitos armados e o direito internacional humanitário. O primeiro materializa-se no direito de Haia (*ius ad bellum*), regulador dos meios e métodos no combate, com enfoque no princípio da necessidade, e o direito de Genebra (*ius in bello*<sup>2</sup>), que estabelece a proteção das vítimas de guerra capturadas pelo inimigo, baseado no princípio da humanidade. Essa divisão<sup>3</sup> representa o atual desenvolvimento sócio-político da sociedade internacional e não é absoluta; em ambos os conjuntos de leis encontramos traços dos dois princípios. Apesar do *jus ad bellum* e do *jus in bello* possuírem existência independente, não podemos dizer que o *jus ad bellum* (direito à guerra) opera separadamente do *jus in bello* (direito na guerra) (WATKIN, 2005).

Segundo Walzer existem dois tipos de normas: aquela que estabelece quando e como os soldados podem matar e aquela que determina quem matar. Para esse autor, a primeira limita a intensidade e duração do combate, baseia-se nas transformações sociais e inovações tecnológicas; a segunda distingue as vítimas de guerra que podem ser atacadas daquelas que não podem, e “a estrutura legal de seus dispositivos aparenta persistir sem referência a sistemas sociais, como se as normas envolvidas tivessem uma ligação mais íntima com noções universais de certo e errado” (WALZER, 2003, p.72).

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<sup>1</sup> O *ius ad bellum* foi alterado para o *ius contra bellum*.

<sup>2</sup> Baseia-se em dois princípios: distinção entre combatentes e civis e os meios de empreender a guerra não são ilimitados.

<sup>3</sup> A separação entre o *ius ad bellum* e o *ius in bello* é confirmada pelo preâmbulo do Protocolo Adicional I de 1977: [...] as disposições das Convenções de Genebra de 12 de agosto de 1949 e do presente Protocolo devem ser plenamente aplicadas, em qualquer circunstância, a todas as pessoas protegidas por aqueles instrumentos, sem qualquer distinção desfavorável baseada na natureza ou na origem do conflito armado, ou nas causas defendidas pelas Partes em conflito ou a elas atribuídas [...]. I PROTOCOLO ADICIONAL DE 1977, 1998, p.5.

### 2.1.3 Desenvolvimentos gerais do direito dos conflitos armados

As primeiras manifestações da tendência à limitação da guerra foram as Convenções de Haia de 1899 e 1907 que apresentaram diversas soluções pacíficas de controvérsias. Os Estados se comprometeram a empregar todos os esforços necessários para evitar o uso da força armada.

O Pacto da Sociedade das Nações Unidas em 1919 buscou estabelecer limites à ampla liberdade dos Estados ao recurso à força. No entanto, foi incapaz de alcançar seu objetivo com a eclosão da II Guerra Mundial. O Pacto de Kellogg-Briand de 1928, instrumento de política internacional, condenou o recurso à guerra como forma de resolução das controvérsias internacionais.

A Carta das Nações Unidas de 1945 desenvolveu o sistema pacífico de resolução de conflitos, estabeleceu limites ao *jus ad bellum* e colocou fim à ampla liberdade ao recurso à força<sup>4</sup>, nos termos do artigo 2 (4):

Todos os membros deverão evitar em suas relações internacionais a ameaça ou o uso da força contra a integridade territorial ou a dependência política de qualquer Estado, ou qualquer outra ação incompatível com os propósitos das Nações Unidas. (CARTA DAS NAÇÕES UNIDAS DE 1945, 2005, p. 35).

Após a Segunda Guerra Mundial, muitos conflitos<sup>5</sup> ocorreram devido ao processo de descolonização e a noção da guerra enfrentou dificuldades, pois já era incapaz de identificar corretamente todos os conflitos existentes. A Carta da ONU de 1945, além de determinar a limitação ao recurso da força, estabeleceu o uso do termo “agressão” e “conflito armado” para designar os embates tanto de caráter internacional quanto os conflitos não-internacionais, possibilitando um maior alcance da norma.

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<sup>4</sup> O artigo 51 da Carta das Nações Unidas representa uma exceção à proibição do uso da força e dispõe que nada prejudicará o direito de *legítima defesa individual ou coletiva* no caso de ocorrer um ataque armado contra um membro das Nações Unidas.

<sup>5</sup> Ocorreram 189 conflitos desde 1945 e apenas 19 deles foram classificados por todas as partes como conflito internacional, ou seja, “guerra”. BORGES (2006, p.12-13).

Os atos praticados durante a guerra e a forma em que o sangue foi e é derramado determinam o surgimento do *ius in bello*, modernamente designado como Direito Internacional Humanitário. Segundo o CICV, este ramo do direito pode ser definido como:

As regras internacionais, de origem convencional ou costumeira, que são especificamente destinadas a regulamentar os problemas humanitários decorrentes diretamente dos conflitos armados, internacionais ou não-internacionais, e que restringem, por razões humanitárias, o direito das partes no conflito de empregar os métodos e meios de guerra de sua escolha ou que protegem as pessoas e bens afetados, ou que podem ser afetados pelo conflito. (MELLO, 1997, p.135-136).

Percebe-se que o Direito Internacional Humanitário tem como objetivo último preservar a dignidade da pessoa humana e diminuir ao máximo o sofrimento, mesmo em condições extremas, através da regulação dos meios e métodos utilizados nos conflitos armados. Atualmente, o Direito Internacional Humanitário, conta com as quatro Convenções de Genebra de 1949 e os dois Protocolos Adicionais de 1977 para a proteção das pessoas afetadas pelos conflitos armados de caráter internacional e não-internacional.

A Primeira Convenção busca a melhoria das condições dos feridos e dos enfermos das forças armadas em campanha; a Segunda Convenção estabelece a melhoria das condições dos feridos, enfermos e náufragos das forças armadas no mar; a Terceira Convenção, que será objeto de estudo nos próximos capítulos, estabelece o tratamento dos prisioneiros de guerra e a Quarta Convenção de 1949 aborda a proteção da população civil em tempo de guerra. O I Protocolo Adicional de 1977 busca a proteção das vítimas dos conflitos armados internacionais e o II Protocolo Adicional refere-se à proteção das vítimas dos conflitos armados não-internacionais.

## **2.2 O desenvolvimento da lei relativa aos prisioneiros de guerra**

### *2.2.1 Antiguidade*

Nas sociedades primitivas os prisioneiros de guerra sofriam torturas cruéis e eram mortos<sup>6</sup> ou podiam ser admitidos como membros da tribo, se fossem crianças ou mulheres. A fome levava o homem ao canibalismo e os capturados também serviam como fonte de alimento. Os prisioneiros de guerra não admitidos como membros da tribo, muitas vezes eram mortos em sacrifício para os deuses antigos, como entre os astecas e maias.

Na medida em que as ferramentas de trabalho foram desenvolvidas, o canibalismo deixou de ser uma prática e a manutenção dos trabalhadores tornou-se necessária para o cultivo da terra (ROSAS, 2005). Os indivíduos capturados eram utilizados como escravos e um bem capaz de proporcionar lucros.

Os gregos tratavam seus prisioneiros com violência, escravizava-os ou matava-os. Já em Roma, o tratamento era mais benevolente, por possuírem os romanos motivações diferentes dos gregos. Os gregos desejavam manter sua supremacia; os romanos visavam uma organização imperial pacífica, com a simpatia dos subjugados. Os prisioneiros só eram escravizados ou mortos quando praticavam algum ato infame contra Roma. Normalmente os costumes de guerra e o tratamento dos prisioneiros entre Estados Grego-romanos eram mais desenvolvidos do que as guerras destes contra os bárbaros.

### *2.2.2 Idade Média*

Com o declínio do Império Romano, a Europa foi tomada pelo feudalismo. Este sistema sócio-econômico baseava-se na descentralização e alianças pessoais dos Senhores

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<sup>6</sup> Os aborígenes norte-americanos não possuíam escravos, torturavam e matavam seus inimigos capturados.

Feudais. O mundo medieval reconhecia muitas autoridades, mas nenhuma absoluta (GRAY, 2004).

As guerras eram conduzidas no âmbito particular, entre grupos, como: senhores feudais e reis; cidades-estados e a Igreja. Não havia a noção de Estado no sentido contemporâneo. A guerra e o monopólio das armas eram os meios primários da aristocracia feudal manter o controle sobre os feudos.

O código de guerra da cavalaria e o conseqüente respeito à vida do inimigo capturado era aplicado apenas aos próprios cavaleiros, não se estendendo à população civil, mantida à mercê dos senhores feudais. Havia uma licença para matar, pilhar e destruir cidades quando era declarada a guerra.

Apesar da descentralização dos feudos, a Europa compartilhava a fé na Igreja Católica. Gradualmente, o feudalismo entrou em declínio com o aparecimento de autoridades reais e o desenvolvimento do comércio e da indústria. Enquanto este fenômeno ocorria, a guerra privada perdia terreno e a guerra pública ganhava legitimidade. Foi também na Idade Média que a noção de guerra justa e injusta se definiu. Os cristãos possuíam legitimidade para participar e empreender guerras justas.

O tratamento dos prisioneiros de guerra na Idade Média refletia as mudanças sociais e dos costumes de guerra. A escravidão começou a diminuir quando deixou de ser a base da economia européia. Os aristocratas capturados eram detidos em busca do recebimento de resgate ou troca por outro indivíduo. Já os soldados comuns eram mortos no campo de batalha quando sofriam a derrota.

A humanização do tratamento dos prisioneiros de guerra teve início com a influência do estoicismo, que “lutava” contra a violência física, defendendo a superioridade intelectual (MELLO, 1997). O estoicismo de Sêneca consagrou a preocupação com a serenidade humana ao enfrentar as tribulações da vida e as injustiças do mundo. Os estóicos buscavam a felicidade e a mediania do comportamento humano, vislumbrando a saída para as ansiedades e dificuldades humanas, na ética da ação virtuosa (BITTAR, 2002).

Através de Santo Agostinho e São Tomás de Aquino, com seus ensinamentos de igualdade, fraternidade e amor ao próximo, o cristianismo constituiu um grande passo para a humanização do tratamento dos prisioneiros de guerra. Entretanto, na luta contra o infiel,

durante as Cruzadas, admitia-se a escravidão e nas guerras entre cristãos aristocratas aplicava-se o resgate.

No mundo Islâmico já era possível encontrar normas relativas ao tratamento de civis e prisioneiros de guerra. Abu-Bakr determinou que os civis deveriam ser protegidos nas expedições realizadas na Síria. Além disso, no Código de 1280 a tortura e a mutilação eram proibidas (ROSAS, 2005).

### 2.2.3 *Modernidade*

A partir do século XVI e XVII mudanças importantes ocorreram com a consolidação do Estado soberano. As guerras privadas<sup>7</sup> foram substituídas pelas guerras públicas e somente o Estado tinha legitimidade para empreendê-las.

A Guerra dos Trinta Anos<sup>8</sup> foi um dos grandes conflitos do início dos tempos modernos na Europa. Muitos atos de anarquia e destruição ocorreram entre Católicos e Protestantes nessa guerra. Em 1648 foi firmado o Tratado de Vestfália, também chamado de Paz de Vestfália, o primeiro acordo internacional entre Estados soberanos.

A Paz de Vestfália foi seguida por mais de um século de guerras relativamente limitadas entre exércitos disciplinados e comprometidos com a prática da “boa guerra” noção desenvolvida na Idade média.

Na prática da “guerra justa”<sup>9</sup> os beligerantes acordavam em não matar os prisioneiros, taxavam o resgate conforme sua categoria, desde que não mais voltassem ao combate. Gradativamente a “guerra justa” deixou de ser uma preocupação e o foco tornou-se as regras aplicadas durante os conflitos armados. A guerra passou a ser um instrumento de política

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<sup>7</sup> A guerra privada é espécie de autotutela ou autodefesa. A resolução de conflitos tornou-se competência exclusiva do Estado. RONZITTI, Natalino. *Diritto internazionale dei conflitti armati*. 2005, p.25

<sup>8</sup> A Guerra dos Trinta anos passou por quatro fases até chegar na Paz de Vestfália: período palatino-boêmio (1618-1624); o período dinamarquês (1624-1629), o período sueco (1630-1635) e o período francês (1635-1648).

<sup>9</sup> A guerra justa era uma preocupação de diversos autores do século XVI e XVII, tais como: Vitória (1480-1546), Suarez (1548-1617) e Grotius (1583-1645). ROSAS, Allan. *The legal status of prisoners of war*. 2005, p.50-51.

nacional nas relações entre a realeza e os Estado independentes. Segundo Montesquieu (1689-1755), o direito internacional é fundado no princípio de que as Nações devem praticar em relação umas as outras o maior bem possível durante a paz e o menor mal possível durante a guerra, sem prejudicar seu real interesse.

Rousseau (2002) formulou uma nova concepção de guerra:

Não é, pois, a guerra uma relação de homem para homem, mas uma relação de Estado para Estado, na qual os particulares apenas acidentalmente são inimigos, não na qualidade de homens, nem mesmo como cidadãos, mas como soldados; não como membros da pátria, mas como seus defensores. Enfim, cada Estado não pode ter como inimigo, senão outro Estado, nunca homens, entendido que entre coisas de naturezas diversas é impossível fixar uma verdadeira relação [...] Como o objetivo da guerra consiste em destruir o Estado inimigo, tem-se o direito de matar os defensores enquanto estiverem com as armas na mão; mas tão logo as deponham e se rendam, cessam de ser inimigos ou instrumentos do inimigo, voltam a ser simplesmente homens, e não mais se dispõe de direito sobre suas vidas. Pode-se por vezes matar o Estado sem matar um único de seus membros; ora, a guerra não dá nenhum direito desnecessário ao seu objetivo. Estes princípios não são os mesmos de Grotius; não estão alicerçados nas autoridades de poetas, mas derivam da natureza das coisas e são baseados na razão. (ROUSSEAU, 2002, p.27-28).

No século XVII, os prisioneiros de guerra, inclusive aqueles que não pertenciam à aristocracia, tornaram-se propriedade do Estado nas guerras públicas e deixaram de pertencer aos indivíduos que os capturavam. Os soldados capturados recebiam o status de combatente leal, por representarem uma das partes em conflito, não podendo sofrer qualquer punição por ter participado das hostilidades. Os Estados eram responsáveis pelo pagamento do resgate com o tesouro nacional. Foi também no século XVII que o Estado retirou de si a responsabilidade sobre os soldados capturados pelo inimigo. Tal prática gerou a liberação dos prisioneiros quando a paz era selada, sem qualquer pagamento. Outra prática comum era a troca de prisioneiros de mesmo escalão ou importância (ROSAS, 2005).

#### 2.2.4 Da Revolução Francesa até as Convenções de Haia

O Renascimento trouxe uma mudança de paradigma para a sociedade. As leis não emanavam mais de Deus e o homem não mais justificava seus atos, nem os legitimava na vontade divina. O homem passou a acreditar que o poder residia em sua natureza humana.

O desenvolvimento do comércio e da indústria proporcionou o crescimento do poder político da burguesia. Somente os reis e aristocratas desfrutavam do poder, com as alterações inseridas por este desenvolvimento, o poder da burguesia foi exposto na Revolução Francesa de 1789-1793.

A Revolução Francesa foi um movimento pela proteção dos direitos humanos, tais como a propriedade privada, a liberdade de discurso, livre associação e liberdade de religião. A liberdade, fraternidade e igualdade serviram de fundamento para a Revolução.

Em 1792 a Assembléia Nacional Francesa, influenciada pela nova ideologia, promulgou uma lei estabelecendo que os atos de crueldade, insultos e violência em relação aos prisioneiros de guerra seriam punidos do mesmo modo que eram reprimidos os atos contra cidadãos franceses.

A Revolução Francesa deu início à discussão sobre a categoria de pessoas que deveria receber o status de combatente leal e, por conseguinte, de prisioneiro de guerra. Antes das mudanças inseridas por este evento a guerra era empreendida por forças armadas profissionais e havia uma tendência à recusa do status de combatente leal aos levantes populares não devidamente incorporados às forças armadas regulares. No entanto, as forças armadas da Revolução Francesa eram compostas por uma grande quantidade de voluntários, conscritos e oficiais burgueses. Em razão disso, a Assembléia Nacional de 1792 decretou que oficiais e soldados das forças voluntárias deveriam ser tratados como prisioneiros de guerra quando capturados (ROSAS, 2005).

A Revolução Francesa foi seguida pelas guerras napoleônicas, responsáveis pelo desenvolvimento do *jus in bello* e do *jus ad bellum*. O objetivo era ampliar a proteção material dos direitos pessoais da burguesia que temia a destruição das novas formas de guerra.

Os principais desenvolvimentos foram no âmbito filosófico através de Montesquieu, Vattel e Rousseau.

Codificações mais detalhadas sobre a regulação da guerra e sobre os prisioneiros de guerra surgiram somente no século XIX, com os primeiros tratados multilaterais. A primeira Convenção multilateral nesta área foi a Declaração de Paris de 1856<sup>10</sup> sobre lei marítima.

No ano de 1859 ocorreu a batalha de Solferino. Henry Dunant presenciou diversas atrocidades e pôde verificar o tratamento precário oferecido às vítimas de guerra. No ano de 1863 foi criado o Comitê Internacional da Cruz Vermelha<sup>11</sup> com a realização da Conferência Internacional de Genebra, firmando o segundo tratado multilateral sobre o direito na guerra: a Convenção de Genebra de 1864 para a melhoria das condições dos feridos das forças armadas em campanha. Esta Convenção foi revista e ampliada em 1906, estendendo-se às vítimas do conflito naval, os náufragos.

O desenvolvimento moderno das codificações referentes à guerra contou também com a Declaração de São Petersburgo de 1868 sobre o uso, em tempos de guerra, de explosivos; a Declaração de Bruxelas de 1874, que não chegou a ser ratificada, possuía uma parte devotada aos prisioneiros de guerra<sup>12</sup>; o Manual de Oxford de 1880 trazia a definição do termo, no artigo 2<sup>13</sup>.

A Conferência de Haia de 1899 ficou conhecida como Conferência de Paz e contribuiu decisivamente para a codificação das leis e costumes de guerra. Esse encontro falhou em impor a arbitragem e o desarmamento para os Estados, mas produziu dois

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<sup>10</sup> A Declaração foi assinada em 16 de abril de 1856 pela França e Reino Unido originalmente. O tratado foi ratificado por 54 Estados.

<sup>11</sup> Em 1863 o Comitê Internacional da Cruz Vermelha era chamado de Comitê Internacional para ajuda dos militares feridos, somente em 1876 recebeu o nome que perdura na atualidade.

<sup>12</sup> Os artigos 9, 10 e 11 da Declaração de Bruxelas de 1874 estabelecem as categorias de combatentes e não-combatentes.

<sup>13</sup> O Manual de Oxford de 1880 adotado pelo Instituto de Direito Internacional, definiu no artigo 2: “Art. 2. The armed force of a State includes: 1. The army properly so called, including the militia; 2. The national guards, landsturm, free corps, and other bodies which fulfill the three following conditions: (a) That they are under the direction of a responsible chief; (b) That they must have a uniform, or a fixed distinctive emblem recognizable at a distance, and worn by individuals composing such corps; (c) That they carry arms openly; 3. The crews of men-of-war and other military boats; 4. The inhabitants of non-occupied territory, who, on the approach of the enemy, take up arms spontaneously and openly to resist the invading troops, even if they have not had time to organize themselves. Os artigos 21-22 e 61 também abordam a questão dos prisioneiros de Guerra.

importantes acordos: a Convenção para a adaptação dos conflitos marítimos e a Convenção sobre a lei e os costumes da guerra na terra.

As Convenções da Haia de 1899<sup>14</sup> e 1907<sup>15</sup> estabeleceram uma divisão mais precisa entre combatentes e civis. Assim as seguintes categorias receberiam o status e proteção como prisioneiros de guerra: a) os membros regulares das forças armadas; b) membros das milícias e corpos voluntários que não fazem parte das forças armadas, mas que preenchem as condições do artigo 4<sup>16</sup> da III Convenção; c) os membros do *levées en masse*, civis que espontaneamente oferecem resistência às tropas invasoras; d) indivíduos acompanhando o exército sem diretamente fazer parte dele, como correspondentes de guerra; e) membros da tripulação da marinha mercante do inimigo e f) membros das famílias reais, oficiais do governo, agentes diplomáticos e outras pessoas em situação similar. Os membros das forças armadas irregulares, espíões, desertores e mercenários eram alvo de detenção e julgamento, mas não tinham o direito de receber o status de prisioneiro de guerra.

No mesmo período surgiram manuais militares, como o Código Americano de Lieber<sup>17</sup> de 1863 e legislações nacionais, tais como a Regulação da França sobre prisioneiros de guerra de 1859 e 1893 e a Regulação da Rússia de 1877, também sobre prisioneiros de guerra.

As nações “civilizadas” eram as únicas beneficiadas pelas normas elaboradas. No meio do século XIX estas nações eram compostas pela Europa e países da América. Dos países asiáticos somente a Turquia, o Japão, o Sião e a China eram admitidos entre estas nações.

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<sup>14</sup> As Convenções da Haia de 1899 dispõem: normas e costumes da guerra em terra (Convenção nº II) e faz uma adaptação dos princípios da Convenção de Genebra de 1864 às hostilidades marinhas (Convenção nº III).

<sup>15</sup> As Convenções da Haia e 1907 dispõem: normas e costumes da guerra em terra (Convenção nº. IV) e realiza uma adaptação dos princípios da Convenção de Genebra de 1906 às hostilidades marítimas (Convenção nº. X).

<sup>16</sup> The conditions are: 1) that these forces be commanded by person responsible for his subordinates; 2) that they have a fixed distinctive emblem recognizable at a distance; 3) that they carry arms openly; and 4) that they conduct their operations in accordance with the laws and customs of war.

<sup>17</sup> Foi inspirado na guerra civil norte-americana.

### 2.2.5 Da Primeira Guerra Mundial até as Convenções de Genebra de 1949

A Primeira Guerra Mundial (1914-1918) foi caracterizada pela violência em grande escala, sem qualquer precedente. O aumento do número de Estados participantes do conflito, de combatentes e de indivíduos capturados gerou certa dificuldade em aplicar a normativa internacional existente para a proteção e tratamento dos prisioneiros de guerra. Nas palavras de Bugnion:

Morte e destruição não são os únicos legados de um conflito longo. A Grande Guerra deixou a antiga estrutura de direito humanitário em ruínas, assim como as cidades e a sessão rural da Europa, onde os maiores exércitos do mundo se encontraram durante quatro anos. As Convenções de Haia, em particular, mostraram sua fraqueza, ruindo sob o peso de repetidas violações e o recurso de represálias; sua falta de precisão e a ausência de qualquer supervisão e medidas punitivas tornaram suas provisões ineficazes<sup>18</sup> (BUGNION, 2003, p. 118, *tradução nossa*).

As Convenções da Haia de 1899 e 1907 apresentavam certa preocupação com a proteção dos prisioneiros de guerra. No entanto, no curso da Primeira Guerra Mundial deficiências foram encontradas na norma, tais como a falta de precisão na sua aplicação e as discrepâncias no tratamento dos prisioneiros. Esses tratados estavam longe de adequadamente garantir a proteção das vítimas de guerra. Para superar essas dificuldades e deficiências, os beligerantes concluíram acordos bilaterais detalhados sobre o tratamento dos prisioneiros de guerra e a repatriação dos doentes e feridos, em 1917 e 1918. No entanto, esses tratados tiveram efeito tardio para prevenir os abusos no tratamento dos prisioneiros (BUGNION, 2003), apenas após a assinatura da Alemanha do Armistício<sup>19</sup>.

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<sup>18</sup> Death and destruction are not the only legacies of a long conflict. The Great War left the old structure of humanitarian law just as ruined as the towns and countryside of Europe where the world's largest armies had fought one another for four years. The Hague Conventions, in particular, had shown their weakness, crumbling under the weight of repeated violations and the recourse to reprisals; their lack of detail and the absence of any kind of supervision and punitive measures made most of their provisions ineffective.

<sup>19</sup> "Armistice: a military convention drawn up for political and military purposes and therefore containing, besides purely military clauses, political and economic clauses for the primary purpose of suspending active hostilities, over the whole theatre of war, usually for an indefinite period. An armistice does not put an end to the state of war, which subsists with all its legal consequences. Only a government may take the initiative in

O Comitê Internacional da Cruz Vermelha atuou durante a guerra. Fez o levantamento de informações<sup>20</sup> sobre a situação dos indivíduos capturados e as transmitiu para os Estados, mas as Convenções de 1906 e 1907 falharam em fornecer ao Comitê Internacional bases nas quais pudesse trabalhar, uma vez que não conferiu poderes, nem mencionou em seu texto, a organização para realizar ações diretas. Em 1921, na Conferência Internacional realizada em Genebra, o Comitê Internacional da Cruz Vermelha expressou o desejo de elaborar uma convenção destinada especificamente ao tratamento dos prisioneiros de guerra.

Diante das atrocidades cometidas na Primeira Guerra Mundial e da visível necessidade de normas capazes de proteger adequadamente as vítimas dos conflitos armados, foi convocada em 1929 uma Conferência Diplomática em Genebra para a elaboração da Convenção de Genebra relativa à proteção e tratamento dos prisioneiros de guerra de 1929; participaram 47 Estados, sendo 25 Estados europeus e 22 Estados não-europeus. Esta Convenção não substituiu, mas completou as Convenções da Haia. As maiores inovações dessa Convenção foram a proibição de represálias contra os prisioneiros de guerra, artigo 2 (3), a captura e evacuação dos prisioneiros de guerra, a previsão de penalidades coletivas, artigo 46 (4), a organização do trabalho dos prisioneiros, a designação de representantes pelos prisioneiros, artigo 43-44, e o controle do exercício da Potência Detentora<sup>21</sup>.

A Segunda Guerra Mundial (1939-1945) teve início como uma guerra européia, mas se espalhou rapidamente, levando a violência para um nível de destruição global. Enquanto o conflito de 1914-1918 permaneceu essencialmente na Europa, o de 1939-1945 foi um conflito mundial em todos os sentidos. Os recursos industriais, científicos e tecnológicos estavam a serviço da guerra na produção de meios de destruição em massa, atingindo diretamente mais de cinquenta milhões de vítimas, mortas ou desaparecidas. Pela primeira vez na história o número de vítimas civis foi superior ao número de soldados mortos ou

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proposing an armistice. Besides making provision for general armistice just mentioned, international law provides for local armistices for collection, exchange and transfer of wounded.” VERRI, 1992, p.21-22.

<sup>20</sup> A Agência Internacional dos Prisioneiros de guerra realizou o levantamento das informações sobre a situação dessas vítimas durante a Grande Guerra. Essa Agência foi criada pela Resolução VI da Conferência de Washington. Maiores detalhes : Bugnion (2003, p.84-85).

<sup>21</sup> Detaining power: in an international armed conflict, the Power holding wounded, sick and shipwrecked members of armed forces, medical and religious personnel, civilian internees or prisoners of war belonging to the adverse party.” VERRI, 1992, p.41.

feridos. A destruição física foi enorme, devastando casas, transportes, campos de agricultura e seus equipamentos, gerando a miséria, fome e doenças. Bugnion (2003) resume o cenário da Segunda Guerra Mundial:

O cataclisma da Segunda Guerra Mundial foi sem precedentes em termos de perda da vida humana, destruição física e declínio moral. Nunca antes a Guerra levou a tal lamentação, agonia e devastação; nunca antes ocorreu a distorção nihilista dos valores humanos que levaram a tal desumanidade<sup>22</sup>. (BUGNION, 2003, p. 170-171, *tradução nossa*).

A Convenção de Genebra de 1929 protegia os soldados doentes e feridos e quase todos os países ratificaram o texto. Para que a lei tivesse pleno efeito, todos os Estados envolvidos deveriam ser partes, no entanto, Japão e União Soviética não o eram. A lei relativa aos prisioneiros de guerra foi constantemente violada, além de gerar uma diferenciação no tratamento de prisioneiros de guerra conforme suas influências ideológicas e nacionalidade, já que os países em questão não haviam ratificado as convenções. Todos os países em guerra contra a União Soviética e Japão estavam livres de qualquer obrigação, sob o Código dos prisioneiros de guerra. Como resultado, a Convenção era obrigatória apenas entre os aliados, Alemanha e Itália.

Muitos problemas surgiram com a aplicação da Convenção de Genebra de 1929, relativa ao tratamento dos prisioneiros de guerra, tais como o status dos combatentes que representavam governos no exílio, membros de movimentos organizados de resistência operando em territórios ocupados e o status dos prisioneiros alemães após a rendição da Alemanha em 1945 (ROSAS, 2005).

O Comitê Internacional da Cruz Vermelha pôde atuar ativamente no auxílio de prisioneiros de guerra capturados durante a Segunda Guerra Mundial. A experiência adquirida inspirou a Conferência Diplomática em Genebra de 1946, que incluiu em sua pauta a revisão das duas Convenções de Genebra de 1929, assim como das Convenções de Haia de 1907. Em 1948, realizou-se em Estocolmo, uma Conferência de Especialistas Governamentais, na qual foram delineadas as quatro novas

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<sup>22</sup> The cataclysm of the Second World War was unprecedented in terms of the loss of human life, physical destruction and moral decline. Never before had war led to such mourning, agony and devastation; never before had the nihilistic distortion of human values led to such inhumanity”.

Convenções para a proteção das vítimas nos conflitos armados. Estas Convenções foram adotadas na Conferência Diplomática de Genebra de 1949 que contou com a participação de 64 países (BUGNION, 2003). A terceira Convenção de Genebra de 1949 substituiu a Convenção de 1929 sobre o tratamento dos prisioneiros de guerra.

A Terceira Convenção de Genebra de 1949 contém 143 artigos, enquanto a Convenção de 1929 contém 97. A Convenção de 1949 estabeleceu de forma mais precisa as condições de cativeiro dos prisioneiros de guerra, a forma de desenvolvimento do trabalho dos prisioneiros, seus recursos financeiros, sua libertação e os procedimentos judiciais contra eles. A Convenção de Genebra de 1949 também determina o princípio fundamental de que os prisioneiros devem ser soltos e repatriados tão logo as hostilidades ativas tenham sido finalizadas<sup>23</sup>.

As quatro Convenções de Genebra de 1949 são textos legais mais abrangentes e visam regular a situação dos feridos e enfermos no campo de batalha, em alto-mar e a situação dos prisioneiros de guerra e civis. Esta regulamentação aplica-se à pessoa humana instrumento no conflito de interesses dos Estados para que possa guardar menores frações das seqüelas deixadas pela guerra.

#### *2.2.6 Os protocolos adicionais de 1977*

No final da Conferência Diplomática de 1949, a esperança expressa era de que os Governos nunca precisassem utilizar as Convenções de Genebra e a paz reinasse nas relações internacionais (BUGNION, 2003). Tal declaração não passa de uma esperança pia, já que a rivalidade entre os dois grandes blocos aumentava, o desmembramento dos impérios coloniais ocorria e a instabilidade política se espalha no mundo, gerando conflitos em diversos países.

Durante os conflitos, aqueles países que aplicavam as Convenções de Genebra ofereciam uma proteção efetiva às vítimas de guerra, mas isso não era uma constante, já que

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<sup>23</sup> Artigo 118 da Terceira Convenção de Genebra de 1949.

o direito internacional enfrentava novos desafios com os novos tipos de conflitos que ainda não haviam sido vivenciados: as guerras de libertação nacional, “[...] conflito interno que na realidade eram guerras agenciadas entre as superpotências, intensificadas por suas intervenções abertas ou clandestinas; subversões armadas ou guerras revolucionárias; ou conflitos diretos entre duas ou mais facções dentro de nações divididas.”<sup>24</sup> (BUGNION, 2003, p.320, *tradução nossa*).

A experiência vivida ressaltava as discrepâncias entre as normas contidas nas Convenções de Haia, revisadas pela última vez em 1907, e o direito de Genebra de 1949. As maiores divergências encontravam-se na proteção da população civil contra os efeitos das hostilidades e nos meios e métodos de guerra, já que as normas estavam visivelmente arcaicas, com a possibilidade do uso de armas nucleares. As Convenções de Genebra foram elaboradas após a experiência da Segunda Guerra Mundial, não conseguindo alcançar as emergentes necessidades.

As guerras de libertação nacional ocorreram basicamente em países de Terceiro Mundo<sup>25</sup> que não participaram da elaboração das normas de direito internacional humanitário e almejavam que estas fossem alteradas para alcançar com precisão sua realidade e necessidades.

A solução encontrada pelo sistema das Nações Unidas e pelo Movimento da Cruz Vermelha foi a elaboração de protocolos adicionais capazes de complementar o texto das Convenções de Genebra de 1949. A primeira Conferência realizada pelo CICV foi em junho de 1971 com a presença de 190 especialistas governamentais, representantes de quarenta e um países. O segundo encontro foi realizado em junho de 1972 com mais de 400 especialistas governamentais, representantes de setenta e sete Estados. Além desses encontros o CICV realizou outros: em março de 1971 em Haia e em março de 1972 no Vietnã.

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<sup>24</sup> [...] internal conflicts which were in reality proxy wars between the superpowers, fuelled by their overt or covert intervention; armed subversion or revolutionary wars; or straightforward conflicts between two or more factions within divided nations.

<sup>25</sup> Em 1951 ocorreu a independência da Líbia e Omã; 1953 proclamação da República do Egito e golpe no Irã; em 1954 teve início a guerra na Argélia; 1956, independência do Marrocos, do Sudão e da Tunísia; 1960, independência da Somália; 1961, independência do Kuwait; 1975, início da guerra civil no Líbano. Estes são alguns exemplos de guerras de libertação nacional ocorridas no período anterior a elaboração dos Protocolos Adicionais de 1977. Maiores detalhes: VIZENTINI, 2002.

Com base nesses encontros foram elaborados dois protocolos adicionais para as Convenções de Genebra de 1949. O primeiro estabeleceu a proteção das vítimas de conflitos armados internacionais e o segundo determinou a proteção das vítimas de conflitos armados não-internacionais. Em 1973 foi realizada em Teerã a 22ª Conferência Internacional da Cruz Vermelha, onde se iniciou a discussão sobre a adoção dos protocolos, mas foi na Conferência para a Reafirmação e Desenvolvimento do Direito Internacional Humanitário Aplicável nos Conflitos Armados, realizada em Genebra, em quatro sessões (fevereiro a março de 1974, fevereiro a abril 1975, abril a junho de 1976 e março a junho de 1977) que os Protocolos Adicionais foram finalmente aprovados. Os I e II Protocolos Adicionais entraram em vigor no dia 7 de dezembro de 1978 e ampliaram a proteção às vítimas de guerra oferecidas pelas Convenções de Genebra de 1949.

### **3 A ESTRUTURA LEGAL RELATIVA AOS PRISIONEIRO DE GUERRA NA ATUALIDADE**

#### **3.1 Os tratados relativos aos prisioneiros de guerra na atualidade**

##### *3.1.1 Terceira Convenção de Genebra de 1949*

Na atualidade a fonte mais importante referente aos prisioneiros de guerra é a Terceira Convenção de Genebra de 1949, com 143 artigos. Possui presença quase universal<sup>26</sup> na Sociedade Internacional, aceita em 194<sup>27</sup> países do mundo.

A Convenção discorre sobre a captura e guarda de combatentes da parte adversa, conferindo a eles o status de prisioneiro de guerra; garante direitos e confere obrigações; aproximando-se do contexto geral de promoção dos direitos humanos (BORGES, 2006; BUGNION, 2003; ROSAS, 2005). Em seu artigo 4, determina objetivamente os indivíduos protegidos. No entanto, os critérios para estabelecer quem se enquadra ou não na categoria de combatente para receber o status de prisioneiro de guerra, levantam questões que não foram devidamente respondidas pelo tratado. O Protocolo Adicional I de 1977 consegue suprir algumas dessas questões, discutidas nos capítulos subsequentes.

O artigo 6 da Convenção preceitua: “nenhum acordo especial poderá prejudicar a situação dos prisioneiros tal como está regulamentada pela presente Convenção, nem restringir os direitos que esta lhes confere”(III CONVENÇÃO DE GENEBRA DE 1949,1992, p. 65) e o artigo 7 completa: “os prisioneiros de guerra não poderão em caso algum, renunciar, total ou parcialmente aos direitos que lhes são conferidos pela presente

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<sup>26</sup> “The Geneva Conventions have therefore attained a degree of universality comparable to that of United Nations Charter or the founding charters of some of its specialized agencies, such as ILO, UNESCO, WHO and FAO. They are one of the rare sets of rules which have received the unanimous support of the international community”. BUGNION, 2003, p.315.

<sup>27</sup> Atualmente 194 países ratificaram as Convenções de Genebra de 1949, 167 ratificaram o Protocolo Adicional I de 1977 e 163 ratificaram o Protocolo Adicional II de 1977. A lista desses países encontra-se no site do Comitê Internacional da Cruz Vermelha, CICV.

Convenção e pelos acordos especiais referidos no artigo anterior, caso estes existam”(III CONVENÇÃO DE GENEVRA DE 1949, 1992, p. 65).

A Terceira Convenção protege os interesses dos prisioneiros de guerra e discorre sobre o tratamento dos prisioneiros de guerra durante o cativeiro, em 97 (Título III) dos seus 143 artigos. A estrutura da Convenção é assim disposta: Título I – Disposições gerais (artigos 1 a 11); Título II – Proteção Geral dos Prisioneiros de Guerra (Artigos 12 a 16); Título III – Cativeiro (Artigos 17 a 108); Título IV – Fim do Cativeiro (Artigos 109 a 121); Título V – Departamentos de informação e sociedades de socorro relacionadas com os prisioneiros de guerra (Artigos 122 a 125); Título VI – Aplicação da Convenção (Artigos 126 a 143) .

O Título III é um dos mais importantes, abrangendo o início e fim do cativeiro. Durante o cativeiro os prisioneiros recebem direitos como: higiene e assistência médica (artigos 29 a 32); alojamento, alimentação e vestuário (artigos 25 a 28); assistência religiosa (artigo 33); liberdade religiosa, intelectual e a possibilidade de exercitar-se (artigos 34 a 38). A Convenção também dispõe sobre o relacionamento dos prisioneiros de guerra com o exterior (artigos 69 a 77) e o relacionamento dos prisioneiros com as autoridades (artigos 78 a 108); garante a oportunidade de prestarem queixa sobre o regime de cativeiro (art.78), escolha de representantes (art. 79, 80 e 81) e sanções penais e disciplinares (artigos 82 a 108). Vejamos sua disposição geral:

### Título III – Cativeiro

#### *Seção I – Início do Cativeiro (17-20)*

#### *Seção II – Internamento dos prisioneiros de guerra (21-48)*

##### *Capítulo I – Generalidades (21-24)*

##### *Capítulo II – Alojamento, alimentação e vestuário dos prisioneiros de guerra (25-28)*

##### *Capítulo III – Higiene e assistência médica (29-32)*

##### *Capítulo IV – Pessoal, médico e religioso retido para assistir aos prisioneiros de guerra (33)*

##### *Capítulo V – Religião, atividades intelectuais e físicas (34-38)*

##### *Capítulo VI – Disciplina (39-42)*

##### *Capítulo VII – Postos de prisioneiros de guerra (43-45)*

*Capítulo VIII – Transferência de prisioneiros de guerra depois de sua chegada ao campo (46-48)*

*Seção III – Trabalho dos prisioneiros de guerra (49-57)*

*Seção IV – Recursos pecuniários dos prisioneiros de guerra (58-68)*

*Seção V – Relacionamento dos prisioneiros de guerra com o exterior (69-77)*

*Seção VI – Relacionamento dos prisioneiros de guerra com as autoridades (78-108)*

*Título IV – Fim do Cativo (109-143)*

O texto da norma é bastante preciso e detalhista, um exemplo é o artigo 27:

O vestuário, incluindo a roupa íntima e os calçados, será fornecido em quantidade suficiente pela Potência detentora, que deverá ter em consideração o clima da região na qual estão os prisioneiros. Os uniformes dos exércitos inimigos capturados pela Potência detentora poderão ser utilizados para vestir os prisioneiros de guerra, se forem adequados ao clima da região. A substituição e o reparo regulares desses artigos deverão ser assegurados pela Potência detentora. Por outro lado, deverão ser fornecidos aos prisioneiros de guerra que trabalharem vestimentas apropriadas, conforme requerido pela natureza do trabalho. (III CONVENÇÃO DE GENEBRA DE 1949, 1992, p. 72-73).

No que tange a repatriação dos prisioneiros de guerra (artigos 118 e 119) a Terceira Convenção de Genebra de 1949 modificou, ampliou e especificou o estabelecido pela Convenção de 1929. A Potência Detentora tem a obrigação de libertar e repatriar os prisioneiros sem demora, tão logo terminem as hostilidades ativas.

A Convenção lida com os interesses subjetivos dos prisioneiros de guerra, tratados como representantes de uma entidade política e legal inimiga, por isso, é correto afirmar que este tratado estabelece obrigações para as Altas Partes Contratantes em busca da proteção de seus próprios interesses, externada na necessidade de conferir direitos aos indivíduos capturados.

Observa-se que os princípios dispostos na Terceira Convenção de Genebra de 1949, assim como nas outras Convenções de 1949 baseiam-se da experiência vivida durante as duas Guerras Mundiais, especialmente na segunda. Foi nessa guerra que os conflitos modernos se desenvolveram, com armas de destruição em massa e a violência em larga escala, marcando a humanidade e aproximando-se da guerra absoluta de Clausewitz (1979).

A partir dessa experiência as Convenções desenvolveram dispositivos tão detalhados, capazes de orientar precisamente a conduta das Potências beligerantes sobre o tratamento das vítimas de guerra.

### *3.1.2 As outras Convenções de Genebra de 1949*

As Convenções de Genebra de 1949 guardam grande similaridade e complementaridade por terem sido elaboradas conjuntamente. Os artigos 1 a 3 são comuns à todas as Convenções e versam sobre a aplicação geral das mesmas. Os artigos 6 a 11 são comuns às três primeiras Convenções e os artigos 7 a 12 da Quarta Convenção versam sobre acordos especiais, a impossibilidade de renúncia a direitos, sobre as Potências Protetoras<sup>28</sup> e seus substitutos<sup>29</sup>, assim como sobre procedimentos de conciliação.

Todas as Convenções possuem uma ligação direta com a Terceira Convenção de Genebra, pois os enfermos e feridos protegidos na Primeira Convenção; os enfermos, feridos e náufragos da Segunda Convenção se enquadram nos critérios estabelecidos pelo artigo 4 da Terceira Convenção. Os artigos 14 e 16 da Primeira Convenção e da Segunda Convenção estabelecem essa relação de forma expressa. O artigo 14 dispõe: “Considerando o disposto no artigo 12, são prisioneiros de guerra os feridos e enfermos de um beligerante que caírem em poder do adversário, sendo-lhes aplicáveis as regras do direito das gentes relativas aos prisioneiros de guerra.” (III CONVENÇÃO DE GENEBRA DE 1949, 1992, p. 67-68).

A Quarta Convenção de Genebra de 1949, relativa à proteção dos civis vítimas dos conflitos armados não carrega consigo nenhuma disposição direta e expressa sobre sua relação com a Terceira. E por isso, existe certa dificuldade de enquadrar alguns indivíduos

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<sup>28</sup> Protecting Power: “the power whose duty it is to safeguard the interests of the parties to the conflict, and of their nationals in enemy territory. There are special regulations governing the choice and activity of those Powers and of their substitutes, if any (GC I-III arts 8-11; GC IV arts. 9-12; H CP art. 21; P I art. 5). VERRI,1992,p.91.

<sup>29</sup> As Potências Protetoras geralmente são escolhidas entre países neutros, mas o CICV pode ser um substituto.

envolvidos nas hostilidades, seja como combatente legítimo, seja como civil. Sobre essa relação discutiremos nos capítulos subseqüentes.

### *3.1.3 A relação entre as Convenções de Direito Humanitário e as Convenções relativas à proteção dos Direitos Humanos*

Além da profunda relação existente entre o direito de guerra e o direito na guerra, o Direito Internacional Humanitário possui os mesmos fundamentos éticos compartilhados pelos Direitos humanos (CHETAIL, 2003; HEINTZE, 2004; ROSAS, 2005). Apesar de suas diferenças históricas e suas especificidades normativas, a idéia central de proteção da dignidade da pessoa humana é encontrada em ambos os conjuntos de normas, confirmando sua complementaridade e convergência. Os tratados internacionais de direitos humanos são aplicados também durante os conflitos armados.

Existem tratados internacionais de direitos humanos, tais como a Convenção Internacional sobre Direitos Civis e Políticos de 1966, que expressamente prevêem sua aplicação durante situações de emergência pública. Essa convenção é aplicada no tratamento dos prisioneiros de guerra.

A Convenção sobre Direitos Civis e Políticos contém diversas provisões que são aplicadas aos prisioneiros de guerra, como o artigo 8, parágrafos 1 e 2, com a proibição da escravidão e servidão; o artigo 16, com o direito a ser reconhecido como pessoa e o artigo 18, liberdade de pensamento, consciência e religião. A maioria das provisões contidas nessa Convenção, de uma forma ou de outra, encontram-se na Terceira Convenção de Genebra de 1949, apresentada no item 3.1.1.

A Corte Internacional de Justiça (CIJ) confirma o caráter complementar e convergente dos direitos humanos ao direito humanitário, reconhecendo sua aplicação continua durante os conflitos armados. Assim vejamos:

A Corte observa que a proteção da Convenção Internacional sobre Direitos Civis e Políticos não cessa nos tempos de guerra, exceto pela operação do artigo 4 da Convenção onde certas provisões podem ser derogadas nos casos de emergência

nacional. O respeito ao direito à vida [garantido pelo artigo 6 da Convenção Internacional] não é, contudo, tal provisão. Em princípio, o direito de arbitrariamente retirar a vida de uma pessoa é determinado pela *lex specialis*, nomeado, lei aplicável aos conflitos armados, criada para regular a condução das hostilidades. Assim, quando ocorre a perda de um vida em particular, através do uso de certa arma no conflito, deve ser considerada uma privação arbitrária da vida, contrária ao artigo 6 da Convenção, e pode apenas ser decidida pela lei aplicável ao conflito armado e não deduzida pelos termos da Convenção em si.<sup>30</sup> (Legalidade do uso de Armas Nucleares, p. 240, *tradução nossa*).

A Convenção Européia para Proteção dos Direitos Humanos e Liberdades Fundamentais de 1950, um instrumento regional, em seu artigo 15, estabelece o destino das normas de direitos humanos em situações em que a vida de uma nação é ameaçada pela guerra ou por uma emergência pública. Essa Convenção proíbe expressamente a derrogação de certos direitos durante os conflitos armados, tais como, o direito à vida, a liberdade de crença e a proibição da tortura. Estes direitos não podem ser derogados em nenhuma circunstância e devem ser aplicados sem exceção (HEINTZE, 2004).

O artigo 3, comum às quatro Convenções de Genebra, contém uma lista de direitos que devem ser protegidos em todas as circunstâncias e associam-se diretamente com os direitos humanos não-derrogáveis. Verifica-se aqui a aplicação cumulativa dos direitos humanos e do direito humanitário, garantindo um mínimo de padrões de humanidade.

Outro exemplo de instrumento regional que pretende a proteção dos direitos humanos, mesmo nos conflitos armados é a Convenção Americana de Direitos Humanos de 1969. Esta Convenção estabelece, no artigo 27, direitos humanos que não podem ser derogados nos tempos de guerra. A Convenção sobre Direitos Civis e Políticos possui cláusula de emergência similar a dos instrumentos regionais no seu artigo 4.

Todos esses instrumentos demonstram que os direitos humanos são parte intrínseca do complexo normativo que regula os conflitos armados e outras situações emergenciais.

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<sup>30</sup> The Court observes that the protection of the International Covenant of Civil and Political Rights does not cease in times of war, except by operation of Article 4 of the Covenant whereby certain provisions may be derogated from in a time of national emergency. Respect for the right to life [guaranteed under Article 6 of the International Covenant] is not, however, such a provision. In principle, the right not arbitrarily to be deprived of one's life, however, then falls to be determined by the applicable *lex specialis*, namely, the Law applicable in armed conflict which is designed to regulate the conduct of hostilities. Thus whether a particular loss of life, through the use of a certain weapon in warfare, is to be considered an arbitrary deprivation of life contrary to Article 6 of the Covenant, can only be decided by reference to the Law applicable in armed conflict and not deduced from the terms of the Covenant itself.

Consideram a obrigação dos Estados de respeitar os direitos não-derrogáveis em todas as circunstâncias, inclusive durante os conflitos armados (CHETAIL, 2003; HEINTZE, 2004; ROSAS, 2005).

A Convenção sobre os Direitos da Criança, adotada em 1989, apresenta substancial intercessão entre a proteção internacional dos direitos humanos e o direito internacional humanitário, constituindo progresso considerável na codificação para proteger as vítimas dos conflitos armados. O artigo 38 (1) do tratado obriga os Estados a garantir o respeito das regras de direito humanitário referentes à proteção das crianças. Esse artigo relaciona-se diretamente com o artigo 77 do I Protocolo Adicional de 1977, pois visivelmente repete as provisões contidas nesse tratado.

As Convenções de Genebra de 1949 são normas que tem como fundamento a proteção da pessoa humana, aplicadas a circunstâncias específicas, não excluindo o caráter complementar e convergente dos tratados de direitos humanos. A convergência significa a intercessão no escopo da proteção, ou seja, permite uma aplicação cumulativa de ambos os corpos normativos e tem fundamento na teoria da complementaridade<sup>31</sup> (HEINTZE, 2004), na qual os tratados de direitos humanos preenchem lacunas existentes no direito humanitário.

### **3.2 Os Protocolos Adicionais de 1977**

Os I e II Protocolos Adicionais de 1977 representam um avanço na extensão da proteção humanitária e carregam consigo algumas respostas para as lacunas da III Convenção de Genebra, tais como o aumento da proteção da população civil contra os ataques indiscriminados, ampliação do status dos combatentes nas guerras de libertação nacional e nas situações de guerrilha, desenvolvimento da implementação do direito internacional humanitário e aumento da proteção tanto dos civis quanto dos combatentes nos conflitos armados não-internacionais (ROSAS, 2005). Estes tratados são produtos dos anos 1970 e

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<sup>31</sup> A teoria da complementaridade tem exemplos práticos recentes: Kuwait em 1990-1991 e Iraque 2003-2004. Maiores detalhes em Heintze (2004,p.794-795).

refletem a atmosfera de confronto da guerra fria, talvez isso explique o fato de alguns dos principais atores<sup>32</sup> do cenário político internacional ainda não os terem ratificado (BORGES, 2006). Um exemplo dessa contribuição é o artigo 75, do Protocolo Adicional I de 1977, que foi reconhecido como direito internacional costumeiro e estende a proteção dos direitos humanos para todos os beligerantes detidos. Assim, vejamos parte do supracitado artigo:

[...] 1. Na medida em que forem afetadas por uma situação prevista pelo artigo 1 do presente Protocolo, as pessoas que estiverem em poder de uma Parte em conflito e não se beneficiarem de um tratamento mais favorável, nos termos das Convenções e do presente Protocolo, serão, em qualquer circunstância, tratadas com humanidade e se beneficiarão pelo menos das proteções previstas pelo presente artigo, sem qualquer distinção de caráter desfavorável baseada em raça, cor, sexo, língua, religião ou crença, opiniões políticas ou outras, origem nacional ou social, fortuna, nascimento ou outra situação, ou qualquer outro critério análogo. Todas as Partes respeitarão a pessoa, a honra, as convicções e práticas religiosas de todas essas pessoas. [...] 3. Toda pessoa presa, detida ou internada por atos relacionados com o conflito armado será informada sem demora das razões por que aquelas medidas foram tomadas, em uma língua que compreenda. Exceto em caso de prisão ou detenção por motivo de infração penal, será libertada no prazo mais curto possível, e em qualquer caso, desde que tenham cessado as circunstâncias que justificavam sua prisão, sua detenção ou sua internação. [...] 6. As pessoas presas, detidas ou internadas por motivos relacionados com o conflito armado se beneficiarão das proteções previstas pelo presente artigo até sua libertação definitiva, seu repatriamento ou seu estabelecimento, mesmo após o fim do conflito armado. [...] 8. Nenhuma disposição do presente artigo poderá ser interpretada como limitando ou infringindo qualquer outra disposição mais favorável, assegurando, nos termos das regras do direito internacional aplicável, uma proteção maior às pessoas abrangidas pelo parágrafo 1. (I PROTOCOLO ADICIONAL DE 1977, 1998, p.61-64).

O I Protocolo Adicional de 1977 é o mais importante para o presente estudo e relaciona-se com a proteção das vítimas dos conflitos armados internacionais, possuindo 102 artigos. O parágrafo 2 do artigo 1 expressa: “os civis e os combatentes ficarão sob a proteção e a autoridade dos princípios de direito internacional, tal como resulta do costume estabelecido, dos princípios humanitários e das exigências da consciência pública”.

O artigo 41 estabelece a proibição do ataque aos inimigos fora de combate (*hors de combat*), os artigos 43 e 44 determinam a proteção do combatente membro das forças

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<sup>32</sup> Os Estados Unidos não ratificaram o Protocolo Adicional I de 1977 sob o argumento de que este protege e incentiva o terrorismo internacional. O Presidente Ronald Reagan afirmava que o reconhecimento das guerras de libertação nacional e garantir o status de combatente aos membros das forças armadas irregulares não satisfazia o critério tradicional de combatente.

armadas e estabelecem critérios para a determinação do status de prisioneiro de guerra; o artigo 45 protege as pessoas que tomam parte nas hostilidades; os artigos 46 e 47 excluem, respectivamente, o tratamento como prisioneiro de guerra para espões e mercenários. Os artigos 43, 44 e 45 relacionam-se diretamente aos artigos 4 e 5 da Terceira Convenção de Genebra de 1949, o primeiro define aqueles intitulados prisioneiros de guerra e o segundo aplica-se aos casos em que há dúvidas sobre o status de prisioneiro de guerra de certo indivíduo.

No que tange a população civil, o artigo 50 define os indivíduos integrantes desse grupo e o artigo 51 estabelece a proteção dos mesmos; complementando a Quarta Convenção de Genebra de 1949. Os artigos 92, 93, 94, 95 e 96 dispõem sobre a assinatura, ratificação, adesão e entrada em vigor do Protocolo I. O artigo 99 determina que a denúncia deve ser feita por escrito, produzindo efeito apenas à Parte denunciante e nenhuma denúncia notificada tem efeito sobre as obrigações já contraídas em virtude de conflito armado e sobre atos já cometidos.

O II Protocolo Adicional de 1977 determina a proteção das vítimas dos conflitos armados internos, com 28 artigos. O parágrafo 2 do artigo 1 exclui a aplicação do tratado nas “situações de tensão e perturbação internas, tais como motins, atos de violência isolados e esporádicos e outros atos análogos, que não são considerados conflitos armados”, ou seja, aplicar-se-á o tratado quando ocorrer um conflito interno que atinja parâmetros internacionais. O artigo 2 preceitua que não há qualquer caráter de distinção na aplicação da norma. O artigo 4 determina as garantias fundamentais para os indivíduos afetados pelo conflito; os artigos 7, 8, 9 e 10 protegem os feridos, enfermos e náufragos, complementando a Primeira e a Segunda Convenções de Genebra de 1949; os artigos 13, 14, 15, 16, 17 e 18 protegem a população civil afetada, novamente realizando complementos a Quarta Convenção e o artigo 19 e seguintes dispõem sobre assinatura, ratificação, adesão, entrada em vigor, denúncia e notificações. Esse tratado não tem interferência na determinação do status de prisioneiro de guerra ou nos princípios tradicionais aplicados aos combatentes, ele apenas confere garantias mínimas às pessoas envolvidas nos conflitos armados.

### 3.3 Os costumes internacionais e o *ius cogens*

A existência de tratados internacionais sobre a proteção dos prisioneiros de guerra não retira do costume internacional e do *ius cogens* sua relevância. A Corte Internacional de Justiça (CIJ), através de sua opinião consultiva e sua jurisprudência, possui um papel fundamental para a compreensão da conexão entre as Convenções de Genebra de 1949, o direito costumeiro e o *ius cogens*.

O direito costumeiro é estabelecido através de práticas regulares reconhecidas como normas. Pode-se dizer que o costume é constituído basicamente de dois elementos. O primeiro é a uniformidade da prática, ou seja, “a repetição contínua do mesmo comportamento através dos anos” (BUGNION, 2003, p.345). Diferentes sujeitos realizam ações semelhantes em relação a situações similares de forma consideravelmente extensiva e uniforme. O segundo elemento está no reconhecimento de que este direito uniforme e contínuo corresponde a uma necessidade ou dever. A força obrigatória do direito costumeiro está em sua convicção, em outras palavras, na crença da existência de um direito ou obrigação, chamado de *juris sive necessitatis*. O artigo 38 do Estatuto da Corte Internacional de Justiça (1945) define o direito costumeiro como “[...] uma prática geral aceita como sendo o direito.”

O direito costumeiro tem relevância para o Direito Internacional Humanitário (DIH), pois existem algumas situações nas quais ele pode atuar. Em primeiro lugar, pode ser que algum país envolvido em um conflito armado não tenha ratificado as Convenções de Genebra de 1949, nessa situação os costumes são aplicados; em segundo lugar ainda existem aspectos sobre o regime dos prisioneiros de guerra que não são expressamente cobertos pela Convenção; e em terceiro lugar, existe a possibilidade de uma das partes do tratado ter formulado alguma reserva sobre alguma de suas provisões. O costume internacional carrega consigo um alto grau de aceitação na sociedade internacional e por isso é essencial no âmbito do direito internacional humanitário.

A Corte Internacional de Justiça em 1949, no Caso do Canal de Corfu; refere-se indiretamente à natureza costumeira dos tratados de direito internacional humanitário

(CHETAIL, 2003). Este caso discute a obrigação de notificar a existência de campos minados, contidas na Convenção de Haia, n. VIII, de 1907. A Albânia, uma das partes em conflito, não ratificou esse tratado. A Corte declara:

A incumbência da obrigação sobre as autoridades albanianas consistia em notificar, para o benefício da navegação em geral, a existência de minas nas águas territoriais albanianas e alertar os navios britânicos que se aproximavam do perigo iminente que as minas os expunham. Tais obrigações baseiam-se, não na Convenção de Haia de 1907, n. VIII, mas nos princípios reconhecidos: considerações elementares de humanidade; e na obrigação de todos os Estados de não deixar o seu território ser usado para a prática de atos contrários ao direito de outros Estados.<sup>33</sup> (O Caso do Canal de Corfu - Méritos, p. 22, *tradução nossa*).

A Corte entende que provisões específicas da Convenção de Haia de 1907 declaram princípios gerais do direito internacional. E portanto, mesmo que implicitamente, admite-se a natureza costumeira das normas expressas na Convenção (RONZITTI, 2001). Em 1986, no caso concernente às Atividades Militares e Paramilitares contra e na Nicarágua a Corte reitera seu posicionamento:

Se um Estado em qualquer território marítimo (...) falhar em dar qualquer notificação ou aviso de qualquer forma, em detrimento da navegação pacífica e da segurança, comete uma violação contra os princípios do direito humanitário expostos nas provisões específicas da Convenção n. VIII de 1907.<sup>34</sup> (Caso concernente as Atividades Militares e Paramilitares contra e na Nicarágua, p.112, *tradução nossa*).

No mesmo caso, a Corte Internacional de Justiça também examina a natureza costumeira das Convenções Internacionais de Genebra de 1949. A reserva formulada pelos Estados Unidos aos tratados internacionais multilaterais parece impedir a Corte de aplicar as

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<sup>33</sup> The obligations incumbent upon the Albanian authorities consisted in notifying, for the benefit of shipping in general, the existence of minefield in Albanian territorial waters and in warning the approaching British warships of the imminent danger to which the minefield exposed them. Such obligations are based, not on The Hague Convention of 1907, n. VIII, recognized principles, namely: elementary considerations of humanity, even more exacting in peace than in war; the principle of the freedom of even more exacting in peace than in war; the principle of the freedom of maritime communication; and every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States.

<sup>34</sup> "If a State lays in any waters whatever (...) and fails to give any warning or notification whatsoever, in disregard of the security of peaceful shipping, it commits a breach of the principles of humanitarian law underlying the specific provisions of Convention n. VII of 1907".

Convenções de Genebra. A Corte, contudo, entende não ser necessário fazer qualquer consideração sobre a reserva dos Estados Unidos, pois:

A conduta dos Estados Unidos será julgada em conformidade com os princípios gerais fundamentais do direito humanitário. [...] As Convenções de Genebra em algumas questões desenvolvem, e em outras não são mais do que a expressão de tais princípios.<sup>35</sup> (Atividades Militares e Paramilitares contra e na Nicarágua, p. 218, *tradução nossa*).

A denúncia do tratado não retira a obrigação das Partes em conflito de permanecerem obrigadas ao cumprimento dos princípios gerais do direito internacional, dos usos e costumes estabelecidos entre as nações e das normas humanitárias ditadas pela consciência pública (CHETAIL, 2003). A Terceira Convenção de Genebra de 1949 expressa no artigo 142, parágrafo 4:

A denúncia só será válida em relação à Potência denunciante. Não terá efeito algum sobre as obrigações que continuam a caber às Partes em conflito em virtude dos princípios do direito das gentes, tal como resulta dos usos e costumes estabelecidos entre nações civilizadas, dos princípios humanitários e das exigências da consciência pública. (III CONVENÇÃO DE GENEBRA DE 1949, 1992, p. 112).

A posição de norma costumeira das Convenções de Genebra de 1949 é confirmada através do seu próprio texto, pois este tem como base princípios estabelecidos desde o século XIX, contidos nas Convenções de Haia e na Convenção de Genebra de 1929<sup>36</sup>. O artigo 3, comum a todas as Convenções de Genebra de 1949, contém disposições claramente inspiradas nas “considerações de humanidade elementares”<sup>37</sup>. No entanto, nem todas as provisões contidas na Terceira Convenção alcançaram a posição de direito costumeiro, um exemplo é o artigo 4 e a determinação do status dos prisioneiros de guerra, pois não há uma aplicação ou um entendimento uniforme dessa norma.

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<sup>35</sup> “The conduct of the United States may be judged according to the fundamental general principles of humanitarian law. (...) The Geneva Conventions are in some respects a development, and in other respects no more than the expression of such principles”

<sup>36</sup> O Tribunal de Nuremberg em 1945 confirmou que as Convenções de Haia, n. IV de 1907 declaravam o direito e os costumes de guerra. Maiores detalhes em : Rosas ( 2005, p 98-99) e Chetail (2003, p. 245-246).

<sup>37</sup> Termo usado pela Corte Internacional de Justiça para designar os princípios de humanidade expostos no artigo 3 comum às quatro Convenções de Genebra de 1949.

Em 1996, em sua opinião consultiva sobre a Legalidade do Tratado sobre o Uso de Armas Nucleares, a Corte confirma seu posicionamento de dez anos atrás no caso da Nicarágua e no Caso do Canal de Corfu, afirmando, de forma ambígua, que as Convenções de Haia declaram os princípios e normas costumeiras e as Convenções de Genebra baseiam-se nesses princípios ampliando-os.

No que tange ao *ius cogens*, também é importante compreender sua relevância e relação com a Terceira Convenção de Genebra de 1949. O *ius cogens* trata-se de normas peremptórias de direito internacional associadas à noção de ordem pública, essenciais para a comunidade de Estados. A Convenção de Viena de 1969 define essas normas em seu artigo 53:

É nulo um tratado que, no momento de sua conclusão, conflite com uma norma imperativa do Direito Internacional geral. Para os fins da presente Convenção, uma norma imperativa de Direito Internacional geral é uma norma aceita e reconhecida pela comunidade internacional dos Estados como um todo, como norma da qual nenhuma derrogação é permitida e que só pode ser modificada por norma ulterior de Direito Internacional geral da mesma natureza. (CONVENÇÃO DE VIENA DE 1969, 2005, p.270).

Segundo o entendimento da CIJ, as normas de *ius cogens* relacionam-se com as obrigações *erga omnes*, em vários contextos, em especial com DIH, com os direitos humanos fundamentais, com a proibição do uso da força e o direito de autodeterminação dos povos. A primeira referência realizada pela Corte à obrigação *erga omnes* foi em relação à proibição do genocídio em sua opinião consultiva sobre Reservas a Convenção para a Prevenção e Punição do Crime de Genocídio de 1951. A Corte Internacional de Justiça, nas palavras de Cheitail (2003):

Considera que a adoção da Convenção para a Prevenção e Punição do Crime de Genocídio em 1948 teve o efeito de cristalizar a ilegalidade do genocídio como uma obrigação *erga omnes*. Em segundo lugar, admite que não apenas a ilegalidade do genocídio em si adquiriu o status de uma obrigação *erga omnes*, mas toda a Convenção, incluindo particularmente a obrigação de trazer a julgamento ou a extradição de pessoas que tenham cometido, incitado ou tentado cometer tal crime internacional.<sup>38</sup> (CHETAIL, 2003, p.250, tradução nossa).

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<sup>38</sup> The Court considers that the adoption of the Convention on the Prevention and Punishment of the Crime of Genocide in 1948 had the effect of crystallizing the outlawing of genocide as an obligation *erga omnes*.

Ao contrário da clareza sobre o Crime de Genocídio, a obscuridade prevalece sobre a posição das normas aplicáveis a condução das hostilidades e a proteção das vítimas de guerra. A Corte apenas declara que as normas fundamentais de direito humanitário devem ser observadas pelos Estados, independentemente de terem ratificado ou não as Convenções, pois estas normas constituem princípios intransgredíveis de direito costumeiro internacional (CHETAIL, 2003; ROSAS, 2005).

A declaração de que as normas contidas nas Convenções de Genebra de 1949 possuem princípios intransgredíveis pode gerar duas interpretações. A primeira de que os princípios fundamentais de direito humanitário são realmente normas imperativas, ou seja, *ius cogens*, gerando a obrigação *erga omnes* e a segunda de que a Corte reconhece implicitamente o caráter peremptório de tais normas, mas se conteve, perdendo a oportunidade de aclarar o posicionamento do direito humanitário.

Assim, o posicionamento fundamental de direito costumeiro das normas de direito humanitário é indiscutível. No entanto, a ligação entre suas normas e o seu potencial como *ius cogens* fica prejudicado devido à falta de clareza da Corte. Apesar disso, os princípios fundamentais do direito humanitário, são indiscutivelmente normas peremptórias.

### 3.3.1 Os princípios fundamentais do Direito Internacional Humanitário

Os princípios fundamentais do Direito Internacional Humanitário (DIH) podem ser agrupados em três grupos: princípios fundamentais relativos à condução das hostilidades; princípios relativos ao tratamento das pessoas no poder da Parte adversa e os princípios relativos à implementação do DIH.

Os princípios fundamentais relativos à condução das hostilidades estão na necessidade da distinção entre combatentes e civis, na proibição do uso de armas que causem

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Secondly, it admits that it is not only the outlawing of genocide itself which has acquired the status of an obligation *erga omnes*, but the entire Convention, including in particular the obligation to bring to trial or extradite persons having committed, incited or attempted to commit such an international crime.

sofrimento desnecessário (proporcionalidade) e no princípio de humanidade contido na Cláusula Martens.

A distinção entre combatentes e não-combatentes é um princípio fundamental contido nas Convenções de Genebra de 1949 que busca a proteção da população civil e de objetos civis, pois determina aqueles que podem ser atingidos pelas hostilidades ativas; posto que somente os combatentes devam ser alvos de ataques, ao passo que os civis deverão ser preservados (CHETAIL, 2003; GEIB, 2006; ROSAS, 2005; WATKIN, 2005).

O primeiro instrumento multilateral preocupado com a distinção entre combatentes e não-combatentes foi a Declaração de São Petersburgo de 1868. Desde então, diversos instrumentos reiteram essa distinção, mas foi com a adoção dos Protocolos Adicionais de 1977 que esse princípio atingiu o nível universal. O artigo 48 do I Protocolo Adicional estabelece:

Com vista a assegurar o respeito e a proteção da população civil e dos bens de caráter civil, as Partes em conflito devem sempre fazer a distinção entre população civil e combatentes, assim como entre bens de caráter civil e objetivos militares, devendo, portanto, dirigir suas operações unicamente contra objetivos militares. (I PROTOCOLO ADICIONAL DE 1977, 1998, p. 39).

O segundo princípio determina a proibição do uso de armas que causem o sofrimento desnecessário aos combatentes, retirando dos Estados à liberdade na escolha dos meios e métodos utilizados no combate. Esse princípio também se encontra na Declaração de São Petersburgo de 1868, nas Regulações de Haia de 1899 e 1907 e foi reafirmado no I Protocolo Adicional de 1977.

A Cláusula Martens recebeu esse nome na Conferência de Paz na Haia de 1899 em homenagem a um delegado russo, sua versão moderna está contida no parágrafo 2 do artigo 1 do Protocolo Adicional I de 1977. Essa cláusula é um direito costumeiro, tem o caráter normativo e regula a conduta dos Estados no caso de haver a ausência de uma norma em particular. Os princípios fundamentais relativos ao tratamento das pessoas no poder da parte adversa encontram-se expressos no artigo 3, comum às quatro Convenções de Genebra de 1949, ou seja, as vítimas do conflito devem receber tratamento humano e digno. Esse

dispositivo era o único adotado no caso dos conflitos armados internos, até a adoção do Protocolo Adicional II de 1977.

No que tange aos princípios relativos à implementação do direito internacional humanitário, encontramos a obrigação de respeitar e garantir o respeito do direito humanitário; a assistência humanitária e a proibição do genocídio.

A obrigação de respeitar e garantir o respeito do direito humanitário está expressa no artigo 1 das Convenções de Genebra e no I Protocolo Adicional dispõe: “as Altas Partes contratantes se comprometem a respeitar e fazer respeitar o presente protocolo em todas as circunstâncias.” Essa provisão relaciona-se diretamente com o caráter especial do direito humanitário e determina que cada membro da comunidade internacional está obrigado a cumprir e a garantir o cumprimento dessas normas.

O princípio da assistência humanitária preceitua o auxílio durante os conflitos armados sem discriminação de qualquer tipo, em busca da real proteção contra o sofrimento causado pela guerra à pessoa humana.

Sobre a prevenção e punição do crime de genocídio, o mesmo constitui um princípio do *ius cogens* e acarreta a obrigação *erga omnes*. A qualificação legal do crime de genocídio independe do tipo de conflito armado, interno ou internacional ou sequer da existência de um conflito. Além disso, os Estados possuem jurisdição universal no direito internacional para prevenir e punir o crime de genocídio, ou seja, não existem limites territoriais para combatê-lo.

### 3.3.2 A força obrigatória da Terceira Convenção de Genebra de 1949

A Conferência Diplomática de 1949 tomou o cuidado de garantir a força obrigatória das Convenções de Genebra que estavam sendo discutidas quando omitiu intencionalmente a cláusula geral de participação, *clausula si omnes*, contida na Convenção de Genebra de 1929. Essa omissão permite que a norma seja aplicada inclusive em relação aos países que não são partes dos tratados. O artigo 2, comum às quatro Convenções estipula:

Além das disposições que devem entrar em vigor em tempo de paz, a presente Convenção será aplicada em caso de guerra declarada ou de qualquer outro conflito armado que possa surgir entre duas ou mais Altas Partes Contratantes, mesmo que o estado de guerra não seja reconhecido por uma delas.

A Convenção será igualmente aplicada em todos os casos de ocupação total ou parcial do território de uma Alta Parte Contratante, mesmo que essa ocupação não encontre qualquer resistência militar.

Se uma das Potências em conflito não for parte na presente Convenção, as potências que nela são Partes manter-se-ão, no entanto, ligadas pela referida Convenção, em suas relações recíprocas. Ficarão, por outro lado, ligadas por esta Convenção à referida Potência, se esta aceitar aplicar suas disposições. (III CONVENÇÃO DE GENEBRA DE 1949, 1992, p. 62).

Os artigos 62, 61, 141 e 157 comuns às quatro Convenções, complementam o disposto no parágrafo 3 do artigo 2. Os Estados engajados em conflitos armados de caráter internacional ou não internacional tornam-se obrigados ao cumprimento dos tratados quando declaram sua aceitação ao Conselho Federal Suíço, tal notificação tem efeito imediato.

No que tange a denúncia, os artigos 63, 62, 142 e 158, também comuns às quatro Convenções, produzem efeitos um ano após sua notificação ao Conselho Federal Suíço, que comunicará a notificação aos Governos de todas as Altas Partes Contratantes. A denúncia só tem validade em relação à Potência denunciante. “Não terá efeito algum sobre as obrigações que couberem às Partes em conflito em virtude dos princípios do direito das gentes, tal como resultam dos usos e costumes estabelecidos entre nações civilizadas, dos princípios humanitários e das exigências da consciência pública.” (Art.63 (3), I CONVENÇÃO DE GENEBRA DE 1949, 1992, p.38).

Bugnion (2003) formula a seguinte reflexão sobre a denúncia:

Dada à universalidade das Convenções e seus padrões morais internacionais, é difícil imaginar que qualquer país, uma vez parte, poderia denunciá-las.

Por outro lado, é concebível que ao invés de denunciar a Convenção – o que poderia ter repercussões *vis-à-vis* para todas as partes contratantes – um país em Guerra poderia decidir suspender sua aplicação em relação ao adversário, com base nas flagrantes violações das provisões básicas pelo oponente<sup>39</sup>. (BUGNION, 2003, p. 315, *tradução nossa*).

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<sup>39</sup> “Given the universality of the Conventions and their international moral standing, it is hard to imagine that any country, once party to them, would denounce them. On the other hand, it is conceivable that instead of denouncing the Conventions – which would have repercussions *vis-à-vis* all contracting parties – a country at war might decide to suspend their application in regard to its adversary, on the ground that the latter had blatantly violated their basic provisions.”

Dessa forma, o Estado, ao invés de denunciar a Convenção, poderia se embasar na falta de reciprocidade para deixar de aplicá-la. Na verdade, é de aceitação geral no Direito Internacional que o Estado diretamente prejudicado por uma brecha material de um tratado, tenha o direito de suspender a aplicação total ou em parte do tratado em relação ao outro Estado (BROWNLIE, 1997, p.201).

A Convenção de Viena de 1969, no artigo 60, parágrafo 1 confirma o posicionamento de Brownlie (1997): “Uma violação substancial de um tratado bilateral por uma das partes autoriza a outra parte a invocar a violação como causa de extinção ou suspensão da execução de tratado, no todo ou em parte”. Esta é uma forma de represália, adotada pelo Estado lesado pela brecha, de penalizar o Estado responsável. Represálias inevitavelmente levam ao abuso e geram contra-represálias. As partes ficam presas em medidas e contramedidas como desculpa para deixar de cumprir obrigações, com possíveis atos violentos.

Em relação às Convenções de Genebra, os Estados signatários abriram mão das represálias, tornando-as proibidas no âmbito do Direito Internacional Humanitário, conforme disposto no artigo 46, 47, 13 e 33, comuns às quatro Convenções: “Estão proibidas as medidas de represália contra feridos, enfermos, pessoal, edifícios ou material protegidos pela Convenção.” As Altas Partes Contratantes não tem permissão de se eximir do cumprimento dos tratados, mesmo que a parte adversa o faça. O artigo 60, parágrafo 5 da Convenção de Viena de 1969, em relação ao Direito Internacional Humanitário afirma: “Os parágrafos 1 a 3 não se aplicam às disposições sobre a proteção da pessoa humana contidas em tratados internacionais de caráter humanitário, especialmente às disposições que proíbem qualquer forma de represália contra pessoas protegidas por tais tratados.”

Um tratado internacional torna-se obrigatório para todas as nações quando a grande maioria das nações expressa sua concordância, a vontade da minoria não-parte do tratado é sobreposta em razão da expressão de um padrão ou obrigação pela maioria dos Estados subscritos. O tratado de direito internacional humanitário é distinto por restringir a conduta que de outra forma seria anárquica (SASSÒLI; BOUVIER, 1999). A força obrigatória das Convenções de Genebra de 1949 está no fato das partes terem se comprometido a cumpri-las em todas as circunstâncias.

## 4 A CONDIÇÃO LEGAL PARA O STATUS DE PRISIONEIRO DE GUERRA

### 4.1 A existência de um conflito armado

Antes de ser analisada a categoria de pessoas intituladas prisioneiros de guerra é necessário compreender algumas questões. A primeira delas é a dicotomia entre os conflitos armados e as relações nos tempos de paz.

Como visto anteriormente, as Convenções de Haia de 1899 e 1907 e a Convenção de Genebra de 1929 estão associadas à concepção clássica da guerra e foram silenciosas quanto à sua aplicabilidade, obviamente, seu uso era direcionado em tempo de guerra. Já as Convenções de Genebra de 1949 juntamente com a Carta das Nações Unidas introduziram a noção de conflito armado. O artigo 2, comum às quatro Convenções preceitua:

Além das disposições que devem entrar em vigor em tempo de paz, a presente Convenção será aplicada em caso de guerra declarada ou de qualquer outro conflito armado que possa surgir entre duas ou mais Altas Partes Contratantes, mesmo que o estado de guerra não seja reconhecido por uma delas.

A Convenção será igualmente aplicada em todos os casos de ocupação total ou parcial do território de uma Alta Parte Contratante, mesmo que essa ocupação não encontre qualquer resistência militar.

Se uma das Potências em conflito não for Parte na presente Convenção, as potências que nela são Partes manter-se-ão, no entanto, ligadas pela referida Convenção, em suas relações recíprocas. Ficarão, por outro lado, ligadas por esta Convenção à referida Potência, se esta aceitar aplicar suas disposições. (CONVENÇÕES DE GENEBRA DE 1949, 1992, p.62).

Antigamente, a guerra era precedida de uma cerimônia diplomática na qual um dos Estados, antes de qualquer ato beligerante, apresentava sua declaração de guerra oficialmente<sup>40</sup>, com todas as implicações legais cabíveis. Quando um conflito tinha início, sem ter sido precedido dessa declaração, ou quando uma das partes não reconhecia o estado de guerra, em teoria, a contestação da aplicação das Convenções existentes era possível.

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<sup>40</sup> Um exemplo é a declaração de Guerra assinada pelo Presidente Franklins D. Roosevelt em 8 de dezembro de 1941, contra o Império do Japão, um dia após o ataque à Pearl Harbor.

A aplicação da Terceira Convenção de Genebra de 1949 pressupõe a existência de um conflito armado ou ocupação territorial. No entanto, a determinação da existência de um conflito enfrenta certa dificuldade, pois a interpretação do parágrafo 1 do artigo 2 mostra-se visivelmente problemática no que tange à declaração do estado de guerra: “mesmo que o estado de guerra não seja reconhecido por uma delas (Partes)”. Esse artigo pode ser lido em sua literalidade: se ambas as partes não reconhecerem o estado de guerra, então a Convenção não será aplicada (PICTET, 1952; ROSAS, 2005).

Apesar da possibilidade da interpretação literal, o entendimento majoritário (PICTET, 1960; ROSAS, 2005; STEWART, 2003) estabelece que o parágrafo 1 do artigo 2 não deve ser compreendido em sua literalidade. A frase em questão deve ser interpretada da seguinte forma: mesmo no caso do não reconhecimento do estado de guerra por um ou mais Estados não há a necessidade deste para a ampla aplicação da Convenção. Na verdade a intenção dos criadores da Convenção era justamente seu amplo alcance durante os conflitos armados. No caso de ocupação territorial parcial ou total de uma das Partes do tratado, não é necessário declarar o estado de guerra. Este outro argumento também dá apoio a essa interpretação (ROSAS, 2005).

Segundo Pictet (1952) um soldado ferido não é mais ou menos merecedor, de tratamento médico de acordo com a existência ou não do reconhecimento do estado de guerra do seu Governo. Em outras palavras, independentemente da existência de guerra declarada ou não, as Convenções de Genebra de 1949 deverão ser aplicadas a todo conflito armado, mesmo quando uma das partes não seja signatária do tratado, pois as normas humanitárias estão incluídas no rol do direito costumeiro, por ter alcançado um alto grau de universalidade.

A distinção clássica entre guerra e estado de guerra (guerra no sentido formal) por um lado e guerra e conflito armado por outro lado (guerra em sentido material) perdeu sua significação prática, já que o direito de guerra foi substituído pela lei dos conflitos armados e por tanto, podemos interpretar o “estado de guerra” do parágrafo 1 do artigo 2 das Convenções de Genebra referindo-se à guerra em sentido material, ou “estado de conflito armado” (ROSAS, 2005). Nas palavras de Pictet (1960):

Ainda é necessário acertar o significado de “conflito armado”. A substituição dessa expressão muito mais geral pela palavra “guerra” foi deliberada. É possível argumentar quase de forma interminável sobre a definição legal de “guerra”. Um Estado que use armas para cometer atos hostis contra outro Estado pode sempre manter que não está fazendo guerra, mas meramente engajado em uma ação de polícia, ou atuando em legítima defesa. A expressão “conflito armado” torna esse argumento mais difícil. Qualquer diferença surgida entre dois Estados que leva a intervenção de membros das forças armadas será um conflito armado nos termos do artigo 2, mesmo se uma das Partes negar a existência do estado de guerra. Não faz diferença por quanto tempo o conflito dura ou quanta violência ocorreu, ou o quanto são numerosas as forças participantes; é suficiente que as forças armadas de uma das Potências tenha capturado adversários que se enquadrem no escopo do artigo 4. Mesmo não tendo ocorrido luta, o fato daquelas pessoas protegidas pela Convenção serem detidos é suficiente para sua aplicação. O número de pessoas capturadas em tais circunstâncias é, obviamente, imaterial.<sup>41</sup> (PICTET, 1960, p. 22-23, *tradução nossa*).

A ausência do reconhecimento formal do estado de guerra pelas partes em conflito não é razão suficiente para considerá-las livres da obrigação de cumprir a Terceira Convenção de Genebra de 1949. Levando em consideração o exposto, existem casos nos quais não há dúvidas sobre a aplicação da Convenção como: no caso de reconhecimento formal explícito do estado de guerra pelas partes; quando ocorrem lutas prolongadas e contínuas entre dois Estados (mesmo não havendo declaração formal por nenhuma das partes); ou no caso de ocupação territorial parcial ou total de um Estado, mesmo não tendo ocorrido qualquer resistência armada. Contudo, três problemas podem ser levantados sobre a aplicação da Terceira Convenção de Genebra, em conformidade com o pensamento de Rosas (2005):

- 1) Questões relativas ao caráter militar da operação (sua magnitude, intensidade e frequência);

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<sup>41</sup> It remains to ascertain what is meant by “armed conflict”. The substitution of this much more general expression for the word “war” was deliberate. It is possible to argue almost endlessly about the legal definition of “war”. A State which uses arms to commit a hostile act against another State can always maintain that it is not making war, but merely engaging in a police action, or acting in legitimate self-defense. The expression “armed conflict” makes such arguments less easy. Any difference arising between two States and leading to the intervention of members of the armed forces is an armed conflict within meaning of Article 2, even if one of the Parties denies the existence of a state of war. It makes no difference how long the conflict lasts, how much slaughter takes place, or how numerous are the participating forces; it suffices for the armed forces of one Power to have captured adversaries falling within the scope of article 4. Even if there has been no fighting, the fact that persons covered by the Convention are detained is sufficient for its application. The number of persons captured in such circumstances is, of course, immaterial.

- 2) Questões relativas ao caráter da relação entre um Estado e as forças armadas participantes em um conflito;
- 3) Questões relativas ao caráter das partes do conflito e suas forças armadas, notadamente a questão da participação de organizações internacionais.<sup>42</sup> (ROSAS, 2005, , p.231, *tradução nossa*).

No que tange ao primeiro problema, o simples fato de um Estado deter pessoal militar de outro Estado, em si, não constitui a obrigação deste de conferir o status de prisioneiro de guerra. Esse princípio aplica-se não apenas ao pessoal militar que comete crimes comuns no território de outro Estado, mas também àqueles que realizam operações militares isoladas, como por exemplo, espionagem. Dificuldades ocorrem, no entanto, quando estas operações militares são freqüentes e acompanhadas de atos não amigáveis entre os Estados.

O segundo problema envolve o não reconhecimento oficial da atuação de forças armadas participantes de um conflito contra um Estado, em nome de outro Estado<sup>43</sup>. Esses participantes atuam em nome próprio e, portanto, a Potência Detentora não confere a eles o status de prisioneiro de guerra, tratando-os como infiltrados, sujeitos à punição. E se o Estado do qual essas forças armadas vieram se recusar a reconhecer esses indivíduos como seus subordinados, a Potência Detentora se vê no direito de recusar o status de prisioneiro de guerra, mas se esta reconhece a situação de um conflito armado, conseqüentemente, a Terceira Convenção é aplicada.

Outro caso associado a este problema ocorre quando existe um conflito armado entre duas partes, mas algumas das tropas participantes são nacionais de um terceiro Estado. Quando estas tropas, mesmo nacionais de outro Estado, atuam como voluntários lutando em favor de uma das partes, então tem o direito de receber o status de prisioneiro de guerra.

A terceira questão levantada por Rosas (2005) associa-se ao caráter das partes em conflito e suas forças armadas. O problema central aqui concerne à natureza das hostilidades envolvendo as Nações Unidas (ONU) e alguma organização intergovernamental regional. As Convenções de Genebra e os Protocolos Adicionais não possuem qualquer provisão sobre a

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<sup>42</sup> 1) Questions related to the character of the military operations (their magnitude, intensity and frequency); 2) Questions related to the character of the relationship between a state and the armed forces participating in a conflict; 3) Questions related to the character of the parties to the conflict and their armed forces, notably the question of the participation of international organizations.

<sup>43</sup> Por exemplo, a Invasão na Baía dos Porcos em Cuba no ano de 1961 e a Expedição paquistanesa para Kashmir em 1965.

possibilidade de organizações internacionais se tornarem partes dos tratados, tampouco as Nações Unidas ou outra organização fizeram esforços para tal. É importante lembrar que o Direito Internacional humanitário, seja através dos tratados ou como direito costumeiro, considera ambas as partes obrigadas ao seu cumprimento, independente de seu status diante do direito na guerra.

A ONU também pode ser parte em um conflito armado e encontra-se obrigada ao cumprimento das normas de direito internacional humanitário e o pessoal militar capturado, pela Potência Detentora, deve ser tratado como prisioneiro de guerra. No que tange as outras organizações internacionais, tais como a Organização dos Estados Americanos e a Organização da Unidade Africana, não há dúvida sobre a aplicação do direito internacional humanitário, já que as forças armadas dessas organizações são aquelas dos seus Estados-membros.

#### **4.2 A existência de um conflito armado internacional**

A segunda questão a ser discutida é a dicotomia entre os conflitos armados internacionais e os conflitos internos (não-internacionais). Tradicionalmente, o caráter internacional da guerra sempre foi um dos critérios mais importantes para a aplicação da lei, inclusive em relação aos prisioneiros de guerra (ROSAS, 2005; SASSÒLI; BOUVIER, 1999; STEWART, 2003). Até o advento dos Protocolos Adicionais de 1977, as Convenções não eram aplicadas aos conflitos armados internos. Aplicava-se apenas o artigo 3, comum às quatro Convenções, conferindo garantias fundamentais no tratamento das pessoas atingidas pelas hostilidades ativas.

O CICV recomenda a aplicação extensiva do direito internacional humanitário “em todos os casos de conflitos armados sem o caráter internacional, especialmente nos casos de

guerra civil, conflitos coloniais, ou guerras religiosas, as quais podem ocorrer no território de uma ou mais Altas Partes contratantes”<sup>44</sup>. (PICTET, 1960, p.31, *tradução nossa*).

As hostilidades internas com caráter internacional são chamadas de conflitos internacionalizados pela doutrina contemporânea (PICTET, 1952; STEWART, 2003; ROSAS, 2005; SASSÒLI; BOUVIER, 1999). As situações que podem atingir o status de conflito internacionalizado incluem: as guerras entre duas facções internas, ambas patrocinadas por diferentes Estados; hostilidades diretas entre dois Estados estrangeiros que realizam uma intervenção militar em um conflito armado interno como suporte de lados opostos e a guerra envolvendo uma intervenção estrangeira em suporte a um grupo de insurgentes contra um governo estabelecido (STEWART, 2003). Rosas (2005) realiza a seguinte classificação dos conflitos internos: aqueles puramente internos, cobertos pelo artigo 3 comum às quatro Convenções de Genebra; conflitos internos prolongados, onde ambas as partes dispõem de certa quantidade de organização e disciplina; guerras civis onde ambas as partes possuem muitas características de um Estado; conflitos mistos envolvendo tanto lutas civis quanto a participação de um terceiro Estado; guerras de libertação nacional e conflitos inter-estatais. Essas classificações são complementares e discutidas nos próximos subitens.

A aplicação do direito humanitário baseia-se na premissa de que a violência armada interna gera o exercício da autoridade governamental e não a aplicação das Regulações internacionais, com base nesse raciocínio as Convenções de Haia de 1899 e 1907 eram aplicadas às guerras de caráter internacional.

As Convenções de Genebra de 1949 se mantiveram fortemente a favor de regular as relações inter-estatais ao invés das guerras domésticas. A grande maioria das provisões contidas nas Convenções aplica-se aos conflitos armados de caráter internacional. O artigo 3 estende os princípios humanitários mais rudimentares para as pessoas envolvidas nas hostilidades e colocadas *hors de combat*, mas não contém uma provisão específica para a proteção dos prisioneiros de guerra. Nas palavras de Stewart (2003): “os escassos princípios enumerados nele [artigo 3] são aplicados apenas onde a intensidade das hostilidades alcançou

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<sup>44</sup> “In all cases of armed conflict which are not of international character, especially cases of civil war, colonial conflicts, or wars of religion, which may occur in the territory of one or more High Contracting Parties” (PICTET, 1960, p.31).

o nível prolongado de violência armada entre autoridades governamentais e grupos armados organizados ou entre tais grupos armados.”<sup>45</sup> (STEWART, p. 318, *tradução nossa*).

Os Protocolos Adicionais de 1977 estabelecem a distinção entre conflitos armados internacionais e conflitos armados internos e deixam sem solução o problema sobre a lei a ser aplicada aos conflitos armados internos. O I Protocolo Adicional de 1977 aplica-se aos conflitos armados internacionais, conforme seu artigo 1, parágrafo 3: “O presente Protocolo, que complementa as Convenções de Genebra de 1949 para a proteção das vítimas de guerra, se aplica nas situações previstas pelo artigo 2, comum a estas Convenções”. O parágrafo 4 do supracitado artigo estabelece:

Nas situações mencionadas no parágrafo precedente estão incluídos os conflitos armados em que os povos lutam contra a dominação colonial e a ocupação estrangeira e contra os regimes racistas, no exercício do direito dos povos à autodeterminação, consagrada na Carta das Nações Unidas e na Declaração relativa aos princípios do direito internacional no que diz respeito às relações amigáveis e à cooperação entre os Estados nos termos da Carta das Nações Unidas. (I PROTOCOLO ADICIONAL DE 1977, 1998, p. 6).

Estes dispositivos legais confirmam a dicotomia entre conflitos armados internacionais e não-internacionais: conflitos armados internacionais não são sinônimos de guerras inter-estatais, ou a completa extensão do direito internacional humanitário pressupõe que os beligerantes em conflito sejam necessariamente Estados (STEWART, 2003).

A maior contribuição do direito humanitário recente é o II Protocolo Adicional de 1977 que suplementa o artigo 3 das Convenções de Genebra e proporciona maior clareza aos princípios dispostos nesse artigo, mas ao mesmo tempo, estabelece significativa limitação ao alcance de sua própria aplicação. O artigo 1 dispõe:

1. O presente Protocolo, [...] se aplica a todos os conflitos armados que não estejam cobertos pelo artigo 1 do I Protocolo adicional às Convenções de Genebra de 12 de agosto de 1949 [...] e que se desenrolem em território de uma Alta Parte contratante, entre suas forças armadas e as forças armadas dissidentes, ou grupos armados organizados que, sob a chefia de um comandante responsável, exerçam sobre uma

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<sup>45</sup> The scant principles enumerate in it apply only where the intensity of hostilities reaches the level of “protracted armed violence between governmental authorities and organized armed groups or between such armed groups.

parte de seu território um controle tal que lhes permita levar a cabo operações militares contínuas e concertadas e aplicar o presente protocolo.

2. O presente Protocolo não se aplica às situações de tensão e perturbação internas, tais como motins, atos de violência isolados e esporádicos e outros atos análogos, que não são considerados conflitos armados. (II PROTOCOLO ADICIONAL DE 1977, 1998, p. 98).

O II Protocolo Adicional não é aplicado aos conflitos armados entre dois grupos dissidentes beligerantes. Aplica-se somente aos conflitos que se aproximam da concepção tradicional das hostilidades inter-estatais, quando uma força armada organizada dissidente exerce controle militar sobre parte do território de um Estado. A diferença entre a regulação dos conflitos armados internacionais e a lei aplicável aos conflitos armados internos é impactante, já que apenas o artigo 3 e vinte e oito artigos do II Protocolo Adicional de 1977 são aplicados a eles, nem mesmo as normas que regulam os meios e métodos de combate são utilizadas. A disparidade da aplicação da norma começa com o fato do artigo 3 ser aplicável apenas aos não-participantes e pessoas que tenham baixado suas armas, fazendo pouco para regular o combate ou proteger os civis contra os efeitos das hostilidades. Esse artigo falha em elaborar regras precisas para estabelecer a distinção entre alvos militares e civis, nem faz referência ao princípio da proporcionalidade (STEWART, 2003).

Outro fato importante, sob um ponto de vista político é a ausência de requerimento que possa conferir aos combatentes o status de prisioneiro de guerra em conflitos armados não-internacionais, tanto no artigo 3 quanto no II Protocolo Adicional de 1977, nada impede as partes de processar os combatentes inimigos em tais circunstâncias por terem pegado em armas. Assim, aos conflitos armados internos são aplicados os princípios gerais do Direito humanitário, as normas internacionais especificamente direcionadas a eles, e a legislação nacional elaborada por cada Estado.

#### 4.2.1 *Os critérios de internacionalização do conflito armado e a aplicação do Direito Internacional Humanitário*

É indiscutível que um conflito armado entre Estados tem o caráter internacional e por sua vez, todas as Convenções de Genebra de 1949 e o I Protocolo Adicional de 1977 serão aplicados. Já um conflito armado interno, aquele que ocorrer dentro do território de um Estado, pode ter ou não o caráter internacional, se outro Estado intervir com tropas, por exemplo; ou se os participantes do conflito armado interno agirem em nome de outro Estado. Existem alguns critérios de internacionalização do conflito armado no âmbito do direito internacional: se os participantes atuam como agentes de um Estado ou se ocorre uma intervenção militar.

Quando alguns participantes do conflito interno agem em nome de outro Estado, conferem a este o aspecto clássico necessário para sua internacionalização. No caso sobre as Atividades Militares e Paramilitares contra e na Nicarágua, a Corte Internacional de Justiça teve que responder sobre a relação e responsabilidade dos Estados Unidos da América pelo conflito armado entre os *contras* que patrocinava e o governo da Nicarágua. Este órgão declarou que tendo ou não a relação dos *contras* com o Governo dos Estados Unidos sido de dependência por um lado e de controle por outro, seria correto equiparar os *contras*, por propósitos legais, como um órgão do Governo dos Estados Unidos, ou atuando em nome desse Governo.

A Corte Internacional de Justiça (CIJ) entendeu que apesar do alto grau de envolvimento e participação dos Estados Unidos da América no conflito, ao patrocinar e manter o controle sobre os *contras*, não foi responsável por violações do direito humanitário, pois não controlava as ações desses participantes. A decisão é controversa e carrega consigo considerável inconsistência jurídica, tendo sido bastante debatida nos meios acadêmicos. A Câmara de Apelação esclareceu que se um Estado financia, treina, equipa ou provê suporte operacional para um grupo, aquele exerce controle sobre este, tornando-se responsável pelos atos praticados.

O critério apresentado pode ser aplicado em três situações distintas nas quais os agentes podem ser considerados órgãos, de fato, de um Estado. A primeira situação envolve

os atos praticados por um único indivíduo ou um grupo não militar organizado que alega ter atuado como um órgão de um Estado; a segunda envolve o controle de um Estado sobre forças armadas subordinadas, milícias ou unidades paramilitares e a terceira envolve a assimilação de indivíduos aos órgãos de um Estado, onde estes agirão na própria estrutura do Estado.

Apesar da vasta literatura sobre estes critérios, sua aplicação ainda se mostra confusa e problemática. A grande questão é responder se o insurgente cometeu ações que possam ligá-lo a um Estado. Através da resposta dessa pergunta, o caráter internacional, será atribuído ou não ao conflito armado. Stewart (2003) declara:

A complexidade também possui efeitos sérios nas Partes externas que buscam reforçar as normas de direito internacional humanitário. Não apenas as partes em conflito que envolve a luta de vários atores internacionais e domésticos irão determinar se um detento se qualifica para o status de prisioneiro de guerra, também irá o CICV, o qual está tentado a encorajar o respeito por tal status. Além disso, da perspectiva legal, o teste é uma fundação trêmula para a aplicação dos diversos tipos de sanções penais providas sobre os dois regimes. É duramente surpreendente, então, que o teste atrasou excessivamente os procedimentos tanto no ICTY e no Tribunal Criminal Internacional para Rwanda (ICTR).<sup>46</sup> (STEWART, 2003, p. 327, *tradução nossa*).

Estes três critérios (ou testes) refletem o atual desenvolvimento da responsabilidade do Estado no direito internacional público, mas utilizá-los no direito humanitário mina a possibilidade da aplicação consistente das normas humanitárias nos conflitos internacionalizados.

A intervenção militar de outro Estado no conflito interno é o segundo critério considerado capaz de conferir o caráter internacional a esse conflito. Mesmo intervenções militares estrangeiras que afetem de forma indireta um conflito interno independente é suficiente para tornar o conflito internacional, como o exemplo da Croácia e Bósnia-

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<sup>46</sup>The complexity also has serious effects on outside parties seeking to enforce international humanitarian norms. Not only will parties to a conflict involving various international and domestic actors struggle to determine whether detainees qualify for prisoner-of-war status, so too will the ICRC, which is attempting to encourage respect for that status. Moreover, from the perspective of legality the test is a shaky foundation for the application of the very different penal sanctions provided for under the two regimes. It is hardly surprising, then, that the test has unduly delayed proceedings of both the ICTY and the International Criminal Tribunal for Rwanda (ICTR).

Herzegovina. As forças armadas da Croácia estavam estacionadas em uma área fora do conflito que ocorria entre as forças armadas da Bósnia-Herzegovina e o Conselho de Defesa Croaciano. Ao obrigar o engajamento das forças armadas da Bósnia-Herzegovina fora da área do conflito, as forças armadas da Croácia enfraqueceram a capacidade desta de lutar contra o Conselho de Defesa Croaciano na Bósnia central e por isso foi responsabilizada pelo Tribunal Penal Internacional para a Ex-Iugoslávia<sup>47</sup>.

O grau de intensidade do conflito interno se mostra irrelevante, pois as Convenções de Genebra, aplicadas nos tradicionais conflitos entre Estados, independem do nível de intensidade e não existe base legal para que os conflitos armados internacionalizados sejam tratados de forma diversa.

A razão mais pertinente para a incorporação da intervenção militar como critério de internacionalização de um conflito armado interno é sua relação com o parágrafo 2 do artigo 2 das quatro Convenções de Genebra de 1949, que determina a internacionalização do conflito quando ocorrer a ocupação total ou parcial do território de um Estado, mesmo sem resistência. O parágrafo 2 do artigo 2, preenche a lacuna do parágrafo 1 (ROSAS, 2005; STEWART, 2003) e amplia a aplicação das Convenções para proteger as vítimas da ocupação.

Outra questão a ser discutida é a relevância do reconhecimento de uma entidade envolvida em um conflito pelo adversário e terceiros Estados. Um Estado pode se negar a reconhecer o status de prisioneiro de guerra de um indivíduo por não ter reconhecido o status de Estado da entidade que ele representa? O reconhecimento formal um do outro não é uma condição necessária para considerar o conflito como de caráter internacional e conseqüentemente gerar a aplicação das Convenções de Genebra e do direito internacional humanitário em geral. Se a entidade possuir os requisitos, como por exemplo, organização, esta pode ser reconhecida como parte legítima no conflito.

O artigo 4 do I Protocolo Adicional de 1977 dispõe:

A aplicação das Convenções de Genebra e do presente Protocolo, assim como a conclusão dos acordos previstos por estes instrumentos, não terão efeito sobre o estatuto jurídico das Partes em conflito. Nem a ocupação de um território, nem a

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<sup>47</sup> International Criminal Tribunal for the former Yugoslavia.

aplicação das Convenções e do presente Protocolo afetarão o estatuto jurídico do território em questão. (I PROTOCOLO ADICIONAL DE 1977, 1998, p. 7-8).

A interpretação deste artigo deixa claro que a aplicação das Convenções de Genebra e o I Protocolo Adicional não dependem ou implicam no reconhecimento do adversário como um Estado. Rosas (2005) entende que este princípio básico não retira todas as dificuldades envolvidas em estabelecer se uma entidade preenche todos os requerimentos para a condição de Estado (povo, território, administração e soberania). Caso haja dúvidas sobre algum destes requerimentos, o reconhecimento do Estado tem considerável significância prática, pois se certa entidade não obteve o reconhecimento de nenhum Estado, presume-se que não possui a condição de Estado. O próprio reconhecimento confere legitimidade à entidade e possibilita alcançar outros requerimentos para a condição de Estado.

A questão do reconhecimento do governo inimigo para a aplicação das normas humanitárias encontra certa relevância em razão do artigo 4 A, parágrafo 3. Segundo este artigo as forças armadas inimigas devem estar a serviço de um governo ou autoridade não reconhecida pela Potência Detentora. No entanto, a dúvida surge apenas quando existem duas entidades que clamam ser o governo legítimo de um mesmo Estado.

O reconhecimento da beligerância é uma condição essencial para a aplicação da lei dos conflitos armados nas guerras civis. Esse reconhecimento dado pelos governos legítimos envolvidos no conflito, garante aos soldados rebeldes capturados o direito de receber o status de prisioneiro de guerra, ou seja, as Convenções de Genebra são aplicadas na íntegra, pelo menos se a entidade oposta ao governo legítimo aplica as normas. Por outro lado, se o governo legítimo realiza atos que impliquem o reconhecimento implícito da entidade, então este se torna automaticamente obrigado ao cumprimento das normas humanitárias, mesmo que negue sua aplicação explicitamente.

#### 4.2.2 Os efeitos da internacionalização: a caracterização mista versus a caracterização global

No âmbito do direito internacional humanitário, existem dois posicionamentos distintos sobre os efeitos da internacionalização: a abordagem mista e a abordagem global dos conflitos armados internos.

A caracterização mista é a abordagem predominante, na qual, dependendo das circunstâncias do conflito, este pode ter o caráter internacional e ao mesmo tempo ser um conflito armado interno. Isso significa dizer que se ocorrerem diversos conflitos no mesmo território de um Estado, a caracterização deve ser individualizada, ou seja, cada um recebe seu caráter, que pode ser internacional ou interno.

Em resposta a esta classificação, surgiu a caracterização global. Um grande número de autoridades prefere aplicar o conjunto de normas do direito humanitário a todo o território que contém múltiplos conflitos de origem interna e internacional (PICTET, 1960; ROSAS, 2005; STEWART, 2003).

Estas duas abordagens podem gerar decisões opostas e contraditórias. Nas palavras de Stewart (2003):

[...] a relativa força e fraqueza das visões mista e global indica que atingindo qualquer tipo de acordo na presente estrutura irá inevitavelmente envolver a escolha entre uma teoria que não pode funcionar e uma prática que não é justificada. O desafio, portanto, não é tanto o mérito das duas visões competidoras como para a estrutura do direito internacional humanitário mais geral.<sup>48</sup> (STEWART, 2003, p. 335, tradução nossa).

Estes conflitos, chamados “mistos” envolvem pelos menos três partes, duas delas são autoridades originadas em um mesmo Estado. Alguns exemplos podem ser citados: como os conflitos no Afeganistão, Indochina (Camboja, Laos e Vietnã) e Angola (ROSAS, 2005). Os conflitos ocorridos podem ser caracterizados como internos que se tornaram

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<sup>48</sup> [...] the relative strengths and weaknesses of the “mixed” and “global” views indicate that reaching any sort of agreement within the present framework will inevitably involve choosing between a theory that cannot work and a practice that is not justified. The challenge therefore, is not so much to the merit of the two competing views as to the structure of international humanitarian law more generally.

internacionalizados, pela participação direta de um ou mais Estados; ou conflitos internacionais que se tornaram internalizados pela emergência de duas autoridades nacionais após o início das hostilidades. Segundo Rosas (2005) uma dessas conseqüências legais pode ocorrer: o conflito como um todo é coberto pelas Convenções de Genebra (artigo 2); o conflito é amparado parte pelo artigo 2 e parte pelo artigo 3 ou somente o artigo 3 será aplicado. As Convenções de Genebra não fornecem resposta para tal questão e os Protocolos Adicionais agravam a dicotomia entre os conflitos armados internacionais e internos.

Nos conflitos internos internacionalizados pela participação estrangeira, a abordagem tradicional (PICTET, 1952; ROSAS, 2005; STEWART, 2003) distingue a assistência estrangeira, o governo legítimo e os rebeldes (insurgentes). Com a assistência estrangeira, o conflito permanece interno, aplicando-se apenas o artigo 3 das Convenções de Genebra; as Convenções de Genebra aplicam-se no entanto na relação entre o Governo legítimo e o Estado estrangeiro e na relação entre o governo legítimo e rebeldes, o artigo 3 comum às quatro Convenções também é utilizado. Segundo Rosas (2005):

A base teórica da visão de que o suporte militar ao governo legítimo transforma o conflito em internacional, e que a transformação também acontece na relação entre o governo legítimo e os rebeldes, parece ser que a aceitação de tal suporte implique em um tipo de reconhecimento de beligerância, ou que o princípio de que ambas as partes em um conflito internacional devem ser Estados ou assuntos similares do direito internacional não se aplicam no que tange a intervenção estrangeira.<sup>49</sup> (ROSAS, 2005, p.283, *tradução nossa*).

O Comitê Internacional da Cruz Vermelha recomenda a aplicação do direito internacional como um todo no caso de conflito armado não-internacional, no qual, uma ou outra parte, ou ambas recebem assistência de um terceiro. No entanto, esta recomendação não foi bem recebida pela comunidade internacional que prefere manter a distinção tradicional entre o governo legítimo e os rebeldes.

Sempre existirão duas autoridades clamando pela legitimidade, por ambos possuírem tal reconhecimento por um número significativo de terceiros Estados. Um exemplo de tal

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<sup>49</sup> The theoretical basis of the view that military aid to the lawful government transforms the conflict into an international one, and that the transformation also takes place in the relation between the lawful government and the rebels, seems to be either that the acceptance of such aid implies a kind of recognition of belligerency, or that the principle that both parties to an international conflict must be states or other similar subjects of international law does not apply in respect of foreign intervention.

questão, que discutiremos no próximo capítulo é o ocorrido no Vietnã. Nestas situações, quando um terceiro Estado intervém, o faz sob o argumento de estar auxiliando o governo legítimo, o que pode implicar na falta de obrigação do reconhecimento do status de prisioneiro de guerra para os rebeldes. Por outro lado, o adversário também pode se declarar o governo legítimo, e como tal tem o dever de conferir o status de prisioneiro de guerra para todo soldado inimigo capturado (ROSAS, 2005; STEWART, 2003).

No caso do Vietnã, a intervenção no conflito tomou tamanha proporção, que seu aspecto interno adquiriu um caráter secundário, perto do seu aspecto internacional. Neste caso, a intervenção e apoio ao governo, dito legítimo, acarretou um reconhecimento implícito dos rebeldes como beligerantes. Quanto maior as proporções do conflito, maior é a dificuldade em se utilizar a divisão tradicional entre rebeldes e governo legítimo. Essa situação gera a consideração do estabelecido no artigo 4 A (3) da Terceira Convenção de Genebra de 1949, que analisaremos à seguir.

O artigo 6 da Quarta Convenção de Genebra de 1949 define quando a aplicação das normas humanitárias deve cessar: com o fim das operações militares. No momento em que cessam as hostilidades que justificam o caráter internacional do conflito, este se torna novamente um conflito interno. O Tribunal Penal Internacional da Ex-Iugoslávia declara sobre a questão:

[O] direito internacional humanitário é aplicado do início de tal conflito armado e estende-se após cessar as hostilidades, até que seja alcançada uma conclusão geral da paz; ou, no caso de conflito armado interno, um acordo de paz seja alcançado. Até aquele momento, o direito internacional humanitário continua a ser aplicado em todo o território pelos Estados beligerantes ou, no caso de conflito armado interno, em todo o território sobre o controle de uma parte, tendo o combate ocorrido ou não naquele local.<sup>50</sup> (ICTY apud STEWART, 2003, p. 336).

Essa declaração demonstra que as normas humanitárias em geral continuam a ser aplicadas no caso do conflito perder seu caráter internacional e continuar apenas

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<sup>50</sup> International Humanitarian Law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is achieved. Until that moment, international humanitarian law continued to apply in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there.

internamente. O Tribunal reiterou a obrigação das partes de aplicar estas normas com a alteração do tipo de conflito e com suporte na caracterização mista dos conflitos armados, ou seja, um conflito armado internacional pode se tornar interno.

Tradicionalmente, um conflito cessa com o fim das operações militares evidenciado pelo armistício e o estabelecimento da paz. No entanto, na atualidade raramente um conflito armado tem início com uma declaração do estado de guerra ou tem fim com o acordo do armistício.

#### *4.2.3 O artigo 4 A (3) da Terceira Convenção*

Neste subitem devemos discutir a relevância do artigo 4 A(3) da Terceira Convenção de Genebra de 1949 para os conflitos armados internos com caráter internacional, utilizado como argumento para a aplicação das Convenções de Genebra além das restritas situações inter-estatais. São considerados prisioneiros de guerra os “membros das forças armadas regulares a serviço de um Governo ou de uma autoridade que não seja reconhecida pela Potência detentora” (III CONVENÇÃO DE GENEBRA DE 1949, 1992, p. 64).

A simples existência de forças armadas regulares que alegam aliança com um governo ou autoridade sem reconhecimento não é suficiente para a aplicação da Terceira Convenção de Genebra de 1949, pois esse artigo aplica-se a conflitos armados internacionais. Por outro lado não deve ser ignorada uma possível interpretação liberal do artigo 2, especialmente em conflitos civis com o envolvimento estrangeiro (ROSAS, 2005).

Deve ser compreendido então o significado do governo ou autoridade, conforme mencionado na provisão. O artigo parece basear-se na presunção de que o governo ou autoridade de uma forma ou de outra representam uma parte de um conflito armado internacional contra outra parte. O artigo 43 (1) do I Protocolo Adicional de 1977 confirma esta idéia:

As forças armadas de uma Parte em conflito se compõem de todas as forças, as unidades e os grupos armados e organizados, colocados sob um comando responsável pela conduta de seus subordinados diante dessa Parte, mesmo que essa Parte seja representada por um governo ou uma autoridade não reconhecidos pela Parte adversa. Essas forças armadas devem ser submetidas a um regime de disciplina interna que assegure particularmente o respeito às regras do direito internacional aplicável nos conflitos armados. (I PROTOCOLO ADICIONAL DE 1977, 1998, p.34).

O texto preocupa-se em suplementar o artigo 4 da Terceira Convenção de Genebra de 1949 ao dispor a definição de forças armadas e combatentes leais e aplica-se a todos os tipos de forças armadas, sejam regulares ou independentes, bem como o pessoal de suporte (WATKIN, 2005). Em primeiro lugar o artigo 4 A (3) refere-se ao governo ou autoridade chamados de governos genuínos (ROSAS, 2005; WATKIN, 2005) em exílio, mas que continuam a resistir a ocupação de uma Potência, confirmando a aplicação das Convenções de Genebra, mesmo sem o reconhecimento desse governo ou autoridade pela Potência ocupante. Em segundo lugar, este artigo também se aplica no caso de resistência após o desaparecimento de um governo ou mesmo após o governo em poder ter proibido a resistência através de um armistício.

Dessa forma essa provisão não parece pressupor que a autoridade sem reconhecimento seja necessariamente um Estado ou uma Parte de um conflito armado internacional. Os únicos requerimentos para o alcance da norma são: a autoridade deve ser capaz de se expor, de forma plausível, representar uma das partes em conflito; e deve ter certa organização e disciplina para constituir forças armadas regulares capazes de oferecer resistência a Potência ocupante. Se esta autoridade ou governo alegar representar uma Alta Parte Contratante, torna-se obrigada ao cumprimento da Terceira Convenção de Genebra (HENCKARTS; DOSWALD-BECK, 2005; PICTET, 1952; ROSAS, 2005; WATKIN, 2005).

#### 4.2.4 O artigo 4 A (2) da Terceira Convenção, as forças independentes e os Estados partes

O artigo 4 A (2) estabelece outra categoria de pessoas que recebe o status e tratamento de prisioneiro de guerra :

Membros de outras milícias ou de outros corpos voluntários, incluindo os dos movimentos de resistência organizados, pertencentes a uma Parte em conflito, que operem fora ou no interior de seu próprio território, mesmo quando ocupado, desde que essas milícias ou corpos voluntários, incluindo os movimentos de resistência organizados, satisfaçam as seguintes condições:

- a) Sejam comandados por uma pessoa responsável por seus subordinados;
- b) Possuam um sinal distintivo fixo e reconhecível à distância;
- c) Tragam as armas à vista;
- d) Respeitem, em suas operações, as leis e costumes da guerra.

(III CONVENÇÃO DE GENEBRA DE 1949, 1992, p. 63).

As forças independentes são aquelas que não compõem as forças armadas regulares protegidas pelo supracitado artigo. Os movimentos de resistência em territórios ocupados foram incluídos nessa categoria de combatentes protegidos, contudo, qualificam-se para o status de prisioneiro de guerra aqueles que participarem de conflitos armados de caráter internacional e de uma forma ou de outra atuarem em nome de uma parte em conflito (PICTET, 1960; ROSAS, 2005).

A ligação entre o movimento de resistência e uma parte em conflito, segundo Rosas (2005), baseia-se na presunção de que o movimento de resistência atua em nome de um país ocupado, mas não indica claramente como esta relação deve ser revelada.

Segundo a doutrina predominante (PICTET, 1960; ROSAS, 2005; STEWART, 2003) este dispositivo deve ser interpretado de forma liberal para não impor a autorização expressa de uma parte para a atuação das forças armadas independentes. Nas palavras de Rosas (2005) “Essa interpretação parece bem fundamentada, pois o requerimento da autorização expressa de um estrangeiro aparentemente já foi abandonado na não ratificada Declaração de Bruxelas

de 1897 e nas Regulações de Haia de 1899 e 1907.”<sup>51</sup> (ROSAS, 2005, p. 258, *tradução nossa*).

A ligação entre o movimento de resistência a parte estabelece-se de fato através do auxílio militar e material. Como visto anteriormente, no caso da Nicarágua, se o auxílio for comprovado, o Estado torna-se responsável pelos atos praticados pela força armada do movimento de resistência.

Assim, pode ser estabelecida a distinção entre o disposto no artigo 4 A (2) e as seguintes situações: as forças independentes representam um único governo (mesmo em exílio) que resiste continuamente um Estado estrangeiro; o governo de uma parte em conflito deixa de existir ou concorda em dar fim às hostilidades ativas, mas algumas forças independentes continuam à resistir apoiadas por outra parte no conflito; no caso do artigo 4 A (3) as forças independentes são apoiadas por governos ou autoridades não reconhecidos e por ultimo as forças independentes não recebem qualquer apoio de nenhum governo ou autoridade.

No que tange à primeira situação, não há dúvidas de que mesmo em exílio o governo representa o Estado que tem seu território ocupado e expressa ou tacitamente, autoriza os movimentos de resistência, conferindo o caráter internacional ao conflito e garantindo o status de prisioneiro de guerra aos membros dessa força armada.

A segunda situação enfrenta o problema das forças independentes sem o apoio de seu próprio governo. Segundo o entendimento de Rosas (2005) e Watkin (2005) as forças independentes não precisam necessariamente pertencer ao seu próprio governo, desde que estejam afiliadas a outra parte em conflito. Assim, as provisões contidas no artigo 4 A (2) aplicam-se da mesma forma que aquelas dispostas no parágrafo 3 do mesmo artigo. No entanto, a situação torna-se delicada se o novo governo consolida sua posição e começa a combater ativamente o movimento de resistência, especialmente se o suporte estrangeiro perde força tomando um caráter secundário. Neste caso o conflito pode perder seu caráter internacional e torna-se um conflito interno.

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<sup>51</sup> This interpretation seems well-founded because the requirement of Express authorization from a sovereign was apparently already abandoned in the ungratified Brussels Declaration of 1874 and the Hague Regulations of 1899 and 1907.

A terceira situação, referente ao artigo 4 A (3), foi discutida no subitem anterior e conforme o posicionamento de Rosas (2005), as forças independentes também tem o direito de receber o status de prisioneiro de guerra e a proteção conferida pela Terceira Convenção de Genebra de 1949.

Sobre a última situação, na qual o movimento de resistência não recebe qualquer apoio ou suporte de qualquer governo ou autoridade representante de uma parte em conflito, presume-se que esta força independente esteja travando uma guerra privada (ROSAS, 2005; STEWART, 2003; SASSÒLI, BOUVIER, 1999; WATKIN, 2005), ou constituindo um conflito interno. No entanto, se este movimento ocorre espontaneamente e se estabelece quando governo interno foi desestruturado pela ocupação territorial de um Estado estrangeiro, então, o conflito adquire o caráter internacional, garantindo o alcance da Terceira Convenção de Genebra de 1949.

#### *4.2.5 Guerras de Libertação Nacional e guerras civis em larga escala*

Neste tópico discute-se sobre as guerras de libertação nacional, as guerras civis em larga escala e o alcance do direito internacional humanitário nestes conflitos. O status legal das guerras de libertação nacional determina a condição jurídica dos combatentes participantes nas hostilidades e estabelece a aplicação ou não das normas contidas nas Convenções de Genebra de 1949. Esse fenômeno baseia-se no direito do povo de uma nação defender sua identidade e território contra a dominação colonial, ocupação estrangeira e regimes racistas, através do exercício do direito de autodeterminação dos povos<sup>52</sup> (HIGGINS, 2004; RONZITTI, 2001; ROSAS, 2005; SLUKA, 1996).

O embate entre um movimento de libertação nacional e um governo estabelecido é uma forma única de conflito, na qual o próprio povo, espontaneamente, pega em armas para

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<sup>52</sup> O princípio de autodeterminação dos povos encontra-se inserido nos artigos 1 e 51 da Carta das Nações Unidas de 1945.

defender-se da opressão<sup>53</sup>. Os meios e métodos de guerra podem ser desde táticas de guerrilha, como na Guerra do Vietnã, até o engajamento regular e direto dos integrantes do movimento com as forças armadas do governo opressor.

Como vimos anteriormente, a doutrina tradicional baseia-se no princípio de que a lei da guerra aplica-se aos conflitos entre Estados. No entanto, já vimos algumas situações nas quais o direito humanitário alcança outros atores envolvidos nas hostilidades, podemos incluir neste rol, os movimentos de libertação nacional, também atingidos pelas Convenções de Genebra de 1949 e os Protocolos Adicionais de 1977.

Para que o status das guerras de libertação nacional seja estabelecido na doutrina contemporânea, seu posicionamento deve ser revisto na doutrina tradicional. A doutrina clássica distingue três estágios (HIGGINS, 2004) de desafio para a autoridade estatal estabelecida: a rebelião, a insurgência e a beligerância. Através desses estágios determinava-se a aplicação ou não das normas internacionais existentes.

A rebelião envolve meramente desafios esporádicos e isolados à autoridade legítima do Estado, não conferindo direitos ou deveres aos rebeldes. Os rebeldes, quando capturados, são tratados como criminosos sob a lei doméstica do Estado e não desfrutam do status de prisioneiro de guerra. Qualquer assistência fornecida por um terceiro Estado é proibida na doutrina tradicional, considerada como uma intervenção desleal e uma interferência do Estado estrangeiro (HIGGINS, 2004). Este critério é vago e incerto, pois o termo rebelião pode tanto cobrir diversos conflitos menores dentro de um Estado como um único protesto violento e rápido.

A insurgência é uma rebelião de natureza mais séria por carregar consigo maior confusão. Certos autores (HIGGINS, 2004; ROSAS, 2005) defendem o posicionamento de que se um grupo de rebeldes recebe o status de insurgentes, automaticamente o conflito extrapola os limites da lei interna e alcança o direito internacional. Em contrapartida, existem aqueles (CASTREN *apud* WILSON, 1988) defensores da idéia de que os insurgentes recebem o status quase internacional e por isso a lei doméstica ainda deve ser aplicada. O status da insurgência permanece incerto e parece constituir um distúrbio civil com um

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<sup>53</sup> Opressão aqui está no sentido de um regime que nega direitos, em particular, o direito de autodeterminação, para a população, por exemplo, no regime do Apartheid na África do Sul.

mínimo de organização. Para o reconhecimento dos rebeldes como insurgentes, estes devem ter controle suficiente de uma parcela territorial do Estado e as forças militares necessárias para tal. Os insurgentes podem parcialmente internacionalizar um conflito, sem garantir a ele a condição de beligerância, permitindo que certas normas de direito humanitário sejam aplicadas.

O reconhecimento do status de beligerância acarreta na caracterização internacional do conflito (ROSAS, 2005), a natureza deste é mais grave em relação à rebelião e à insurgência. Esse conceito é mais bem definido no direito internacional do que as outras duas categorias. Segundo Menon (1994) “[...] o estado de hostilidades entre dois grupos lutando pelo poder ou autoridade é o reconhecimento da existência da guerra”<sup>54</sup> (MENON, 1994, p.110, *tradução nossa*), o reconhecimento da beligerância estabelece direitos e obrigações para as partes.

No entendimento de Higgins (2004) a beligerância pode ser caracterizada através da confirmação de que o conflito armado se espalhou pelo território de forma ampla; em segundo lugar, uma parte substancial do território estatal passa a ser administrada pelos beligerantes e a conduta nas hostilidades deve ser em conformidade com as normas e costumes de guerra.

As guerras de libertação nacional podem ser sustentadas ou empreendidas de diversas formas violentas contra o governo estabelecido. Por isso, existe certa dificuldade em conferir às elas o status de beligerância, devido à relutância dos Estados em admitir a ocorrência de conflitos sérios em suas fronteiras. Reconhecer a existência desse conflito demonstra a falta de capacidade do governo de lidar com a situação que saiu de controle; e confere legitimidade aos atos dos beligerantes, garantido a eles lugar no direito internacional. Na doutrina tradicional, esta é a única forma de garantir a aplicação do *jus in bello* e conseqüentemente proteger os combatentes desses movimentos sob os auspícios do direito humanitário. O reconhecimento também tende a encorajar a observância das normas humanitárias, ao passo que sem o mesmo o oposto é permitido, cabendo a discricionariedade dos Estados aplicarem ou não essas normas.

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<sup>54</sup> [...] a state of hostilities between two groups contending for Power or authority, is the recognition of the existence of war.

Antes do advento das Convenções de Genebra de 1949, os rebeldes eram considerados criminosos, julgados pelas leis domésticas dos Estados. Essa situação foi alterada através do artigo 3, comum às quatro Convenções. O direito internacional tradicional não era bem equipado para lidar com os desafios as autoridades governamentais estabelecidas.

As Convenções de Genebra de 1949 estabeleceram apenas duas categorias de conflitos: os internacionais e os não-internacionais. Por isso, torna-se extremamente relevante determinar o caráter internacional das guerras de libertação nacional para que os combatentes envolvidos nesses movimentos possam receber a legitimidade necessária para garantir a proteção da norma. Caso contrário, recebem a proteção de apenas um número limitado de normas (artigo 3, comum às quatro convenções e o II Protocolo Adicional de 1977).

Os artigos 60, 59, 139 e 155 das quatro Convenções de Genebra de 1949, respectivamente, juntamente com o artigo 2 (3) comum a esses tratados conferem aos movimentos de libertação nacional a possibilidade de aderirem e aplicarem as normas humanitárias, na condição de Potência, através de uma interpretação extensiva da norma. O termo Potência não pode limitar-se a Estados, pois existem diversas organizações, como a própria ONU, também atingidas pelas normas humanitárias (ROSAS, 2005).

Permitir a interpretação extensiva exposta não foi a intenção das Convenções, pois desejavam restringir o termo Potência apenas para Estados (HIGGINS, 2004). O legislador de 1949 não levou em conta a possibilidade do movimento de libertação nacional se tornar parte contratante dos tratados (SCHLINDLER, 1979). Entre o ano de 1949 e 1974 o Comitê Internacional da Cruz Vermelha (CICV) realizou a Conferência Diplomática para a Reafirmação e Desenvolvimento do Direito Internacional Humanitário aplicável nos Conflitos Armados, evoluindo na comunidade internacional idéias e gerou o reconhecimento e a classificação das guerras de libertação nacional como guerras de caráter internacional. Essa evolução tem relação direta com o princípio da autodeterminação dos povos de um ponto de vista moral para o legal, devido à crescente noção da ilegalidade do colonialismo e racismo (ROSAS, 2005).

Quando um movimento de libertação nacional não recebe o status de conflito armado internacional, permanece como um conflito não internacional, somente o artigo 3 das

Convenções de Genebra e o II Protocolo Adicional de 1977 são aplicados. Wilson (1988) elabora uma crítica a esta limitação: “o artigo 3 não previne que o governo estabelecido venha a punir os rebeldes sob a lei interna, ou muda seu status na lei”<sup>55</sup>(WILSON, 1988, p. 43, *tradução nossa*). Isso significa que os combatentes detidos conforme esta norma devem ser tratados com humanidade, mas ainda podem ser sentenciados à morte após julgamento pela lei interna.

Outro ponto fraco do artigo 3, comum às quatro Convenções de Genebra é que os meios e métodos na guerra e a conduta nas hostilidades não são limitados por ele, alcançando somente os indivíduos não envolvidos diretamente no conflito e pessoas que tenham deposto as armas. Existe uma incerteza sobre a aplicação desse artigo pois sua aplicação é automática, mas não trata-se de tarefa fácil a identificação da existência do conflito como tal. Nas palavras de Higgins:

Provavelmente a dimensão mais insatisfatória da provisão é a incerteza do início de sua aplicação, sem a definição do termo “conflito armado de caráter não internacional”. Existe muita incerteza concernente ao quanto de violência é necessária antes que um conflito possa ser considerado um conflito não internacional sobre as Convenções de Genebra para o propósito do comum artigo 3. Para uma guerra de libertação nacional ser coberta pelo artigo 3, quais atributos deve ter? A imprecisão do artigo 3 permite diversas interpretações e a possibilidade das guerras de libertação nacional caírem no escopo desse artigo.<sup>56</sup> (HIGGINS, 2004, p. 21, *tradução nossa*).

A aplicação do artigo 3 implica em um grau de violência menor daquele necessário para o reconhecimento da beligerância; não requer reciprocidade, nem que os combatentes exerçam controle de parte do território ou tenha características de um governo. O reconhecimento da beligerância implica na aplicação de todo o corpo das normas humanitárias a estes conflitos.

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<sup>55</sup> Article 3 does not prevent the established government from punishing the rebels under municipal law, nor does it change their status in law.

<sup>56</sup> Probably the most unsatisfactory dimension of provision is the uncertainty of the threshold of its application, with the term of armed conflict not of an international character not being defined. There is much uncertainty concerning the threshold of violence necessary before a conflict can be regarded as being a non-international conflict under the Geneva Convention for the purposes of Common Article 3. In order for a war of national liberation to be covered by article 3, what attributes must it have? The vagueness of article 3 does allow for interpretation and the possibility of wars of national liberation falling within the scope of this article.

Devido à dificuldade em estabelecer se certo conflito pode ser caracterizado ou não como guerra de libertação nacional, os beligerantes tendem a se propor ao cumprimento das normas de direito internacional humanitário em busca da legitimidade de sua luta. Em 1956 e 1958, o Fronte para a Libertação Nacional da Argélia (FLN) declarou sua intenção de aplicar as Convenções de Genebra sobre Prisioneiros de Guerra para os prisioneiros franceses e deu ordens para seus soldados de cumprir o direito internacional humanitário. O Governo Provisório da República Argeliana (GPRA) notificou o depositário das Convenções, o governo Suíço, sua adesão foi em 1960. As outras partes dos tratados foram notificadas da adesão, mas o governo Suíço não reconheceu o Governo em questão. No entanto, o Governo Francês reconheceu a aplicabilidade do artigo 3 comum às quatro Convenções na guerra argeliana em 1956.

Portugal por muitos anos se negou a reconhecer a aplicação das Convenções de Genebra e mesmo do comum artigo 3, para os conflitos ocorridos nos territórios da Angola, Moçambique e Guiné-Bissau<sup>57</sup> e implementaram apenas a lei penal interna para tentar controlar os conflitos. No entanto, após 1974 seu posicionamento mudou e Portugal convidou o CICV para visitar seus prisioneiros de guerra (WILSON, 1988; HIGGINS, 2004).

Em 1969, a Organização para a Libertação da Palestina (OLP) comunicou a Suíça sua intenção de aderir as Convenções de Genebra na condição de reciprocidade. No entanto, o Governo suíço se quer comunicou as Altas Partes Contratantes, pois acreditavam que a OLP não era uma parte e não governava seu próprio território.

Verifica-se através dos exemplos exposto o desejo dos movimentos de libertação nacional de aplicar as Convenções de Genebra de 1949 durante sua luta, para que esta se torne legítima. Em contrapartida, os Estados aplicam as Convenções apenas como concessão e se o princípio da reciprocidade é considerado necessário (ROSAS, 2005). As guerras de libertação nacional são consideradas conflitos internacionais, mas trata-se de tarefa difícil libertá-las das amarradas da concepção tradicional de que são conflitos internos, bem como estabelecer quando se tornam guerras de libertação nacional.

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<sup>57</sup> Em 1971 a Assembléia Geral adotou a Resolução 2787 (XXVI) referente aos movimentos de libertação nacional de Zimbábue, Namíbia, Angola, Moçambique, Guiné-Bissau e o Povo Palestino.

Durante o período de descolonização a comunidade internacional deu suporte teórico para os envolvidos nas guerras de libertação nacional. A Assembléia Geral elaborou diversas Resoluções, como a Resolução 2105(XX), a Resolução 2847 (XXVI), ambas de 1965, a Resolução 2446 (XXIII)<sup>58</sup>, todas reafirmam a legitimidade do uso da força para a autodeterminação nos movimentos de libertação nacional.

A Carta das Nações Unidas, nos artigos 1 e 51 confere legitimidade ao uso da força quando terceiros Estados negam o direito de autodeterminação de um povo. Assim como o direito dos envolvidos no conflito de serem tratados como prisioneiros de guerra. A resolução 3103 (XXVIII) de 1973 contém princípios básicos sobre o status legal dos combatentes que lutam contra dominação colonial estrangeira e regimes racistas. Essa resolução declara:

O conflito armado envolvendo a luta do povo contra a dominação colonial e estrangeira e regimes racistas são considerados conflitos armados internacionais no sentido das Convenções de Genebra de 1949 e outros instrumentos internacionais devem ser aplicados às pessoas engajadas na luta armada contra a dominação colonial estrangeira e regimes racistas<sup>59</sup>. (Resolução 3103 (XXVIII) de 1973, *tradução nossa*).

A Conferência Diplomática para a Reafirmação e Desenvolvimento do Direito Internacional Humanitário aplicável nos Conflitos Armados de 1974 a 1977 não apenas alterou a interpretação do artigo 2, comum às quatro Convenções de Genebra de 1949, mas também elaborou e aprovou os Protocolos Adicionais de 1977.

O I Protocolo Adicional, no parágrafo 4 do artigo 1, expressamente prevê o alcance das normas humanitárias às guerras de libertação nacional que lutam contra a “dominação colonial e a ocupação estrangeira e contra os regimes racistas” (I PROTOCOLO ADICIONAL DE 1977, 1992, p.6). O artigo 96 desse instrumento dispõe sobre a necessidade do envio, pelo movimento de libertação nacional, de uma declaração unilateral para o depositário dos tratados para garantir a aplicação das Convenções e do Protocolo ao conflito

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<sup>58</sup> Esta resolução especificamente reafirma a decisão na Conferência de Teerã de 1968 que reconhece o direito dos guerreiros libertadores no sul da África nos territórios coloniais, quando capturados de serem tratados como prisioneiros de guerra sob as Convenções de Genebra de 1949.

<sup>59</sup> The armed conflicts involving the struggle of peoples against colonial and alien domination and racist regimes are to be regarded as international armed conflicts in the sense of the 1949 Geneva Conventions and other international instruments is to apply to the persons engaged in armed struggle against colonial and alien domination and racist regimes.

armado. As autoridades envolvidas têm os mesmos direitos e obrigações de uma Alta Parte contratante, vinculando igualmente todas as Partes em conflito. O artigo 43 dispõe sobre as forças armadas e o artigo 44 amplia a categoria de pessoas beneficiadas pela proteção de prisioneiro de guerra, alcançando os beligerantes envolvidos nesses movimentos.

Apesar do I Protocolo Adicional de 1977 ser considerado um avanço no âmbito do Direito Internacional Humanitário, é capaz de suplementar apenas parcialmente as necessidades das Convenções de Genebra, uma delas relaciona-se diretamente com os movimentos de libertação nacional. O artigo 1(4) limita as guerras de libertação nacional que podem ser protegidas pelo conjunto de normas humanitárias. Estes movimentos deverão ser conflitos armados contra dominação colonial, ocupação estrangeira e regimes racistas, excluído outros como os movimentos de libertação nacional contra regimes autoritários.

O Comitê Internacional da Cruz Vermelha comenta:

Em nossa opinião, pode ser concluído que a lista é exaustiva e completa: ela certamente cobre todos os casos e que o povo, para exercer seu direito de autodeterminação, deve recorrer ao uso da força armada contra a interferência de outro povo, ou contra um regime racista.<sup>60</sup> (SANDOZ; SWINARSKI; ZIMMERMAN, 1987, p. 54).

Segundo o entendimento de HIGGINS (2004) o parágrafo 4 do artigo 1, não é exaustivo, quando se refere a estas situações específicas, utiliza o termo “incluídos”, ou seja, além destes três tipos de movimentos de libertação nacional<sup>61</sup>, outros também poderão ser considerados, baseia seu argumento no fato da Carta das Nações Unidas e das Resoluções da Assembléia Geral garantirem o direito igualmente a todos os povos, não se limitando às situações listadas nesse artigo. Apesar disso, a interpretação e alcance desse artigo se mantém restritiva, gerando diversas críticas da doutrina moderna (GREENWOOD, 1989; HIGGINS, 2004).

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<sup>60</sup> In our opinion, it must be concluded that the list is exhaustive and complete: it certainly covers all cases in which a people, in order to exercise its rights of self-determination, must resort to the use of armed force against the interference of another people, or against a racist regime (SANDOZ; SWINARSKI; ZIMMERMAN, 1987, p. 54)

<sup>61</sup> No momento de elaboração dessa provisão havia muita atenção voltada para o luta de autodeterminação das colônias africanas portuguesas e isso influenciou profundamente a formulação do artigo 1(4) do I Protocolo Adicional de 1977.

No que tange ao artigo 96 desse Protocolo, algumas considerações também devem ser feitas, pois caso não haja a expressa declaração de aceitação pelo movimento de libertação nacional das normas humanitárias, este não será protegido por elas. Os parágrafos 1 e 2 do artigo 96 têm correspondência com o artigo 84 do I Protocolo, estabelecendo a necessidade da comunicação do aceite ao depositário do tratado, para que este, junto das Convenções de Genebra possa ser aplicado. O parágrafo 3 refere-se às guerras de libertação nacional especificamente e deixa claro que as guerras de libertação nacional são legalmente internacionais. O Comitê Internacional da Cruz Vermelha comenta sobre este dispositivo:

Em tal caso o presente parágrafo pode ser aplicado sem dificuldade se há uma declaração comum ou se declarações concordantes dessas autoridades, se, por outro lado, uma ou outra autoridade não faz a declaração, esse parágrafo aplica-se apenas entre as Partes Contratantes e as autoridades que fizerem a declaração.<sup>62</sup> (SANDOZ; SWINARSKI; ZIMMERMAN, 1987, p. 1089, *tradução nossa*).

Assim, se uma declaração é feita pelo movimento de libertação nacional, este assume os mesmos direitos e obrigações do Estado em conflito, caso contrário os membros desse movimento não desfrutam das proteções oferecidas pelos tratados.

Em relação ao status dos combatentes envolvidos nestes movimentos, algumas considerações são necessárias sobre o artigo 44 do I Protocolo Adicional de 1977. As Convenções de Genebra de 1949 mantiveram os critérios tradicionais das Convenções de Haia de 1907 para estabelecer os indivíduos protegidos por elas. O artigo em questão amplia os indivíduos protegidos e exige dos combatentes membros dos movimentos de libertação nacional o uso de sinais distintivos para sua identificação, no entanto, não faz nenhuma explanação adicional sobre estes sinais.

Os guerrilheiros que podem integrar as forças armadas desses movimentos de libertação nacional, para o desenvolvimento de sua tática de guerra, não usam sinais distintivos, mas recebem a proteção das Convenções como prisioneiro de guerra, possuindo legitimidade para tal. Essa posição foi confirmada pelas Resoluções 2852(XXVI) de 1971 e

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<sup>62</sup> In such a case the present paragraph may be applied without difficulty if there is a common declaration or if there are concordant declarations from those authorities, if, on the other hand, one or other of the authorities does not make the declaration, this paragraph applies only between the Contracting Party and the authorities making the declaration.

a Resolução 3032(XXVII) de 1972 da Assembléia Geral e pela própria interpretação das normas pelo Comitê Internacional da Cruz Vermelha: “[...] abole o requerimento de respeito da lei dos conflitos armados em operações militares conduzidas por membros de movimentos de guerrilha, enquanto ainda garante o status de combatente legítimo e de prisioneiro de Guerra se capturado.”<sup>63</sup> (SANDOZ; SWINARSKI; ZIMMERMAN, 1987, p. 383, *tradução nossa*). Os requerimentos para o status de prisioneiro de guerra foram alterados e estendidos no artigo 44 do Protocolo para abranger os beligerantes nas guerras de libertação nacional.

O II Protocolo Adicional surgiu para suplementar e desenvolver o artigo 3 das Convenções de Genebra de 1949 em relação aos conflitos não-internacionais e dentre eles incluem-se as guerras civis em larga escala. Esse instrumento possui algumas provisões relevantes para as guerras de libertação nacional, como o artigo 1 que aplica-se em situações de conflito entre um grupo dissidente e o governo central, não entre dois ou mais grupos dissidentes, mas o protocolo pode ser aplicado a movimentos de libertação nacional não incluídos nos tipos estabelecidos pelo parágrafo 4 do artigo 1 do I Protocolo Adicional. Diferentemente do I Protocolo, o II Protocolo não confere o status de prisioneiro de guerra aos combatentes membros de grupos insurgentes. A lei doméstica continua a ser aplicada nesses casos e o Estado ainda pode proferir sentenças para aqueles culpados de ofensas relacionadas ao conflito. O II Protocolo aplica-se a conflitos que alcançaram um nível específico de intensidade e nenhuma declaração deve ser feita pelas partes em conflito para que o tratado tenha aplicabilidade.

O I Protocolo Adicional de 1977 incluiu no rol dos conflitos armados internacionais apenas três tipos de guerras de libertação nacional. As guerras civis em larga escala podem ser definidas como a luta da população civil pela implementação de seu direito de autodeterminação ou independência. Este tipo de conflito é protegido pelo artigo 3, comum às quatro Convenções e o II Protocolo adicional de 1977. Os indivíduos envolvidos no embate não recebem o status de prisioneiro de guerra, mas se declaram sua aceitação das Convenções são protegidos.

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<sup>63</sup> [...] abolishing the requirement that the Law of armed conflict be respected in military operations conducted by members of guerrilla movements, while still granting the latter the status of legitimate combatants and of prisoner of war in case of capture.

### 4.3 A categoria de pessoas intituladas prisioneiros de guerra

Neste tópico analisa-se a terceira e mais importante dicotomia para o presente estudo: a distinção entre as pessoas intituladas com o status de prisioneiro de guerra, protegidas pela Terceira Convenção de Genebra de 1949 e a outras categorias de pessoas chamadas combatentes desprivilegiados<sup>64</sup> ou ilegítimos<sup>65</sup> e os civis pacíficos.

O artigo 4 da Terceira Convenção de Genebra estabelece os indivíduos que se enquadram na categoria de combatentes legítimos ou privilegiados e exclui um número significativo de pessoas envolvidas nos conflitos armados. Após o advento das Convenções o cenário internacional enfrentou conflitos armados que desafiaram o alcance das normas humanitária e por isso os I e II Protocolos Adicionais de 1977 foram implementados a fim de suprir necessidades emergentes, pois formou-se a convicção de que o grupo de pessoas intituladas com o status de prisioneiro de guerra deveria ser aumentado.

#### 4.3.1 O pessoal militar e os civis intitulados prisioneiros de guerra

O pessoal militar é o grupo de indivíduos regularmente investido da legitimidade necessária para participar dos conflitos armados, são os membros das forças armadas regulares, milícias, corpos voluntários e movimentos de resistência que não estão nas forças regulares e os membros dos levantes em massa. Os parágrafos 1, 2, 3 e 6 do artigo 4 A da Terceira Convenção de Genebra de 1949 apresenta estas categorias, respectivamente:

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<sup>64</sup> Terminologia utilizada por BAXTER (1951) para designar os indivíduos que não preenchem os requisitos para receberem o status de prisioneiro de guerra.

<sup>65</sup> O termo foi utilizado uma vez na famosa decisão da Suprema Corte Norte-americana em 31 de julho de 1942, no Caso *Ex Parte Quirin*. A Suprema Corte realizou a distinção entre combatentes legítimos e ilegítimos, entre membros regulares das forças armadas e os espões.

Artigo 4. A) São prisioneiros de guerra, no sentido da Presente Convenção, as pessoas que caírem em poder do inimigo e pertencerem a uma das seguintes categorias:

- 1) Membros das forças armadas de uma Parte em conflito, assim como os membros das milícias e dos corpos de voluntários pertencentes a essas forças armadas;
- 2) Membros de outras milícias ou de outros corpos voluntários, incluindo os dos movimentos de resistência organizados, pertencentes a uma Parte em conflito, que operem fora ou no interior de seu próprio território, mesmo quando ocupado, desde que essas milícias ou corpos de voluntários, incluindo os movimentos de resistência organizados, satisfaçam as seguintes condições:
  - a) Sejam comandados por uma pessoa responsável por seus subordinados;
  - b) Possuam um sinal distintivo fixo e reconhecível à distância;
  - c) Tragam as armas à vista;
  - d) Respeitem, em suas operações, as leis e costumes de guerra;
- 3) Membros das forças armadas regulares a serviço de um Governo ou de uma autoridade que não seja reconhecida pela Potência detentora; (...)
- 6) A população de um território não-ocupado que, à aproximação do inimigo, pegar espontaneamente em armas para combater as tropas invasoras, sem ter tempo de organizar-se em forças armadas regulares, desde que traga as armas à vista e respeite a lei e os costumes da guerra. (III Convenção de Genebra de 1949, 1992, p.63-64).

A distinção feita pelo artigo 4, nos parágrafos 1 e 2 entre as forças regulares e as forças armadas independentes (ROSAS, 2005) não torna o segundo menos merecedor do status de prisioneiro de guerra, já que o próprio texto da norma reconhece a condição de combatente legítimo dos indivíduos que preenchem os requisitos listados. Os membros das forças armadas regulares é todo pessoal militar pertencente às forças da terra, mar e ar. Já os membros das forças armadas independentes e movimentos de resistência, devem ser organizados e lutar em território ocupado ou nas guerras de libertação nacional, todos eles têm o direito de participar dos conflitos armados. Contudo, na leitura do artigo 4, percebe-se que na categoria das forças armadas regulares, pode estar incluído o pessoal não-combatente, confirmando que a participação direta no conflito não é um fator determinante para a proteção da III Convenção de Genebra de 1949 (DOSWALD-BECK; HENCKAERTS, 2005; ROSAS, 2005; WATKIN, 2005). O parágrafo 1, artigo 44 do I Protocolo Adicional estabelece que todos os combatentes nos termos do artigo 43 devem ser considerados prisioneiros de guerra. O artigo 43 suplementa a categoria de pessoas que pertencem às forças armadas e dispõe:

1. As forças armadas de uma Parte em conflito se compõem de todas as forças, as unidades e os grupos armados e organizados, colocados sob um comando responsável pela conduta de seus subordinados diante dessa Parte, mesmo que essa Parte seja representada por um governo ou uma autoridade não reconhecidos pela Parte adversa. Essas forças armadas devem ser submetidas a um regime de disciplina interna que assegure particularmente o respeito às regras do direito internacional aplicável nos conflitos armados.
2. Os membros das forças armadas de uma Parte em conflito (exceto o pessoal sanitário e religioso citado no artigo 33 da III Convenção) são combatentes, isto é, tem o direito de participar diretamente das hostilidades.
3. A Parte em conflito que incorporar, nas suas forças armadas uma organização paramilitar ou um serviço armado encarregado de fazer respeitar a ordem, deve notificar esse fato às outras Partes em conflito. (I PROTOCOLO ADICIONAL DE 1977, 1998, p. 34).

O pessoal médico e religioso retido pela Potência detentora junto das forças armadas têm a função de prestar assistência aos prisioneiros de guerra, mas não é assim considerado, mesmo se beneficiando de todas as vantagens e da proteção da III Convenção de Genebra de 1949. Os médicos militares e o pessoal religioso, membros de forças armadas são considerados não-combatentes e devem ser protegidos e respeitados como não-combatentes. A condição de não-combatente do pessoal médico e religioso que recebe a mesma proteção conferida aos prisioneiros de guerra baseia-se no direito costumeiro e nos tratados internacionais e proíbe a participação desses indivíduos nas hostilidades ativas. Estes indivíduos não devem ser confundidos com os civis acompanhantes das forças armadas, os quais não são membros delas por definição, nos parágrafos 4 e 5 do artigo 4 da III Convenção:

- 4) As pessoas que acompanham as forças armadas, sem delas fazerem diretamente parte, tais como os membros civis das tripulações de aviões militares, os correspondentes de guerra, os fornecedores, os membros de unidades de trabalho ou de serviços encarregados do bem-estar das forças armadas, desde que devidamente autorizados pelas forças armadas que acompanham, que deverão lhes fornecer um cartão de identidade semelhante ao do modo em anexo;
- 5) Membros das tripulações, incluindo os comandantes, pilotos e aprendizes da marinha mercante e as tripulações da aviação civil das Partes em conflito que não se beneficiarem de um tratamento mais favorável em virtude de outras disposições do direito internacional. (III CONVENÇÃO DE GENEBRA DE 1949, 1992, p. 64).

Estes dispositivos legais estendem a proteção de prisioneiro de guerra para certas categorias de pessoas, que não são pessoal militar, mas possuem o direito de participar das hostilidades (ROSAS, 2005). Primeiramente deve ser comentado que o cartão de identidade

carregado por estes indivíduos não é uma condição indispensável para o direito de ser tratado como prisioneiro de guerra, mas apenas uma garantia suplementar. Assim, a aplicação dessa provisão depende da autorização para o acompanhamento das forças armadas e o cartão de identidade serve apenas como prova dessa autorização (PICTET, 1960). Em segundo lugar, o parágrafo 5 se refere à possibilidade de um tratamento mais favorável disposto em outras normas de direito internacional, no caso, a Convenção de Haia (XI) de 1907, que restringe o direito de fazer os marujos mercantes prisioneiros de guerra, mas a Convenção não se aplica aos navios que tomam parte das hostilidades (ROSAS, 2005; PICTET, 1960).

#### 4.3.2 *Os combatentes legítimos, ilegítimos e o status de prisioneiro de guerra*

Em diferentes contextos, observa-se a relação direta entre o conceito de prisioneiro de guerra e o de combatente legítimo. Os termos beligerantes privilegiados e combatentes legítimos são utilizados por diversos doutrinadores (ALDRICH, 2002; BAXTER, 1951; DÖRMANN, 2003; ROSAS, 2005; WATKIN, 2005) e pelas Regulações de Haia para cobrir a categoria de pessoas com autorização para tomar parte das hostilidades ativas, as quais não podem ser punidas pela mera participação e realização de atos que seriam considerados crimes graves em tempos de paz, mas apenas processados e julgados por violações às normas humanitárias. Dessa forma, uma pessoa não intitulada combatente legítimo pode ser punida pela legislação interna do adversário por ter cometido crimes de guerra ou atos hostis.

O status de prisioneiro de guerra pode ser conferido também a certas categorias de civis, nos termos dos parágrafos 4 e 5 do artigo 4, sem o direito de participar diretamente das hostilidades. Os artigos 48 e seguintes do I Protocolo Adicional de 1977 protegem os civis de uma maneira geral contra os perigos das operações militares, pois estes não devem ser alvos de ataques militares. Exceto nos casos de *levée en masse*, nos termos do parágrafo 6 do artigo 4 da Terceira Convenção, os civis não tem o direito de participar das hostilidades ativas, se participam, continuam sendo civis e podem ser objetos legítimos de ataques militares.

O termo combatente ilegítimo<sup>66</sup>, desleal ou combatente desprivilegiado<sup>67</sup> (DÖRMANN, 2003; PICTET, 1960; ROSAS, 2005; WATKIN, 2005) designa o responsável por cometer atos de beligerância sem preencher os requisitos para classificá-los como prisioneiro de guerra quando caem nas mãos da Potência inimiga. Nas palavras de Watkin (2005):

Combatentes conseqüentemente possuem um status especial. Eles têm o direito de participar das hostilidades e recebem imunidade contra o julgamento (imunidade de combate) pelas mortes cometidas em conformidade com a lei. Além disso, combatentes tem o direito do status de prisioneiro de guerra. O status de combatente não foi projetado ou historicamente aplicado como um conceito inclusivo. Em um sistema desenvolvido para promover ordem e estabelecer padrões de conduta, esse status é em última análise ligado à legitimidade.<sup>68</sup> (WATKIN, 2005, p. 12-13, *tradução nossa*).

O artigo 4 da Terceira Convenção de Genebra de 1949 enumera todas as categorias de pessoas intituladas prisioneiros de Guerra, suplementado pelo artigo 43 do I Protocolo Adicional de 1977. A idéia de combatente legítimo e combatente desprivilegiado está vinculada com as Regulações de Haia, o artigo 4 não a menciona, mas não a ignora completamente. O artigo 4 nos parágrafos 1, 2, 3 e 6 baseia-se no princípio de que as forças regulares, as forças independentes (isso inclui movimentos de resistência organizados aliados a governos ou autoridades sem reconhecimento) e os *levée en masse*, respectivamente, possuem a licença para atuar nas hostilidades ativas, conferindo a eles o status de combatente legítimo. O parágrafo 2, artigo 43 do I Protocolo Adicional expressa diretamente o conceito de combatentes legítimos ao afirmar que os membros das forças armadas de uma das Partes em conflito têm o direito de participar diretamente das hostilidades por serem combatentes. Esse artigo refere-se a todas as forças armadas organizadas, sejam regulares ou

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<sup>66</sup> O termo foi utilizado uma vez na famosa decisão da Suprema Corte Norte-americana em 31 de julho de 1942, no Caso *Ex Parte Quirin*. A Suprema Corte realizou a distinção entre combatentes legítimos e ilegítimos, entre membros regulares das forças armadas e os espíões.

<sup>67</sup> Terminologia utilizada por BAXTER (1951) para designer os indivíduos que não preenchem os requisitos para receberem o status de prisioneiro de guerra.

<sup>68</sup> Combatants therefore have a special status. They have the right to participate in hostilities and receive immunity from prosecution (“combat immunity”) for killing carried out in accordance with the law. Further, combatants have a right to prisoners of war status. Combatant status has not been designed or historically applied as an inclusive concept. In a system designed to provide order and outline standards of conduct, this status is ultimately linked to legitimacy.”

independentes, mas não se aplica aos levantes em massa, não implicando na perda do status de combatente desses indivíduos. Assim, Rosas (2005, p. 308, *tradução nossa*) comenta essa provisão:

Apesar de evitar a palavra “legítimo”, essa provisão, quando se refere ao direito de participar diretamente das hostilidades mostra que sua definição de combatente é essencialmente a mesma concepção de “beligerantes” do artigo 1 das Regulações de Haia e a concepção de combatente legítimo.<sup>69</sup> (ROSAS, 2005, p.308, *tradução nossa*).

De uma maneira geral os civis são todos aqueles não pertencentes à categoria de pessoas referidas no artigo 4 A, parágrafos 1, 2, 3 e 6 da Terceira Convenção de Genebra e no artigo 43 do I Protocolo Adicional. Os civis recebem a proteção do direito costumeiro internacional e pela IV Convenção de Genebra de 1949. Os termos combatentes, prisioneiros de guerra e civis são utilizados pelos tratados internacionais e o termo combatente desprivilegiado ou ilegítimo, não aparece na normativa internacional, por isso os combatentes desprivilegiados, como todos aqueles que tomam parte ativa nos conflitos sem se qualificar para o status de prisioneiro de guerra, ~~ou seja,~~ são civis que recebem a completa proteção da Quarta Convenção de Genebra ou sofrem algumas derrogações. O I Protocolo Adicional de 1977 refere-se expressamente a certas categorias de pessoas que não tem o direito de receber o status de prisioneiro de guerra, são eles: os espíões, conforme o artigo 46 e os mercenários, nos termos do artigo 47, que se envolvem nas hostilidades com o objetivo de obter vantagem pessoal.

O parágrafo 1, artigo 4 da Quarta Convenção de Genebra de 1949 informa seu alcance ao definir as pessoas protegidas por suas provisões:

São protegidas pela presente Convenção as pessoas que, a qualquer momento e de qualquer forma, estiverem em caso de conflito ou ocupação, em poder de uma Parte em conflito ou de uma Potência ocupante da qual não sejam nacionais. (IV CONVENÇÃO DE GENEBRA DE 1949, 1992, p.131-132).

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<sup>69</sup> Although avoiding the Word “lawful”, this provision, by referring to the right to participate directly in hostilities, shows that its definition of combatants is essentially the same as the concept of “belligerents” defined by article 1 of the Hague Regulations and the concept of “lawful combatants”

Essa disposição parece amparar todos aqueles envolvidos nos conflitos armados que não atendem aos requisitos para se tornarem prisioneiros de guerra. Contudo, somente aqueles que preencherem o critério da nacionalidade, ou seja, os nacionais de uma Parte em conflito nas mãos de outra Parte ou Potência são protegidos, caso encontrem-se no poder de seu próprio Estado ou Parte, são excluídos.

O parágrafo 2 do supracitado artigo exclui estas pessoas:

Não estão protegidos os nacionais de um Estado que não faça parte dessa Convenção. Os nacionais de um Estado neutro que estiverem em território de um Estado beligerante e os nacionais de um Estado co-beligerante não serão considerados como pessoas protegidas enquanto o Estado a que pertencerem tiver representação diplomática normal junto ao Estado em poder do qual se encontram. (IV CONVENÇÃO DE GENEBRA DE 1949, p. 131-132).

A exclusão dos nacionais de um Estado que não faça parte da Convenção tornou-se sem efeito prático, pois atualmente os tratados têm a participação quase universal da comunidade internacional.

O parágrafo 4, artigo 4 da Quarta Convenção exclui da proteção de suas provisões os indivíduos protegidos pelas outras três Convenções de Genebra. As pessoas que não preenchem os requisitos necessários para alcançar o status de combatente legítimo e conseqüentemente o status de prisioneiro de guerra são cobertas pela Quarta Convenção de Genebra de 1949 desde que não sejam nacionais de um Estado que não seja parte da Convenção; não estejam nas mãos da Parte ou Potência que sejam nacionais ou não sejam nacionais de um Estado neutro ou Estado co-beligerante com representação diplomática normal (DÖRMANN, 2003; PICTET, 1958). O fato de uma pessoa ter participado de forma ilegítima nas hostilidades ativas não é um motivo para excluir a aplicação da Quarta Convenção de Genebra. No entanto, o artigo 5 dessa Convenção permite certas derrogações para algumas combatentes ilegítimos:

Se uma Parte em conflito tiver razões fundamentadas para considerar que uma pessoa protegida pela presente Convenção que se encontre em seu território é legitimamente suspeita de atividade prejudicial à segurança do Estado, ou se for provado que se dedica de fato a essa atividade, a referida pessoa não poderá fazer valer os direitos e privilégios conferidos pela presente Convenção que, se fossem usados a seu favor, poderiam prejudicar a segurança do Estado.

Se uma pessoa protegida pela Convenção for detida em território ocupado como espiã ou sabotadora, ou porque recai sobre ela uma legítima suspeita de atividades prejudiciais à segurança da Potência ocupante, a referida pessoa poderá, em caso de absoluta necessidade de segurança militar, ser privada dos direitos de comunicação previstos pela presente Convenção.

Em ambos os casos, as referidas pessoas devem, porém ser tratadas com humanidade e, no caso de serem processadas, não poderão ser privadas do direito ao processo imparcial e regular previsto pela presente Convenção. Voltarão a beneficiar-se de todos os direitos e privilégios de pessoa protegida no sentido da presente Convenção, logo que possível, tendo em conta a segurança do Estado ou da Potência ocupante, consoante o caso. (IV CONVENÇÃO DE GENEBRA DE 1949, 1992, p. 132).

Esse artigo estabelece em primeiro lugar a ausência do direito dessas pessoas de clamar pelos privilégios contidos na Quarta Convenção devido à possibilidade de prejudicar a segurança do Estado que a detém; em segundo lugar estas pessoas perdem o direito de comunicação. No entanto, o direito de um tratamento humano, conforme os artigos 27 e 37 da Convenção; a proteção contra a tortura e o direito a um julgamento justo, contido nos artigos 71-76, não podem ser derogados.

Outro argumento favorável à aplicação da IV Convenção aos combatentes ilegítimos é o artigo 45, parágrafo 3 do I Protocolo Adicional: todo participante das hostilidades, sem o benefício da proteção conferida pela III Convenção de Genebra sem outro tratamento mais favorável recebe a proteção da IV Convenção e do artigo 75 do I Protocolo Adicional. O artigo 75 do I Protocolo Adicional de 1977 dispõe garantias fundamentais às pessoas que estiverem em poder de uma Parte em conflito, nacional ou não, protegendo estes indivíduos de tratamentos humilhantes e degradantes. Estes artigos confirmam a aplicação da IV Convenção para os combatentes ilegítimos que preenchem o critério da nacionalidade (DÖRMANN, 2003; WATKIN, 2005).

Nas Conferências Diplomáticas que discutiram a elaboração das Convenções de Genebra, os delegados refletiram sobre a extensão da proteção da III e IV Convenções de Genebra. Os combatentes ilegítimos ou desprivilegiados não deveriam receber o mesmo tratamento e proteção dos prisioneiros de guerra, tampouco todas as proteções conferidas aos civis pacíficos, mas deveriam ter o direito a um tratamento humano sem sua sumária execução. Assim,

A história da IV Convenção de Genebra parece apoiar a visão de que combatentes ilegítimos que preenchem o critério da nacionalidade do seu artigo 4 são protegidos, mas aquela proteção está sujeita à derrogações. Enquanto certas delegações tiveram a visão de que a IV Convenção de Genebra não deveria proteger pessoas que violassem as leis da Guerra, sabotadores e espões.<sup>70</sup> (DÖRMANN, 2003, p. 56, *tradução nossa*).

Na literatura legal, diversos doutrinadores (ALDRICH, 2002; MCDONALD, 2002; HOFFMAN, 2002; NAQVI, 2002) defendem que a IV Convenção de Genebra protege os combatentes ilegítimos que preenchem o critério da nacionalidade. Em contrapartida, autores como Goldman (2002) afirmam que esta convenção não é aplicável aos combatentes ilegítimos. Dessa forma, os indivíduos que não recebem o status de prisioneiro de guerra, quando participam das hostilidades ativas, são considerados combatentes ilegítimos ou desprivilegiados e protegidos pela Quarta Convenção de Genebra de 1949 se preencherem o critério da nacionalidade. O Estado não é obrigado a conferir-lhes o status de prisioneiro de guerra, isso inclui os desertores, e todo caso contrário têm o mínimo de garantias contidas no artigo 75 do I Protocolo Adicional. Apesar de não receberem proteção específica de nenhuma das Convenções, os participantes dos conflitos armados tem o direito a um tratamento humano, sem a tortura, tratamentos degradantes ou humilhantes e um julgamento justo com o devido processo legal.

#### *4.3.3 As condições específicas para o status de prisioneiro de guerra*

O artigo 4 da III Convenção de Genebra de 1949, no parágrafo 2 determina as condições para atingir o status de prisioneiro de guerra aos membros das forças armadas independentes: ser comandado por uma pessoa responsável pelos seus subordinados; usar sinais distintivos fixos e reconhecíveis à certa distância; carregar as armas à vista e respeitar as leis e costumes em suas operações armadas.

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<sup>70</sup> The drafting history of GC IV seems to support the view that “unlawful combatants” fulfilling the nationality criteria of its Article 4 are protected, but that the protection is subject to derogations. While certain delegations took the view that GC IV should not protect persons violating the laws of war, saboteurs and spies.

A primeira condição possui o caráter coletivo e não depende de um comando formalmente estruturado, mas requer disciplina suficiente para garantir o respeito ao direito internacional e evitar crimes de guerra. Contudo, a noção de comando é um conceito militar, reforçado no I Protocolo Adicional de 1977, artigo 43 (1). O I Protocolo Adicional, nos artigos 86 e 87, impõe aos comandantes uma atuação para suprimir as brechas do direito humanitário, sob pena de responsabilização pelo fracasso em aplicar a lei (WATKIN, 2005). O artigo 4 A (2) (a) da Terceira Convenção requer que as forças independentes sejam organizadas, pertençam a uma das Partes em conflito, para garantir não apenas o caráter internacional do mesmo, mas para que esteja implícita a autorização de um governo ou autoridade para lutar em seu nome e não um grupo irresponsável engajados em uma guerra privada (ROSAS, 2005).

O uso de sinais distintivos fixos reconhecíveis a certa distância é a mais polêmica das quatro condições para o status de prisioneiro de guerra devido a sua subjetividade (PFANNER, 2004; ROSAS, 2005; WATKIN, 2005). O melhor sinal distintivo é o uniforme militar, destinado a demonstrar a subordinação de seu usuário a um Estado. O princípio da distinção<sup>71</sup>, explicitamente definido no artigo 48 do I Protocolo Adicional, estabelece que os combatentes devem se distinguir da população civil quando engajados em operações militares ou ataques, pois se falharem, não tem o direito ao status de prisioneiro de guerra. A privação do status de prisioneiro de guerra é uma sanção<sup>72</sup> necessária pela violação da regra tradicional que requer dos combatentes a distinção (ROSAS, 2005). Além disso, o objetivo dessa provisão é proteger a população civil e minimizar os danos causados pela falta de identificação. Este requerimento deseja restringir a guerra a atos de violência entre os inimigos militares.

O uniforme utilizado atualmente nas hostilidades ativas são roupas camufladas, largamente adaptadas à cor do ambiente no qual o exército estiver operando, para tornar a roupa menos visível e dificultar o alvo do inimigo. Nestas condições, a “distinção ainda é

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<sup>71</sup> Este princípio é uma regra estabelecida pelo direito costumeiro e está contido na Declaração de Bruxelas, no Manual de Oxford e nas Regulações de Haia e foi codificado na III Convenção de Genebra e no I Protocolo Adicional.

<sup>72</sup> Ao mesmo tempo em que a sanção protege a população civil, coloca em segurança os interesses dos Estados quando enfrentam resistências populares, principalmente em territórios ocupados.

importante na condução da guerra, mas é particularmente relevante no campo de batalha a habilidade de distinguir entre amigos e inimigos, a tecnologia moderna ajudou nisso.”<sup>73</sup> (PFANNER, 2004, p.100, *tradução nossa*). Os exércitos estão preocupados em buscar novos tipos de uniformes que podem tornar os soldados menos visíveis. Nas situações de combate um sinal distintivo pode substituir o uniforme, principalmente em operações furtivas. Estes sinais geralmente servem para marcar um item do uniforme, como uma insígnia, um bonés, um casaco ou luvas marcadas, mas não são visíveis a distancia. O termo “fixo” descrito na norma determina a existência de um sinal que não pode ser retirado, mas na prática, luvas, bonés e até mesmo uma camisa podem ser removidos. Já o significado de “distintivo” designa o sinal idêntico para todos os membros das organizações de resistência e usado somente pelos membros da organização (PICTET, 1960; ROSAS, 2005).

Nas forças armadas, nem todos os seus integrantes usam uniformes, até mesmo o comandante<sup>74</sup> pode se vestir com roupas civis, mas os membros das forças armadas em operações de espionagem se disfarçam para realizar atividades consideradas desleais no âmbito do direito internacional humanitário. No caso de espionagem um sinal distintivo não substitui o uniforme<sup>75</sup> e nem é suficiente para garantir ao indivíduo o status de prisioneiro de guerra (SANDOZ; SWINARSKI; ZIMMERMANN, 1987).

O parágrafo 7, artigo 44 do I Protocolo Adicional de 1977 indica que as forças regulares geralmente vestem uniformes como sinais distintivos e carregam suas armas abertamente. O uso do uniforme não é obrigatório no direito humanitário, pois o uso de roupas civis somente é ilegal se envolver a perfídia. Nenhum dos instrumentos do direito internacional humanitário traz a definição do que seja uniforme militar, deixando a cargo dos Estados a determinação de seus sinais distintivos e uniformes. Os sinais distintivos são utilizados como substitutos dos uniformes para indicar qual é o lado do combatente no campo de batalha. A escassa jurisprudência sobre o uso de sinais distintivos enfatiza sua importância: a Corte Malasiana no caso Osman em 1969 decidiu que dois indonésios, sem

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<sup>73</sup> Distinction is still important in the conduct of warfare, but what is particularly relevant on the battlefield is the ability to distinguish between friends and foes, and modern technology has helped in this regard.

<sup>74</sup> Saddam Hussein foi capturado em 11 de dezembro de 2003 usando roupas civis e foi declarado prisioneiro de guerra pelos Estados Unidos devido sua função de Comandante das Forças Armadas Iraquianas.

<sup>75</sup> O uniforme neste caso é um fator essencial para decidir se um soldado estava ou não engajado em espionagem.

uniformes e papéis de identificação, clamando serem membros das forças armadas da Indonésia, não tinham o direito de receber o status de prisioneiro de guerra (SASSÒLI; BOUVIER, 1999). A Corte Militar Israelense decidiu no caso Kassen em 1969 que o uso de boinas camufladas e calças verdes eram suficientes para preencher o critério da distinção, pois não eram de uso habitual na área em que os Militantes<sup>76</sup> Palestinos estavam operando (SASSÒLI; BOUVIER, 1999). Diante disso o objetivo da provisão do uso de sinais distintivos é simplesmente diferenciar combatentes de civis e não identificar um grupo específico (PFANNER, 2004), por isso,

Enquanto esse requerimento é dificilmente compatível com as táticas militares normais para evitar ser descoberto e não representar um alvo fácil, relaciona-se nada menos do que com a habilidade dos combatentes de reconhecer um civil à distância em que armas poderiam ser usadas para acertar tal pessoa. A roupa de batalha camuflada usada por todos os exércitos demonstra que esse critério de visibilidade não pode ser aplicado de forma restritiva para os combatentes que não usam uniformes, mas outros sinais distintivos. No entanto, a camuflagem não pode ser equiparada com um disfarce em roupas civis comuns.<sup>77</sup> (PFANNER, 2005, p.108, *tradução nossa*).

As condições dispostas no parágrafo 2, artigo 4 da Terceira Convenção, tem o caráter coletivo e devem ser preenchidas pelos membros das forças independentes, ao passo que as forças armadas regulares, não precisam necessariamente preencher todos estes critérios, pois recebem o status de prisioneiro automaticamente nos termos do parágrafo 1. Tal status reflete o relacionamento entre o Estado como sujeito de direito internacional, as forças armadas como órgãos desses Estados e os membros das forças armadas como combatentes legítimos (ROSAS, 2005; WATKIN, 2005).

A terceira condição estipula que as armas devem ser carregadas abertamente pelos combatentes e relaciona-se especificamente a real forma na qual uma arma é carregada ou de uma maneira mais geral, sobre a forma de condução das hostilidades. Sob o ponto de vista

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<sup>76</sup> Partisans é o termo original.

<sup>77</sup> While this requirement is hardly compatible with normal military tactics to avoid Discovery and not to present an easy target, it nevertheless pertains to the ability of combatants to recognize a civilian at a distance at which weapons could be used to target such persons. The camouflaged battle dress worn by virtually all armies demonstrates that this criterion of visibility cannot be applied too stringently for combatants who do not wear uniforms but other distinctive signs. However, camouflage cannot be equated with a disguise in ordinary civilian clothing.

tradicional esta condição não é preenchida quando um combatente carrega uma pistola ou outra arma escondida, mas a abordagem contemporânea entende que esta provisão busca garantir a lealdade no combate e não impõe a obrigações mais pesadas sobre as forças independentes do que em relação às forças armadas regulares (PICTET, 1960; ROSAS, 2005). O combatente não precisa carregar armas de forma visível<sup>78</sup>, desde que a falta de visibilidade da arma não seja com a intenção de perfídia, do contrário as armadas devem estar à vista. “O inimigo deve ser capaz de reconhecer os militantes como combatentes do mesmo modo que membros de forças armadas regulares, quaisquer sejam suas armas.”<sup>79</sup> (PICTET, 1960, p.61,*tradução nossa*). O parágrafo 3, artigo 44 do I Protocolo Adicional dispõe: “[...] levando em conta que há situações nos conflitos armados em que, devido à natureza das hostilidades, um combatente armado não pode se distinguir da população civil, ele conservará o estatuto de combatente desde que, em tais situações, use as suas armas abertamente” (I PROTOCOLO ADICIONAL DE 1977, 1998, p.20), quando realizar ações militares e quando estiver à vista do adversário. As armas devem ser carregadas abertamente durante as operações militares, mesmo que não seja possível o uso do sinal distintivo, para que o adversário possa agir. Em outras palavras, em casos extremos esta disposição se sobrepõe à anterior.

No que tange a obrigação de respeitar as leis e costumes de guerra, a Terceira Convenção requer das forças independentes a condução de suas operações em consonância com as regras de direito humanitário (Artigo 4 (1) segunda parte, do I Protocolo Adicional de 1977), mas ao mesmo tempo esta disposição é vaga e sujeita a variações na medida em que a guerra evolui. O parágrafo 2, artigo 44 do I Protocolo Adicional estipula que todos os combatentes devem respeitar as regras de direito internacional aplicáveis aos conflitos armados, mas a violação não priva um combatente do direito de assim ser considerado, salvo se deliberadamente deixa de se distinguir da população civil, nos termos dos parágrafos 3 e 4 do mesmo artigo. A única exceção para as condições dispostas é o caso dos levantes em

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<sup>78</sup> Although the difference may seem slight, there must be no confusion between carrying arms “openly” and carrying them “visibly” or “ostensibly”[...] This provision is intended to prescribe that a hand-grenade or a revolver must be carried at belt or shoulder rather than in a pocket or under a coat.

<sup>79</sup> The enemy must be able to recognize partisans as combatants in the same way as members of regular armed forces, whatever their weapons.

massa (artigo 4, parágrafo 6), pois estes combatentes, considerados legítimos, não precisam usar sinais distintivos vistos à distância, nem estar sob um comando organizado.

Conclui-se que as disposições contidas nas letras a e b do artigo 4, possuem indiscutivelmente o caráter coletivo e são essenciais para conferir o status de prisioneiro de guerra, assim como as disposições na letra c, que é capaz inclusive de suprir a falta de distinção dos combatentes nas situações em que estejam impossibilitados de fazê-lo dada a natureza do combate. A letra d, devido a sua subjetividade e as variações em sua interpretação, pode ser violada sem prejudicar o status de combatente dos indivíduos envolvidos no conflito, desde que estes não violem o princípio da distinção. Além disso, a violação das três primeiras condições acarreta na perda do status de combatente e conseqüentemente a proteção como prisioneiro de guerra para as forças armadas independentes.

#### *4.3.4 A dúvida e a determinação do status dos cativos*

Em diferentes contextos existe a dificuldade em estabelecer se uma pessoa capturada sem uniforme é um civil pacífico protegido pela Quarta Convenção de Genebra; um civil protegido pelos parágrafos 4 e 5 do artigo 4 da Terceira Convenção; um combatente desprivilegiado ou ilegítimo, sem o direito de receber o status de prisioneiro de guerra ou um combatente legítimo enquadrado em uma das categorias dos parágrafos 1, 2, 3 ou 6 do Artigo 4 da Terceira Convenção. O status de prisioneiro de guerra impede o julgamento e a punição dos indivíduos detidos pela mera participação nas hostilidades e garante um tratamento humano do momento em que caem nas mãos do inimigo até sua libertação e repatriamento. Dessa forma, determinar o status do capturado quando surgir dúvidas adquire um aspecto fundamental, pois sem o status de prisioneiro de guerra podem ser julgados por atos de beligerância sob as leis domésticas do Estado. O parágrafo 2 do artigo 5 da Terceira Convenção tem a função de buscar suplementar a dúvida e estabelece:

Se houver dúvida quanto ao enquadramento em uma das categorias enumeradas no artigo 4 de pessoas que tiverem cometido um ato beligerante e caírem em poder do inimigo, tais pessoas se beneficiarão da proteção deste Convênio, aguardando que um tribunal competente determine seu estatuto. (III CONVENÇÃO DE GENEBRA DE 1949, 1992, p.65).

Apesar das distinções do artigo 4, na batalha nem sempre é possível estabelecer com clareza a diferença entre combatentes legítimos e civis. A disposição do artigo 5 é utilizada somente no caso de dúvida, se uma pessoa que cometeu um ato de beligerância pertence a uma das categorias citadas. Um tribunal competente deve determinar o status individualmente:

Essa regra parece tornar claro que onde há dúvida sobre o status de prisioneiro de Guerra de uma pessoa capturada, é requerido aos Estados Partes a determinação individual de status por um mecanismo formal. Enquanto isso, a pessoa capturada deve ser tratada como se ele ou ela fosse um prisioneiro de guerra.<sup>80</sup> (NAQVI, 2004, p. 574, *tradução nossa*).

A análise dessa norma impõe a indagação sobre a clareza de alguns pontos relevantes: o significado de “dúvida” e quem está sujeito a esta dúvida; o significado de tribunal competente e qual é o procedimento a ser utilizado por este tribunal.

A dúvida razoável pode ser definida juridicamente como a dúvida que levaria uma pessoa a hesitar antes agir em uma situação importante. Segundo doutrinadores contemporâneos (NAVQI, 2005; PICTET, 1960; ROSAS, 2005), a Terceira Convenção de Genebra cria a presunção de que o indivíduo apreendido no campo de batalha é presumidamente um prisioneiro de guerra, confirmada pelo artigo 45, parágrafo 1 do I Protocolo Adicional de 1977:

Aquele que tomar parte em hostilidades e cair em poder de uma Parte adversa será considerado prisioneiro de guerra, e, em consequência, estará protegido pela III Convenção, quando reivindicar o estatuto de prisioneiro, ou constar que possui direito ao estatuto de prisioneiro de guerra, ou quando a Parte de que depende reivindicar para ele esse estatuto, por notificação à Potência que o detém ou à Potência Protetora. Se existir alguma dúvida sobre seu direito ao estatuto de prisioneiro de guerra, ele continuará a se beneficiar desse estatuto e,

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<sup>80</sup> This rule would seem to make clear that where is doubt as to the prisoner-of-war status of a captured person, States Parties are required to have individual status determined by a formal mechanism. In the meantime, the captured person must be treated as if he or she is a prisoners of war.

conseqüentemente da proteção da III Convenção e do presente Protocolo, enquanto estiver à espera da determinação do seu estatuto por um tribunal competente. (I PROTOCOLO ADICIONAL DE 1977, 1992, p. 36).

Mesmo havendo dúvidas sobre o status do indivíduo detido, este é presumidamente prisioneiro de guerra até a definição de seu status por um tribunal competente. Apesar do artigo 5, parágrafo 2 ser um avanço na proteção das pessoas envolvidas nos conflitos, a norma permanece imprecisa e elementar ( SANDOZ; SWINARSKI; ZIMMERMAN, 1987). O parágrafo 1, artigo 45 do I Protocolo Adicional suplementa e desenvolve o parágrafo 2, artigo 5 da Terceira Convenção de Genebra quando garante o status de prisioneiro para os indivíduos que clama por ele; quando a Parte que representam reivindicar para ele esse status ou quando constar que têm direito ao status.

O tribunal competente nos termos do artigo 5 é indefinido, sua composição é determinada pelas leis domésticas dos Estados Partes. O tribunal é competente por possuir a jurisdição ou a autoridade para agir. Esse tribunal pode ser uma corte de justiça, um lugar de julgamento ou decisão. O tribunal competente não precisa possuir necessariamente o caráter judicial ou militar, pode apenas ostentar sua natureza administrativa com uma autoridade responsável, já que o objetivo não é julgar os atos praticados pelo indivíduo, mas determinar a proteção e direitos que devem ser conferidos a ele. O próprio artigo 45, nos parágrafos 1 e 2, confirma essa diferença, pois no parágrafo 1 refere-se a “tribunal competente” e no parágrafo 2 a um “tribunal judicial” capaz de julgar seu status quando as dúvidas ainda persistirem, assim como as infrações cometidas pelos indivíduos não intitulados prisioneiros de guerra. “Não existem dúvidas de que em princípio é preferível determinar o status do acusado respeitando a proteção da Terceira Convenção, i.e., para tomar uma decisão considerando seu status como um combatente e prisioneiro de Guerra, antes de decidir sobre os méritos do caso.”<sup>81</sup> (PICTET, 1960, p. 77, *tradução nossa*).

O procedimento do tribunal competente deve no mínimo estar em conformidade com a Quarta Convenção de Genebra ou de acordo com as garantias fundamentais dispostas no artigo 75 do I Protocolo Adicional. O Direito internacional humanitário se mantém silencioso

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<sup>81</sup>There is no doubt that in principle it is preferable to determine the status of the accused with regard to the protection of the Third Convention, i.e., to make a decision regarding his status as a combatant and prisoner of war, before deciding on the merits of the case.

sobre quais os direitos processuais aplicáveis na determinação do status de um indivíduo. Já que os direitos humanos são aplicados a qualquer tempo, inclusive durante os conflitos armados, pois os direitos fundamentais não derogáveis, tal como o direito a um julgamento justo, também constante no supracitado artigo 75 e no artigo 3 comum às quatro Convenções de Genebra.

Assim, caso haja dúvidas sobre o status do indivíduo capturado que cometeu atos de beligerância, o parágrafo 2 do artigo 5 da Terceira Convenção de Genebra, juntamente com o artigo 45, parágrafo 1 do I Protocolo Adicional são pertinentes e aplicáveis. O tribunal competente estabelece o status do indivíduo e não precisa necessariamente possuir o caráter judicial, podendo ter o caráter militar ou administrativo. O procedimento adotado para a determinação deste status deve levar em consideração os direitos humanos não derogáveis, como direito a um julgamento justo, bem como as provisões de cunho costumeiro contidas nos artigo 75 do I Protocolo Adicional e artigo 3 comum às quatro Convenções de Genebra, que contém garantias elementares para os envolvidos nos conflitos armados.

## 5 ESTUDO DE CASOS

### 5.1 O Vietnã

#### *5.1.1 Antecedentes históricos e políticos*

A Guerra do Vietnã terminou em 1975 com o colapso do Governo de Saigon e constitui-se no conflito de maior importância do período de 1959-1975. As hostilidades no Vietnã, Laos e Camboja custaram a vida de mais de 58.000 americanos e outros 300.000 foram feridos. Essa guerra foi um conflito armado que envolveu o Vietnã do Norte, com guerrilheiros o Frente de Libertação Nacional<sup>82</sup> (FLN) contra os Estados Unidos e o exército do Vietnã do Sul.

De 1946 até 1954, os vietnamitas lutaram por sua independência contra a França na Primeira Guerra da Indochina, ao final, foi celebrado o Acordo de Genebra de 1954 que estabeleceu uma fronteira provisória entre o norte e o Sul; instituiu também dois governos provisórios de cada lado da fronteira, na dependência da realização de eleições em 1956. O Vietnã do Sul recusou-se então à realização das eleições, perdendo qualquer legitimidade conferida a ele por este tratado. No entanto, cerca de 60 Estados reconheceram a soberania do novo regime e abriram embaixadas em Saigon, mas faltava para o governo do sul o prestígio com seu povo.

O Vietnã do Norte encontrava-se sob o controle dos Comunistas e o Sul era controlado pelos vietnamitas que entraram em colapso junto com a França. No ano de 1964, os Estados Unidos realizaram o primeiro bombardeio ao Vietnã do Norte e enviaram tropas para impedir o colapso do Governo de Saigon no Vietnã do Sul, confirmando a falta de capacidade de autodefesa desse governo e controle sobre seu próprio povo. Os Estados Unidos não foram capazes de atingir seu objetivo e em 1975 o Vietnã foi reunificado sob o

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<sup>82</sup> National Liberation Front (NLF).

comando comunista, tornando-se em 1976 oficialmente a República Comunista do Vietnã. Esse conflito reúne características e elementos de uma guerra de libertação nacional, luta civil e conflito inter-estatal.

O governo de Saigon (Vietnã do Sul) recebeu ajuda técnica e econômica, suprimentos militares, aconselhamento tático e estratégico, além de tropas norte-americanas e ainda assim não conseguiu submeter seus cidadãos à obediência. Evidentemente, essa situação retirou desse governo qualquer legitimidade, já que não conseguiu estabelecer um traço de lealdade local em seus cidadãos em comparação a cumplicidade em larga escala do Vietnã do Norte com a população civil, verificada através de seus métodos militares (guerrilha), prestando auxílio a um movimento revoltoso com raízes profundas no interior do país (WALZER, 2003).

#### *5.1.2 A aplicação da Terceira Convenção de Genebra de 1949 e o status dos indivíduos envolvidos no Conflito*

O número total de tropas regulares no Vietnã do Sul em 1968, no auge da participação norte-americana, chegou a 1 milhão de soldados, com 500.000 americanos. O total de mortes civis e militares chegou a cerca de 2 milhões. O Governo de Saigon repatriou cerca de 26.000 prisioneiros de guerra em 1973 enquanto o Vietnã do Norte cerca de 5.000 vietnamitas e 600 americanos.

As hostilidades atingiram um caráter internacional deixando seu caráter interno com um viés secundário. As Convenções de Genebra de 1949 e todas as normas humanitárias aplicaram-se a este conflito, todas as partes envolvidas reconheceram a aplicabilidade das mesmas. O Governo de Saigon relutou durante certo tempo na aplicação das normas contidas na Terceira Convenção de Genebra em relação aos vietnamitas membros do Fronte de Libertação Nacional, tratando-os como criminosos pelo simples fato de terem participado das hostilidades ativas. No entanto, mudou seu posicionamento devido à execução de 3 soldados americanos pelo Vietnã do Norte em 1965, como represália pela execução de prisioneiros do FLN (ROSAS, 2005).

A aplicação da Terceira Convenção de Genebra de 1949 foi então realizada, com o reconhecimento do status de prisioneiro de guerra a partir de 1965, mas os critérios de classificação e tratamento ainda encontravam-se indefinidos. Em 1966 o quadro foi alterado, com melhor aplicação dos critérios e em 1968, através da Diretiva N. 381-46, de dezembro de 1967 do Comando de Assistência Militar dos Estados Unidos (MACV)<sup>83</sup>, os membros das forças vietnamitas oficiais, das forças vietnamitas locais ou Unidade armada do Vietnã do Norte; os membros de forças irregulares (guerrilha, forças de auto-defesa e forças de serviço-secreto) capturados durante as hostilidades ou que tenham provado a participação nas mesmas, deveriam ser considerados prisioneiros de guerra, com exceção daqueles que praticaram atos terroristas, espionagem ou sabotagem. As categorias de pessoas não intituladas prisioneiros de guerra segundo esta diretiva eram defensores civis, julgados por ofenderem as leis do Governo de Saigon; membros de forças irregulares sem terem provas de participação no combate ou realização de ato beligerante; suspeitos de espionagem, terrorismo ou sabotagem; desertores e civis inocentes (ROSAS, 2005; SASSÒLI; BOUVIER, 1999).

Os indivíduos capturados pelos Estados Unidos, depois de devidamente interrogados e classificados ou eram encaminhados para as autoridades do Governo de Saigon, se não fossem intitulados prisioneiros de guerra, ou eram transferidos para os campos de prisioneiros de guerra também administrados pelo Governo de Saigon. Os civis inocentes eram libertados e retornados ao local de sua captura. No caso de um indivíduo já classificado como prisioneiro de guerra ter seu status questionado por uma autoridade do Governo de Saigon, sua condição era revista por um dos membros do Comando Americano (MACV). O Governo de Saigon, como um verdadeiro produto americano (WALZER, 2003) seguia as diretivas desse Estado em relação aos combatentes capturados por eles e não pelos Estados Unidos. No entanto, diversos guerrilheiros capturados e classificados como prisioneiros de

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<sup>83</sup> United States Military Assistance Command. The United States Military Assistance Command, Vietnam (MACV) was established on Feb. 8, 1962, as a unified command subordinate to the commander-in-chief, Pacific. MACV has the mission of assisting the Republic of Vietnam Armed Forces to maintain internal security against subversion and insurgency and to resist external aggression. Essa é a posição oficial dos Estados Unidos sobre sua participação e papel no Conflito.

guerra foram re-classificados posteriormente pelas autoridades do Governo de Saigon como prisioneiros políticos ou criminosos comuns e transferidos para prisões (ROSAS, 2005).

A Diretiva do Comando de Assistência Militar dos Estados Unidos (MACV) realizou uma interpretação liberal do artigo 4 da Terceira Convenção de Genebra de 1949 para as forças irregulares vietnamitas, mas nem sempre conseguiam preencher todas as condições estabelecidas pelo parágrafo 2 do artigo 4 da Terceira Convenção, no entanto, com exceção do uso do sinal distintivo, as outras condições foram englobadas pela Diretiva de dezembro de 1967.

No que tange ao tratamento dos prisioneiros inimigos capturados no campo de batalha no interrogatório, a tortura e maus-tratos foram largamente utilizados para extrair informações, principalmente pelas forças do Governo de Saigon na presença de pessoal americano. Quando estes atos tomaram publicidade internacional, os Estados Unidos buscaram disseminar os princípios humanitários e a punir os indivíduos que cometiam crimes de guerra. Apesar disso, ainda se teve notícia de execuções de prisioneiros de guerra nos acampamentos, a Cruz Vermelha ficou impossibilitada em diversos momentos de realizar visitas aos detidos e muitos prisioneiros violentados foram escondidos da organização. O artigo 12, parágrafo 3 da Terceira Convenção de Genebra determina a responsabilidade da Potência Detentora que transfere prisioneiros capturados para outra Potência, caso esta venha a violar as normas de direito humanitário referentes ao tratamento desses prisioneiros, por isso, os Estados Unidos também foram responsáveis pelo tratamento conferido aos capturados pelas forças armadas de Saigon.

O Vietnã do Norte contestou o apelo feito pela Cruz Vermelha em 1965 para a aplicação da Terceira Convenção de Genebra de 1949 não se considerando obrigado a aplicar as normas humanitárias, ou seja, não conferiu aos soldados americanos o status de prisioneiro de guerra, sob o argumento de que violavam o *ius in bello* e por participarem de uma guerra de agressão, mas ao mesmo tempo, o FLN afirmou que os prisioneiros capturados eram tratados com humanidade e os inimigos feridos eram ajudados e cuidados, sem exposição a vergonha ou tortura, mas a Cruz Vermelha não recebeu autorização para visitar os acampamentos, nem uma lista dos indivíduos detidos que deveria ter sido fornecida pelo FLN. Afirmavam lutar uma guerra de libertação nacional com caráter internacional contra os

Estados Unidos. Apesar de negarem seu compromisso de cumprir as obrigações específicas contidas na Terceira Convenção, não ignoravam os princípios humanitários e aplicavam o direito costumeiro referente aos prisioneiros de guerra.

Os Estados Unidos durante e após a guerra afirmaram que a República Democrática do Vietnã não cumpriu com suas obrigações internacionais quando negou o status de prisioneiro de guerra para os soldados americanos. Em 1969 na XXI Conferência Internacional da Cruz Vermelha, em Estambul, adotou-se uma resolução geral de que as Potências envolvidas em conflitos armados deveriam cumprir o estabelecido na Terceira Convenção de Genebra. Em 1967 a Assembléia Geral da ONU adotou a Resolução 2676 (XXV) e estabeleceu que todas as partes envolvidas em conflitos armados deveriam cumprir as normas humanitárias contidas nas Convenções de Genebra de 1949, mais especificamente as normas relativas ao Tratamento dos Prisioneiros de guerra, assim como garantir um tratamento digno e humano para todas as pessoas protegidas por estas Convenções (ROSAS, 2005; SASSÒLI; BOUVIER, 1999).

Em 1973 foi celebrado o Acordo de Paris entre Estados Unidos, a República Democrática do Vietnã e o Governo de Saigon. Esse Acordo deu fim à guerra, buscou restaurar a paz no Vietnã e continha um protocolo concernente ao repatriamento do pessoal capturado e seu tratamento. Não foi utilizado no acordo o termo prisioneiro de guerra, mas pessoal militar e civis estrangeiros. Em conformidade com o artigo 1 do Protocolo deveriam ser entregues às autoridades americanas, assim como os vietnamitas membros das forças armadas regulares e irregulares devolvidos para seus respectivos governos e nenhum deles sujeitos a julgamentos e sentenças. A retirada dos Estados Unidos da Guerra em 1973, não deu fim as hostilidades entre o Governo de Saigon e o Governo Revolucionário, mas o conflito adquiriu um caráter interno. Em 1975 o Governo de Saigon entrou em colapso e em 1976 a República Democrática do Vietnã e o Vietnã do Sul se unificaram na República Socialista do Vietnã.

## 5.2 O Afeganistão

### 5.2.1 O Conflito armado internacional e a “Guerra contra o Terrorismo”

Os ataques de 11 de setembro de 2001 em Nova York, Washington e Pensilvânia resultaram em substancial dano material, na morte de mais de 3000 civis e uma ferida no espírito norte-americano. Este evento desencadeou a investigação para encontrar e apresentar provas documentais contra os autores do atentado. A al Qaeda (“A Base”) assumiu a autoria do fato e os Estados Unidos declararam a “guerra contra o terrorismo”.

Os Estados Unidos verificaram que a maior base deste grupo terrorista encontrava-se no Afeganistão. O Talibã regia o país assolado e dividido por mais de vinte anos de conflitos internos, resquícios da antiga dominação da Ex-União Soviética. Os americanos requisitaram o auxílio do Afeganistão na luta contra a al Qaeda e o terrorismo internacional, mas este Estado recusou-se a prestar auxílio aos norte-americanos. Como resultado os Estados Unidos e seus aliados atacaram o Talibã e os membros da al Qaeda, matando e capturando soldados e indivíduos pertencentes à organização, os quais foram encaminhados para a base militar americana na Baía de Guantánamo ou foram presos em uma base aérea em Bagram e na prisão de Kandahar, no Afeganistão.

Duas situações distintas podem ser identificadas: o conflito armado internacional entre os Estados Unidos e o Afeganistão e o embate entre a al Qaeda e os Estados Unidos. No que tange ao conflito armado internacional, as Convenções de Genebra de 1949 são aplicadas, pois o artigo 2, comum às quatro Convenções assim dispõe no caso de guerra declarada ou em qualquer conflito armado que possa surgir entre duas ou mais Altas Partes Contratantes. O conflito empreendido foi contra o Talibã, representante *de facto* daquele Estado.

Em relação ao embate dos Estados Unidos e a al Qaeda, não podemos dizer que o segundo é um Estado. Na verdade, trata-se de uma organização clandestina com bases em diversos países, composta por pessoas de diversas nacionalidades, e através da realização de

atos terroristas busca diversos objetivos políticos e religiosos (ALDRICH, 2002). O embate entre esta organização e os Estados Unidos não se limita ao território do Afeganistão e a princípio as normas humanitárias não se aplicam a esta situação já que a “guerra contra o terrorismo” na realidade não constitui um conflito armado. Nas palavras de Gray (2004):

A al Qaeda é a primeira organização terrorista multinacional capaz de funcionar da América Latina ao Japão com todos os outros continentes entre eles. Diversamente dos terroristas das décadas de 1970 e 1980, a al Qaeda não se guia pela jurisdição territorial – seu teatro de apoio e de operações é global. Em vez de resistir à globalização, suas forças estão sendo reunidas por grupos islâmicos contemporâneos, constantemente atrás de novas bases e novos alvos pelo mundo. (GRAY,2004, p. 93).

A forma de associar o atentado terrorista da al Qaeda de 11 de setembro de 2001 com o Afeganistão seria através da demonstração do patrocínio desse Estado a essa organização, tornando o ato capaz de dar início a um conflito armado, mas essa relação não foi confirmada. A al Qaeda não tem a competência para declarar guerra contra um Estado, os ataques realizados por ela não iniciaram um conflito armado internacional e portanto, se os ataques não foram cometidos nesse contexto, não há que se falar em crime de guerra nos termos das Convenções de Genebra, mas podem ser caracterizados como crimes contra a humanidade. Nas palavras de MCDONALD (2002):

A “guerra contra o terror” claramente não é um conflito armado. Consiste em uma campanha de contra-terrorismo, alguns aspectos dos quais envolve o uso da força militar, em grande parte empreendida nos Estados onde não há conflito armado, apesar de aspectos da campanha contra-terrorista assumirem as características de conflito armado onde os Estados Unidos atacam um Estado considerado patrocinador e protetor da al Qaeda, como fizeram no Afeganistão. Neste caso, seria um conflito armado internacional contra o Estado atacado, mais do que contra a al Qaeda, uma vez que a al Qaeda não é um Estado. Do contrário, a famosa “Guerra contra o terror” a qual os Estados Unidos está realizando contra a al Qaeda não satisfaz as condições das Convenções de Genebra para ser considerada um conflito armado.<sup>84</sup>(MCDONALD, 2002, p.207, *tradução nossa*).

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<sup>84</sup>The “war on terror” is clearly not an armed conflict at all. It consists of a multi-faceted counter-terrorism campaign, some aspects of which involve the use of military force, most of it carried out in States where there is no armed conflict, although aspects of the counter-terrorism campaign assume the characteristics of armed conflict where the US attacks a State considered to be harbouring or assisting al Qaeda, as it did in Afghanistan. In this case, it would be an international armed conflict against the attacked State, rather than al Qaeda, since al Qaeda is not a State. Otherwise, the so-called ‘war on terror’ which the US is waging against al Qaeda does not satisfy the conditions of the Geneva Conventions to be considered as an armed conflict.

A existência de um conflito armado interno entre o Talibã e a al Qaeda acarretaria na aplicação do artigo 3, comum às quatro Convenções de Genebra e neste caso, os Estados Unidos e seus aliados se envolveriam em um conflito interno no território de outro Estado, conferindo ao mesmo o caráter internacional.

### *5.2.2 A situação jurídica dos soldados talibãs e dos membros da al Qaeda*

Estabelecida a existência de duas situações distintas, quais sejam o conflito armado entre o Afeganistão e o contra-terrorismo em relação à al Qaeda, devemos refletir sobre a condição jurídica dos indivíduos envolvidos e afetados por estas duas situações, ou seja, os soldados afegãos e os membros da al Qaeda capturados são combatentes legítimos ou desprivilegiados (ilegítimos)? Estes indivíduos detidos na base militar norte-americana na Baía de Guantánamo, em Cuba, devem receber o status de prisioneiro de guerra e conseqüentemente a proteção conferida pela Terceira Convenção de Genebra de 1949?

Para chegar-se às respostas dessas perguntas deve ser analisada a posição adotada pelos Estados Unidos em relação aos indivíduos capturados durante as hostilidades no território afegão. O Presidente Bush declarou em 7 de fevereiro de 2002<sup>85</sup>: a Terceira Convenção de Genebra de 1949, concernente ao tratamento dos prisioneiros de guerra, ratificada tanto pelos Estados Unidos quanto pelo Afeganistão, aplica-se ao conflito armado no Afeganistão entre o Talibã e os Estados Unidos; esta Convenção não se aplica em relação ao conflito entre al Qaeda e Estados Unidos e os soldados talibãs e os membros da al Qaeda capturados não são considerados prisioneiros de guerra nos termos da Terceira Convenção, apesar do direito de receber um tratamento humano.

Os Estados Unidos implicitamente reconheceu o status de governo legítimo do Talibã no Afeganistão quando direcionou seu diálogo para esse governo e requereu seu apoio na “guerra contra o terrorismo”. Os Estados Unidos reconhece também a existência do conflito

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<sup>85</sup> Press Release, Status of Detainees at Guantanamo, Fact Sheet and Statement (7 February 2002).

armado internacional com o Afeganistão e o alcance da Terceira Convenção de Genebra de 1949.

O status de prisioneiro de guerra foi negado para os soldados talibãs, sob o argumento de terem apoiado os objetivos terroristas desleais da al Qaeda e por terem sido incapazes de preencher as condições estipuladas no parágrafo 2, artigo 4: estar sob o comando de uma pessoa responsável; possuir um sinal distintivo visível à certa distância ou uniforme militar; carregar as armas à vista e respeitar, em suas operações as leis e costumes de guerra<sup>86</sup>.

O artigo 4 A (1) declara que serão considerados prisioneiros de guerra os “membros das forças armadas de uma Parte em conflito, assim como os membros das milícias e dos corpos voluntários pertencentes a essas forças armadas” (III CONVENÇÃO DE GENEBRA DE 1949, 1992, p. 63). As condições supracitadas referem-se à segunda categoria de prisioneiros de guerra, os talibãs encaixam-se na primeira, por serem a força armada do Estado. O artigo 4 A dispõe que “as pessoas que caírem em poder do inimigo e pertencerem a *uma*” das categorias explicitadas será considerada prisioneiro de guerra. Diversos autores (ALDRICH, 2002; MCDONALD, 2002; PAUST, 2002; PFANNER, 2004; VIERUCCI, 2003) argumentam que membros das forças armadas, nos termos do parágrafo 1 do artigo 4 não precisam preencher condições mais específicas; outros (BAXTER, 1951; ROSAS, 2005) afirmam que os combatentes capturados devem preencher cada critério indicado no parágrafo 2 do artigo 4 para qualificá-los adequadamente como membros das forças armadas. As Convenções de Genebra devem ser interpretadas de boa-fé, em conformidade com o sentido comum dos termos do tratado no contexto e sob a luz de seus objetivos e propósitos, como é recomendado pelo artigo 31(1) da Convenção de Viena de 1969 sobre o direito dos tratados.

Pfanner (2004) estipula:

Nem as Regulações de Haia de 1907 ou a Terceira Convenção de Genebra explicitamente estipula que um membro regular das forças armadas tem que preencher os quatro critérios para ser um prisioneiro de Guerra no evento de ser capturado. Pelo contrário, os quatro critérios, inclusive o uso de uniformes ou ao menos um sinal distintivo, são mencionados apenas para as forças irregulares e não para as regulares. As Convenções de Genebra de 1949 endossam essa interpretação

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<sup>86</sup> Press Release, Status of Detainees at Guantanamo, Fact Sheet and Statement (7 February 2002).

literal, separando as duas categorias em dois subparágrafos.<sup>87</sup> (PFANNER, 2004, p.114, *tradução nossa*).

Um argumento possível para tentar justificar o posicionamento dos Estados Unidos é que o Afeganistão não possui força armada. Apenas forças armadas de uma das partes do conflito podem receber o status de prisioneiro de guerra. Não há a necessidade do reconhecimento do Estado e de seu governo pelo outro Estado em conflito para que as normas humanitárias tenham aplicabilidade, conforme o parágrafo 3, do artigo 4 da Terceira Convenção de Genebra (ALDRICH, 2002; MCDONALD, 2002; ROSAS, 2005).

Outro fundamento para buscar fundamentar tal decisão é que as condições especificadas no artigo 4 A (2) para a milícia e corpos voluntários não integrantes das forças armadas também são aplicáveis a todas as forças armadas. Essa afirmativa é perigosa, já que a violação das leis e costumes de guerra pode justificar o não reconhecimento do status dos indivíduos acusados de crimes de guerra, mas a violação das normas humanitárias não impede um indivíduo de receber o status de prisioneiro de guerra.

Os talibãs capturados são automaticamente prisioneiros de guerra por integrarem as forças armadas de seu governo *de facto*. O maior argumento dos Estados Unidos para não conferir aos prisioneiros talibãs o status de prisioneiro de guerra é o fato de não terem usado uniformes militares ou outro sinal distintivo reconhecível à distância. Em termos práticos as forças talibãs estavam sob um comando<sup>88</sup> responsável e se distinguiram dos civis, com o uso de turbantes negros e lenços no pescoço, apesar de não usarem roupas que se assemelham com uniformes militares tradicionais (VAN AGGELEN, 2005). Além disso, o artigo 7 da Terceira Convenção dispõe sobre a inalienabilidade do status de prisioneiro de guerra, ou seja proíbe a renúncia do direito de fazer parte da categoria de prisioneiro e como foi visto anteriormente, caso haja dúvidas sobre a condição de um indivíduo envolvido nas hostilidades, deve este ser tratado como prisioneiro de guerra, até que um tribunal

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<sup>87</sup> Neither the 1907 Hague Regulations nor the Third Geneva Convention explicitly stipulate that a member of regular armed forces has to fulfill the four criteria in order to be a prisoner of war in the event of capture. On the contrary, the four criteria, including wearing a uniform or at least a distinctive sign, are mentioned only for irregular forces and not for regular ones. The 1949 Geneva Conventions endorse this literal reading by separating the two categories into two subparagraphs.

<sup>88</sup> O líder dos Talibãs é Mullah Omar, um líder espiritual, mas sua condição não invalida sua responsabilidade como comandante enquanto for capaz de manter a disciplina de seus homens encontrada nas forças armadas.

competente decida seu status. Os argumentos dos Estados Unidos são insuficientes para justificar o fato de não ter conferido o status de prisioneiro de guerra aos soldados afegãos capturados e não deixam claro suas motivações.

Caso as pessoas envolvidas no conflito não sejam consideradas prisioneiros de guerra devem, pelo critério da nacionalidade, ser consideradas civis, nos termos do artigo 4 da Quarta Convenção de Genebra de 1949. A nacionalidade de alguns indivíduos<sup>89</sup> estrangeiros que combateram junto das forças armadas do talibã levantou a possibilidade de classificá-los como mercenários, nos termos do artigo 47 do I Protocolo Adicional, sob o argumento de que lutavam em busca de ganhos. No entanto, os estrangeiros lutavam uma guerra espiritual no Afeganistão, sendo sua motivação chegar ao paraíso (VIERUCCI, 2003) e não o lucro. Estes indivíduos podem ser classificados como voluntários estrangeiros, com o direito ao status de combatente se atuarem em conformidade com as leis e costumes de guerra, nos termos do parágrafo 2, do artigo 4 da Terceira Convenção.

MCDONALD (2002) reflete sobre as motivações norte-americanas em não conferir o status de prisioneiro de guerra aos soldados talibãs:

Uma razão pode ser que, sobre o artigo 102 da Terceira Convenção de Genebra, combatentes capturados tenham que ser tratados nas mesmas condições que as próprias forças do Estado, isso poderia tornar ilegal julgá-los diante de comissões militares constituídas exclusivamente para julgar não-nacionais. Além do mais, sobre o artigo 103, prisioneiros de guerra deveriam ser julgados o mais rápido possível. Uma vez terminado o conflito, os prisioneiros de guerra deveriam ser libertados a não ser que tenham sido julgados por crimes de guerra ou por outros crimes cometidos durante a custódia. O mero fato de ter lutado não é um crime que deva ser julgado. Pode ser argumentado que o conflito armado entre Estados Unidos e Afeganistão terminou. Parece que, não desejam considerar os talibãs prisioneiros de guerra, pois teriam que libertá-los, e ao mesmo tempo os Estados Unidos também não desejam julgá-los. O governo pode vir a julgar alguns deles diante de comissões militares estabelecidas, mas desde que os detidos estejam realmente presos por suspeita de terrorismo ou pessoas que podem ter informações de inteligência, pode não ser fácil julgá-los por crimes de guerra. Por outro lado, o governo indicou que mesmo se pessoas forem julgadas e absolvidas, ainda assim podem ser libertados, mas serão mantidos presos por tempo indeterminado para interrogatório.<sup>90</sup> (MCDONALDO, 2002, p. 208, *tradução nossa*).

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<sup>89</sup> Dois cidadãos americanos foram capturados lutando pelas forças armadas Talibãs.

<sup>90</sup> One reason may be that, under article 102 of the Third Geneva Convention, captured combatants have to be treated to the same conditions of Trial and sentencing as a State's own forces and this would make it illegal to try them before military commissions set up exclusively to try non-nationals. Moreover, under article 103, prisoners of war should be tried as soon as possible. Once the conflict ends, POW's should be released unless they are being tried for a war crime or for other crimes committed in custody. The mere fact of having fought is

Os soldados talibãs prisioneiros de Guerra devem ser repatriados com o fim das hostilidades ativas ou julgados pelos crimes imputados a eles. No caso de não serem considerados prisioneiros de guerra, cometeram crimes sob os auspícios da lei nacional ou internacional e podem ser julgados pelos Estados Unidos ou outra corte. De uma forma ou de outra não podem ficar presos por tempo indeterminado sem um julgamento, sob pena de violar os direitos humanos a eles intitulados (MCDONALD, 2002).

Em 2002 foi submetido à Corte da Califórnia nos Estados Unidos um pedido de Habeas Corpus em benefício dos prisioneiros detidos na Baía de Guantánamo, Cuba. O pedido formulado foi negado com base nos seguintes argumentos: a Corte se considerou sem jurisdição sobre os detidos, já que estes se encontravam em território cubano e nenhuma outra corte teria jurisdição, dessa forma o caso não poderia ser analisado novamente. A Corte não se pronunciou sobre o status dos membros da al Qaeda e do Talibã.

Os membros da al Qaeda, segundo Aldrich (2002) e McDonald (2002), não podem ser intitulados prisioneiros de guerra, pois são combatentes ilegais e devem ser processados e julgados pela participação e pelos crimes cometidos no conflito armado. Apesar disso são protegidos pela garantia de um tratamento humano em conformidade com o artigo 3, comum às quatro Convenções de Genebra de 1949 e artigo 75 do I Protocolo Adicional, ambos integrantes do direito internacional costumeiro.

O contexto no qual os membros da al Qaeda foram capturados acarreta a aplicação ou não do termo combatente ilegítimo e das Convenções de Genebra. Em relação aos membros da al Qaeda capturados fora do Afeganistão e que não participaram do conflito, não podem ser considerados combatentes desleais, mas suspeitos de terrorismo, e no caso de terem cometido crimes internacionais, podem e devem ser julgados, mas não podem permanecer presos por tempo indeterminado (MCDONALD, 2002).

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not a triable crime. One can argue that the international armed conflict between the US and Afghanistan is now over. It seems that, while not wanting to consider the Taleban POW's, which it might have to release, US does not necessarily want to try them either. The government may try some of them before the military commissions it has established, but since the detainees are really being held as suspected terrorists or persons who might have useful intelligence information, it might not be easy to try them for war crimes. On the other hand, the government has indicated that even if persons were tried and acquitted, they would still not be released, but will be held indefinitely for interrogation purposes.

No caso dos membros da al Qaeda capturados durante o conflito, o termo combatente desleal pode ser aplicado acertadamente, já que, tratam-se de civis ilegalmente envolvidos nas hostilidades. No entanto, se comprovada a relação entre os membros da al Qaeda e as forças armadas Talibãs, estes teriam o direito ao status de prisioneiro de guerra; o Talibã seria responsável pelo ataque de 11 de setembro de 2001, mesmo não tendo controle específico sobre essa ação, pois o simples fato de controlar as atividades gerais e dar suporte a organização seria suficiente para responsabilizá-lo pela mesma. Vierucci (2003) afirma que dependência e aliança de um grupo armado irregular a uma parte do conflito é suficiente para caracterizar o controle do Estado sobre o grupo, tornando-se responsável pelos atos deste, mesmo em relação aos atos que não tenha envolvimento direto.

Aqueles membros que não faziam parte das forças armadas do Talibã poderiam ainda se enquadrar como milícias e forças voluntárias (uma parte do conflito), nos termos do artigo 2 (1), comum às quatro Convenções de Genebra, se pudessem satisfazer as quatro condições estabelecidas pelo parágrafo 2 do artigo 4 da Terceira Convenção de Genebra, então poderiam ser intitulados prisioneiros de guerra.

As forças irregulares que se enquadram nas condições estabelecidas, recebem o status de prisioneiro de guerra. A al Qaeda é uma organização sob um comando responsável, e não há dúvidas de que a primeira condição foi preenchida. Esse grupo possui uma rede terrorista internacional sólida capaz de mobilizar um grande número de membros e recursos (VIERUCCI, 2003), a prova disso foi o elaborado ataque de 11 de setembro de 2001 aos Estados Unidos. No entanto, o grupo não carrega suas armas abertamente, nem sequer usa sinais distintivos visíveis à distância, se misturando com a população civil para realizar seus ataques. E finalmente, a al Qaeda não se preocupou ou se preocupa em conduzir suas operações em conformidade com as normas humanitárias, pelo contrário, a organização atua em total desrespeito à população civil e à sua imunidade aos ataques. Os indivíduos membros dessa organização são desprovidos do direito de receber o status de prisioneiro de guerra.

Os combatentes legítimos ou leais podem ser capturados e detidos como prisioneiros de guerra, já os combatentes desleais ou ilegítimos também são capturados e detidos, mas julgados e punidos pela participação nas hostilidades e pelos atos cometidos, pois não tem o direito de participar diretamente do conflito. Os membros da al Qaeda detidos durante as

hostilidades ativas, apesar de combatentes desleais, se enquadram no parágrafo 1 do artigo 4 da Quarta Convenção de Genebra protegendo as pessoas que a qualquer momento e de qualquer forma, em caso de conflito ou ocupação, estiverem em poder de uma Parte ou Potência ocupante da qual não sejam nacionais. Os Estados Unidos também não conferiu este status, mesmo tendo preenchido o critério da nacionalidade, o que descaracteriza as hipóteses de transferência dos civis dispostas nos artigos 42, 45 e 78 da Quarta Convenção; ao contrário, esses indivíduos são detentos e presumidamente criminosos para essa Potência. O parágrafo 2, do artigo 4 da Quarta Convenção dispõe sobre a segunda limitação da nacionalidade baseada na existência de relações diplomáticas:

Não estão protegidos os nacionais de um Estado que não faça parte dessa Convenção. Os nacionais de um Estado neutro que estiverem em território de um Estado beligerante e os nacionais de um Estado co-beligerante não serão considerados como pessoas protegidas enquanto o Estado a que pertencem tiver representação diplomática normal junto ao Estado em poder do qual se encontram. (IV CONVENÇÃO DE GENEBRA DE 1949, 1992, p.131).

Então, os cidadãos britânicos e paquistaneses capturados no Afeganistão pelos Estados Unidos serão privados dessa condição de pessoa protegida enquanto esses Estados mantiverem relações diplomáticas com os Estados Unidos. Essas pessoas serão protegidas apenas pelas provisões gerais da Parte II do tratado e pela lei da Potência detentora (VIERUCCI, 2003).

Assim, os soldados talibãs devem receber o status de prisioneiro de guerra por constituírem as forças armadas regulares do Afeganistão, nos termos do parágrafo 1 do artigo 4 da Terceira Convenção de Genebra de 1949. Os membros da al Qaeda capturados fora do conflito armado não podem ser considerados combatentes desleais, uma vez que não participaram das hostilidades ativas, não devem ficar presos por tempo indeterminado, mas podem ser julgados e condenados pelos crimes que tiverem cometido. Em relação aos membros da al Qaeda participantes das hostilidades o termo combatente ilegítimo pode ser utilizado já que não fazem parte das forças armadas talibãs e apesar de constituir uma organização sob um comando, não preenchem todas condições estipuladas pelo parágrafo 2 do artigo 4 da Terceira Convenção. Apesar da condição de combatente desleal os membros

da al Qaeda preenchem o requisito da nacionalidade para receberem o status de civil protegido pela Quarta Convenção de Genebra de 1949.

### 5.2.3 A aplicação do artigo 5 da Terceira Convenção de Genebra de 1949

No dia 13 de novembro de 2001 o Presidente Bush, decretou o *Military Order*<sup>91</sup> sobre o tratamento, detenção e julgamento de certos não-cidadãos na guerra contra o terrorismo, as pessoas detidas na base de Guantánamo deveriam ser submetidas à jurisdição de tribunais militares para o julgamento de seus crimes. Nenhuma menção sobre a possibilidade de aplicar as Convenções de Genebra de 1949 foi feita no *Military Order* para as pessoas que caíam sob a jurisdição dessas comissões. O *Military Order* estabelece:

[...] qualquer cidadão não-americano sobre quem ele (o Presidente Bush) tenha feito uma determinação escrita de que tal pessoa, inter alia, engajada em, ou que tenha conspirado cometer, atos de terrorismo internacional contra os Estados Unidos, será detido e julgado por violações à lei de Guerra e outras leis aplicáveis por tribunais militares. A ordem estabelece as comissões militares com o propósito de tais julgamentos.<sup>92</sup> (VIERUCCI, 2003, p. 285).

Sobre o status dos soldados talibãs não paira dúvidas: são combatentes e tem o direito ao status de prisioneiro de guerra. No entanto, os Estados Unidos se recusam a conferir a eles esse status. Discutiu-se, no subitem 4.3.4, a provisão contida no artigo 5 da Terceira Convenção de Genebra de 1949. Discute-se agora a aplicação dessa provisão ao caso dos detidos em Guantánamo, juntamente com a legislação norte-americana.

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<sup>91</sup> President Issues Military Order. Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism.

<sup>92</sup> [...] any non-US citizen, about whom he (The President Bush) had made a written determination that such person had inter alia, engaged in, or conspired to commit, acts of international terrorism against the US, be detained and tried for violations of the laws of war and other applicable laws by military tribunals. The order established Military Commissions for the purpose of such trials.

A Regulação das Forças Armadas dos Estados Unidos de 1997<sup>93</sup>, afirma que a pessoa que não tiver sido classificada como prisioneiro de guerra nos termos do artigo 4 da Terceira Convenção de Genebra, deve receber a mesma proteção da Convenção até que seu status seja determinado por um tribunal competente, nos termos do artigo 5 da Convenção. Na seção 1-6, alínea b afirma:

Um tribunal competente deve determinar o status de qualquer pessoa que não pareça ter o status de prisioneiro de guerra que tenha cometido um ato de beligerância ou tenha se engajado em atividades hostis em benefício das forças armadas inimigas, a qual afirma que ele ou ela é intitulada ao tratamento como prisioneiro de guerra, ou concernente a quem qualquer dúvida de qualquer natureza existir.<sup>94</sup> (REGULAÇÕES DO EXÉRCITO, PRISIONEIRO DE GUERRA INIMIGO, PESSOAL DETIDO, CIVIS INTERNOS E OUTROS DETIDOS, 1997, p.2, *tradução nossa*).

O Regulamento vai além do artigo 5 da Terceira Convenção de Genebra ao afirmar que o tribunal competente determina o status não apenas daqueles em que uma dúvida foi levantada mas também em relação às pessoas que não parecem ser intituladas prisioneiros de guerra. Isso significa que mesmo uma pessoa que não aparenta ser prisioneiro de guerra, mas alega essa condição deve receber o tratamento de prisioneiro de guerra até a determinação definitiva de seu status pelo tribunal (NAQVI, 2002). Dispõe os procedimentos, todas as garantias<sup>95</sup> para um julgamento justo e a composição de um tribunal competente:

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<sup>93</sup> Enemy Prisoners of War, Retained Personnel, Civilian Internees and Other Detainees” US Army Regulation 190-8. 1997.

<sup>94</sup> b. A competent tribunal shall determine the status of any person not appearing to be entitled to prisoner of war status who as committed a belligerent act or has engaged in hostile activities in aid of enemy armed forces, and who asserts that he or she is entitled to treatment as a prisoner of war, or concerning whom any doubt of a like nature exists. Army Regulations, Enemy prisoner of war, retained personnel, civilian internees and other detainees, 1997, p. 2)

<sup>95</sup> (1) Members of the Tribunal and the recorder shall be sworn. The recorder shall be sworn first by the President of the Tribunal. The recorder will then administer the oath to all voting members of the Tribunal to include the President. (2) A written record shall be made of proceedings. (3) Proceedings shall be open except for deliberation and voting by the members and testimony or other matters which would compromise security if held in the open. (4) Persons whose status is to be determined shall be advised of their rights at the beginning of their hearings. (5) Persons whose status is to be determined shall be allowed to attend all open sessions and will be provided with an interpreter if necessary. (6) Persons whose status is to be determined shall be allowed to call witnesses if reasonably available, and to question those witnesses called by the Tribunal. Witnesses shall not be considered reasonably available if, as determined by their commanders, their presence at a hearing would affect combat or support operations. In these cases, written statements, preferably sworn, may be submitted and considered as evidence. (7) Persons whose status is to be determined have a right to testify or otherwise address the Tribunal.

c. Um tribunal competente deve ser composto de três oficiais comissionados, um deve ser oficial de campo. O oficial sênior deve servir como Presidente do Tribunal. Outro oficial não-votante, preferivelmente um oficial do corpo geral de juizes que servirá de relator.<sup>96</sup> (REGULAÇÕES DO EXÉRCITO, PRISIONEIRO DE GUERRA INIMIGO, PESSOAL DETIDO, CIVIS INTERNOS E OUTROS DETIDOS, 1997, p.3, *tradução nossa*).

As pessoas não intituladas prisioneiros de guerra por um tribunal competente não poderão ser executadas ou penalizadas sem um julgamento posterior. Na guerra do Vietnã os Estados Unidos estabeleceram procedimentos para a composição e instauração de um tribunal competente e foi garantido não apenas o tratamento, mas também o status de prisioneiro de guerra para os combatentes que demonstraram a evidência de pertencer a uma unidade militar, mesmo secreta e que tenha realizado um ato de guerra de qualquer natureza (NAQVI, 2002; VIERUCCI, 2003; ROSAS, 2005). No Panamá os Estados Unidos procedeu em conformidade com o estabelecido pelo artigo 5 da Terceira Convenção e conferiu o tratamento de prisioneiro de guerra aos indivíduos capturados até uma decisão final. Na Guerra do Golfo Pérsico ocorreu 1196 audições de tribunais competentes nos termos do artigo 5, como resultado 310 indivíduos receberam o status de prisioneiro de guerra e aos outros foi conferida a proteção nos termos da Quarta Convenção de Genebra (SASSÒLI; BOUVIER, 1999).

A Comissão Internamericana de Direitos Humanos em 12 de março de 2002 decidiu sobre uma demanda de medidas cautelares do Center for Constitutional Rights e declarou:

De acordo com as normas internacionais aplicáveis nos tempos de paz e Guerra, tais como aquelas refletidas no artigo 5 da Terceira Convenção de Genebra e o artigo XVIII da Declaração Americana de Direitos e Deveres do Homem, um tribunal ou uma corte competente, assim como uma autoridade política oposta, deve estar preocupada em garantir o respeito do status legal de pessoas caindo sobre as autoridades e controle de um Estado. [...] Com base nisso, a Comissão requisita que os Estados Unidos tome urgentemente as medidas necessárias para ter o status legal dos detidos da Baía de Guantánamo determinado por um tribunal competente.<sup>97</sup> (HUMAN RIGHTS WATCH, 2002).

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<sup>96</sup> c. A competent tribunal shall be composed of three commissioned officers, one of whom must be of a field grade. The senior officer shall serve as President of the Tribunal. Another non-voting officer, preferably an officer in the Judge Advocate General Corps, shall serve as the recorder.

<sup>97</sup> According to international norms applicable in peacetime and in wartime, such as those reflected in article 5 of the Third Geneva Convention and article XVIII of the American Declaration of the Rights and Duties of man, a competent court or tribunal, as opposed to a political authority, must be charged with ensuring respect for the legal status and rights of persons falling under the authority and control of a State. [...] On this basis, the

Os Estados Unidos não se manifestou quanto à decisão da Comissão, violando suas obrigações internacionais. A decisão do governo norte-americano de negar o status de prisioneiro de guerra aos detidos na Baía de Guantánamo sem a realização do devido procedimento judicial com base no argumento de que não existem dúvidas causou comoção internacional. Diversas organizações internacionais como a Comissão de Direitos Humanos das Nações Unidas, a Anistia Internacional, a Comissão de Juristas Internacionais e o Comitê Internacional da Cruz Vermelha advogam pela aplicação do artigo 5 da Terceira Convenção de Genebra e o estabelecimento de um tribunal competente.

Os presos da Baía de Guantánamo mesmo não sendo considerados prisioneiros de guerra, devem ser protegidos de maus-tratos e tortura. Interrogatórios coercitivos são proibidos em quaisquer circunstâncias. Os Estados Unidos têm clamado por métodos mais agressivos de interrogatório para conseguir informações acerca do terrorismo. Tais interrogatórios são ilegais, e ainda, a Terceira Convenção protege e determina no artigo 17 a forma de condução dos interrogatórios.

Os Estados Unidos consideram estes prisioneiros terroristas, que não respeitam a própria liberdade e argumentam que por isso não merecem as mesmas proteções dadas a outros suspeitos. Esta afirmação contradiz a Quinta Emenda da Constituição Americana: nem mesmo estrangeiros podem ter sua liberdade restringida sem o devido processo legal (DWORKIN, 2004).

Mesmo sem o status de prisioneiro de guerra, estes soldados não podem ficar presos por tempo indeterminado. São presumidamente inocentes até que um tribunal competente os condene. Um Estado não pode arbitrariamente prender e manter pessoas detidas ou presumir uma pessoa culpada a não ser que prove sua inocência. A Suprema Corte Americana em decisão proferida, afirmou que caberia aos prisioneiros de guerra provar sua inocência (DWORKIN, 2004). A Constituição Americana também não permite que sejam dadas menos garantias àqueles que cometeram crimes mais graves em comparação àqueles que cometeram crimes de menor potencial ofensivo.

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Commission hereby requests that the United States take the urgent measures necessary to have the legal status of the detainees at Guantánamo Bay determined by a competent tribunal.

Em 28 de junho de 2004, a Suprema Corte dos Estados Unidos reconheceu o direito de *habeas corpus* de 14 presos<sup>98</sup> na Baía de Guantánamo para questionar a legalidade de suas prisões em tribunais norte-americanos. Esta decisão abriu caminho para que outros presos possam fazer o mesmo questionamento, permitiu que exercessem sua capacidade civil. Apesar disso, o problema ainda está sem solução e não houve mudança efetiva na realidade dos presos da Baía de Guantánamo.

O Comitê Internacional da Cruz Vermelha realiza visitas aos prisioneiros e estabeleceu comunicação com suas famílias, iniciou diálogo com os Estados Unidos e apresentou uma grande preocupação com os problemas significativos<sup>99</sup> que pôde observar em todas as suas visitas, desde as condições de detenção ao tratamento que ainda não foi adequadamente efetivado.

Os soldados detidos, se considerados prisioneiros de guerra, devem ser liberados e repatriados com o fim das hostilidades ativas. Dessa forma, caso não sejam acusados de crimes de guerra, aqueles que simplesmente lutaram ao defenderem seu país devem ser liberados, e os acusados de cometer crimes, através de um Tribunal devidamente constituído, julgados. A determinação do status de combatente possui conseqüências importantes nas garantias judiciais aplicáveis aos detidos na Baía de Guantánamo em eventuais julgamentos sobre sua conduta durante o conflito armado empreendido no Afeganistão.

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<sup>98</sup> Al Odah v. United States; Boumediene v. Bush.; Celikgogus v. Rumsfeld; Rasul v. Bush; Padilla v. Rumsfeld; John Doe v. Bush; Majid Khan; Saleh v. Titan; Habib v. Bush; Hamdi v. Rumsfeld. Todos os casos referentes aos detidos na Baía de Guantánamo estão disponíveis em: < <http://www.ccr-ny.org/v2/gac/>> Acesso em: 16jul. 2007.

## 6 CONCLUSÃO

A guerra é uma criação social e sempre existiu em todas as épocas e civilizações. Os homens sempre lutaram entre si impulsionados pelo desejo de impor sua vontade, motivados por diversos objetivos, sejam eles políticos, econômicos ou religiosos.

Na medida em que a sociedade se desenvolve, com seus avanços tecnológicos, culturais, políticos e religiosos, também o fazem o direito de guerrear e a forma de tratamento dos indivíduos capturados. As sociedades primitivas lutavam pela sobrevivência e os prisioneiros de guerra eram fonte de alimento. Com o desenvolvimento das ferramentas de trabalho os homens passaram a ser utilizados como escravos e força laborativa.

Na antiguidade motivações políticas e econômicas impulsionavam os gregos e os romanos. Os gregos buscavam manter sua supremacia, matando ou escravizando os indivíduos capturados nas batalhas. Já os romanos buscavam estabelecer um império pacífico, com a simpatia dos subjugados, matava-os apenas quando cometiam algum ato infame contra Roma.

Na Idade Média, as guerras eram conduzidas pelos senhores feudais e pela Igreja e foi nessa época que surgiu a idéia de guerras justas e injustas. As guerras começaram a ter motivações religiosas (justas) e através delas a Igreja desejava novos adeptos, enviando seus cavaleiros à terra dos infiéis para, através da força, impor sua fé. Quando as guerras eram travadas entre senhores feudais, os nobres eram tratados com certa humanidade, sendo estes devolvidos após o pagamento de um resgate; os soldados comuns eram aniquilados no campo de batalha e em relação aos infiéis, a escravidão e morte através de torturas eram possíveis. Foi também nesse período que teve início o estoicismo, responsável pela humanização no tratamento dos prisioneiros de guerra, pois pregava a serenidade humana e a ética da ação virtuosa.

A Modernidade presenciou a consolidação dos Estados Soberanos que impuseram o fim às guerras privadas, tomando para si a competência de resolver os conflitos sociais. As guerras tornaram-se públicas e os homens instrumentos do Estado na consecução de seus objetivos. Nesse período, o primeiro acordo internacional, o Tratado de Vestfália, foi firmado

entre Estados soberanos, o direito internacional teve início com o estabelecimento do direito de guerra. Nas guerras públicas, os soldados eram propriedade do Estado e instrumentos na prática da guerra justa, baseada nos códigos morais das cavalaria, desenvolvidos na Idade Média.

A Revolução Francesa foi responsável por dar início à discussão sobre a categoria de pessoas que deveriam receber o status de combatente leal e a proteção como prisioneiro de guerra. As forças armadas e os corpos voluntários que as acompanhavam eram dignos da condição de combatente legal, segundo a Assembléia Nacional de 1792.

Diversas codificações buscaram desenvolver o direito de guerra, como a Declaração de São Petesburgo de 1868 e a Declaração de Bruxelas de 1874. As Convenções de Haia de 1899 e 1907 estabeleceram uma divisão mais precisa entre combatentes e civis, bem como normas de conduta dos soldados e limitações aos métodos utilizados durante as hostilidades. Surgiam as primeiras limitações jurídicas impostas aos Estados na condução da guerra.

A Primeira Guerra Mundial (1914-1918) caracterizou-se pela violência em larga escala e testou os limites legais impostos pela escassa normativa existente aplicável na guerra. As Convenções de Haia de 1899 e 1907 mostraram-se insuficientes para garantir uma adequada proteção aos envolvidos nas hostilidades e 1929 foi elaborada a Convenção de Genebra relativa à proteção dos prisioneiros de guerra, ampliando as provisões para um tratamento mais humano dos combatentes capturados.

A Segunda Guerra Mundial (1939-1945) foi responsável por levar a violência e destruição a um nível global. A maior parte dos países do mundo, direta ou indiretamente, participou do conflito; pois todos os recursos industriais, científicos e tecnológicos estavam a serviço da guerra, para a produção de meios de destruição em massa. Essa Guerra foi responsável por testar a eficácia e precisão das provisões da Convenção de Genebra de 1929, comprovando sua incapacidade e limitação. Um dos grandes problemas dessa norma foi o fato de ser aplicável tão somente entre aqueles que haviam ratificado o tratado, ou seja, se um dos Estados em conflito não tivesse ratificado ou concordado em aplicar as provisões, então, o outro Estado não era obrigado a aplicar o tratado em relação aos combatentes capturados de seu inimigo. Isso permitiu diversas violações legais, pois gerou diferenciações no tratamento dos prisioneiros de guerra conforme suas nacionalidades.

Com o fim do uso da força como forma de resolução de conflitos, através da Carta das Nações Unidas de 1945, o direito internacional enfrentou o fim do direito de guerrear e instituiu o direito internacional humanitário, responsável por estabelecer limites aos meios e métodos nos conflitos armados, determinando a proteção e tratamento das vítimas.

A experiência adquirida nesse conflito inspirou a elaboração das quatro Convenções de Genebra de 1949, mais abrangentes e precisas do que os tratados anteriores. Uma das grandes inovações trazidas por este conjunto de normas foi a omissão da cláusula *si omnes*, permitindo o alcance da norma inclusive em relação aos países que não são partes dos tratados. No entanto, mantiveram-se ligadas a concepção tradicional da guerra entre Estados e a noção de combatentes legítimos.

O fim da Segunda Guerra Mundial foi seguido pela Guerra Fria. Nesse contexto elaboraram-se os dois Protocolos Adicionais de 1977, diante das emergentes necessidades produzidas pelos diversos movimentos de libertação nacional. Esses Protocolos representavam as reivindicações de diversos países em desenvolvimento desejosos em se libertar de regimes racistas e da dominação colonial dos Estados Europeus, que apresentaram certa resistência à idéia. As guerras de libertação nacional foram consideradas conflitos armados internacionais pelo I Protocolo Adicional de 1977.

A guerra sempre enfrentou limitações, sejam elas sociais, políticas, econômicas ou legais. A possibilidade de sofrer a mesma violência empregada é um fator limitador, a própria idéia daqueles que podem participar, dos meios e métodos ou quando combater também impõe limites ao uso da força; as motivações políticas; a capacidade econômica de cada Estado; as pressões sociais feitas pelo povo no sentido de realizar ou não um conflito e as restrições impostas pelo ordenamento jurídico existente foram e são essenciais para determinar as características dos conflitos armados contemporâneos. As normas humanitárias elaboradas ao longo das duras experiências vividas durante as diversas guerras, hoje denominadas conflitos, são as principais responsáveis por limitar e moldar essa criação social. Estas limitações impedem a escalada contínua da guerra na teoria de Clausewitz (1979).

A estrutura normativa referente aos prisioneiros de guerra conta em especial com a Terceira Convenção de Genebra de 1949, responsável por ampliar e substituir a Convenção de Genebra de 1929 e especificar com riqueza de detalhes o tratamento que deve ser

conferido aos indivíduos capturados que recebem esse status. Essa precisão e detalhamento são essenciais para guiar a conduta das Potências Detentoras no tratamento durante o cativeiro e no repatriamento dos combatentes, pois minimizando assim violações por falta de clareza ou interpretações desfavoráveis que permitam certas derrogações de direitos.

Todas as Convenções de Genebra de 1949 guardam profunda relação com os direitos humanos e baseiam-se nos mesmos fundamentos éticos compartilhados em busca da proteção da dignidade da pessoa humana, confirmando a complementaridade e convergência desses dois conjuntos de normas, guardadas suas particularidades e origens distintas. Mesmo durante os conflitos armados, os tratados internacionais de direitos humanos são aplicados e na falta de uma norma humanitária adequada suplementam essas lacunas.

As normas humanitárias possuem profunda relação com os costumes internacionais, declarando-os, e com o *ius cogens*, através de seus princípios fundamentais. A Corte Internacional de Justiça confirma o caráter costumeiro das normas humanitárias, quase universalmente aceitas na sociedade internacional, pois estas declaram e ampliam os costumes internacionais positivados nas Convenções de Haia de 1899 e 1907. Além disso, o direito costumeiro pode atuar nas situações, apesar de quase inexistentes na atualidade, em que um país não tenha ratificado as Convenções e mesmo na denúncia dos tratados não se retira a obrigação dos Estados de cumprir os costumes de guerra consolidados no âmbito internacional. O artigo 3, comum às quatro Convenções de Genebra, é um exemplo de norma inquestionavelmente costumeira por ser baseada nas considerações de humanidade elementares.

Apesar desse caráter costumeiro das provisões contidas nas Convenções, ainda restam divergências sobre o caráter de algumas de suas disposições, como o artigo 4 da Terceira Convenção. Os Estados ainda não foram completamente capazes de estabelecer uma interpretação homogênea dessa norma, já que, conforme suas motivações políticas realizam uma interpretação extensiva ou uma interpretação restritiva do texto.

No que tange aos princípios fundamentais com caráter de *ius cogens*, sua obrigatoriedade garante a posição das Convenções de Genebra como essenciais para garantir a ordem pública internacional, além de torná-las uma obrigação para os Estados. No entanto, apesar do destaque conferido aos princípios humanitários elementares, a Corte Internacional

de Justiça não foi clara sobre o caráter obrigatório dessas normas. Um exemplo de fundamento peremptório contido nesses tratados é o princípio da distinção entre civis e combatentes, essencial para a devida aplicação da Terceira Convenção Genebra de 1949, determinando aqueles que podem ou não ser atingidos pelos ataques e quem tem o direito de receber o status de prisioneiro de guerra.

A reflexão sobre três dicotomias foram essenciais para estabelecer a condição legal para o status de prisioneiro de guerra: a primeira é a distinção entre os conflitos armados e as relações de paz; a segunda refere-se aos conflitos armados internacionais e internos e a terceira sobre os combatentes legítimos e ilegítimos.

As Convenções de Genebra de 1949 afastaram-se da necessidade da declaração oficial de guerra para o alcance de suas normas, o mero uso da força, ou seja, a existência de um conflito armado entre Estados justifica a aplicação das normas humanitárias, não importando a duração ou o nível da violência. Assim, cessa as relações de paz com o início das hostilidades de fato, mesmo sem a declaração oficial ou reconhecimento do estado de guerra.

A segunda questão discutida no presente trabalho representa tarefa mais trabalhosa já que implica na análise da dicotomia dos conflitos armados internacionais, internos, internacionalizantes e todos os seus respectivos desdobramentos relativos ao caráter do relacionamento do Estado com as forças armadas participantes de um conflito; o caráter das partes em conflito e suas forças armadas.

O direito humanitário parte da premissa de que a violência interna está sujeita ao exercício da autoridade governamental, com base nisso as Convenções de Genebra mantiveram-se fortemente a favor de regular as relações inter-estatais, aplicando-se aos conflitos internos apenas o artigo 3, comum às quatro Convenções, e o II Protocolo Adicional de 1977.

A definição clássica de conflito internacional pressupõe que os beligerantes sejam Estados. Com o advento dos Protocolos Adicionais de 1977 o âmbito de aplicação das Convenções de Genebra foi aumentado para os novos atores envolvidos nas hostilidades. Os conflitos internos com caráter internacional são aqueles que justificam a aplicação de todas as normas humanitárias e incluem: conflitos entre duas facções internas, ambas patrocinadas

por diferentes Estados; hostilidades diretas entre dois Estados que realizam intervenção militar em um conflito armado interno e a guerra envolvendo uma intervenção estrangeira em suporte a um grupo de insurgentes contra um governo estabelecido e guerras de libertação nacional.

Os Protocolos Adicionais de 1977 tentam explicar a diferença entre os conflitos armados internacionais e internos, deixando claro que os conflitos internacionais, não incluem apenas Estados, mas também organizações internacionais legitimamente envolvidas.

A atuação em nome de um Estado é a forma clássica para conferir a um conflito armado o caráter internacional. O patrocínio de um Estado estrangeiro a uma organização ou grupo dissidente interno, mesmo sem o controle direto de suas operações também é suficiente para responsabilizá-lo e conferir o caráter internacional à guerra. A intervenção militar de um Estado em um conflito interno, auxiliando uma das partes, seja o governo supostamente legítimo, seja o grupo de dissidentes, tem o caráter internacional necessário.

As guerras de libertação nacional são aquelas em que o próprio povo pega espontaneamente em armas para defender-se contra a dominação colonial, ocupação estrangeira e regimes racistas, nos termos do parágrafo 4 do artigo 1 do I Protocolo Adicional de 1977. Essa definição tem sido interpretada de forma restritiva e seu alcance tem se resumido a estes três casos. No entanto, esses movimentos podem incluir a luta contra governos ditatoriais e opressores. Dessa forma, aos movimentos de libertação nacional, confere-se o caráter de parte legítima no conflito, quando declaram expressamente sua aceitação em realizar suas operações conforme as normas contidas no direito humanitário. Por sua vez, são aplicadas todas as provisões do artigo 4 da Terceira Convenção aos indivíduos integrantes desses movimentos, garantido a eles o caráter de legitimidade necessário. Dentre seus integrantes incluem-se os guerrilheiros, responsáveis pelas táticas e guerrilha, aceitas na doutrina tradicional.

Aos conflitos internos que não atingem o status de beligerância necessário aplicam-se limitadas normas. A principal crítica formulada é a falta de definição e proteção aos prisioneiros de guerra, pois não existe qualquer norma que impeça o julgamento desses indivíduos pela participação no conflito e por crimes na ordem interna dos Estados.

Em relação aos combatentes legítimos e ilegítimos resta considerar que somente aqueles investidos da legitimidade, conferida pelo ordenamento jurídico internacional, podem participar ativamente das hostilidades; para matar e ser alvo de ataques. A idéia de combatente legítimo é reforçada pelo parágrafo 2 do artigo 43 do I Protocolo Adicional de 1977. Em contrapartida, os combatentes ilegítimos são aqueles sem o direito de participar das hostilidades, podem ser julgados por crimes de guerra e pela legislação interna dos Estados.

Os combatentes legítimos, tradicionalmente compõem as forças armadas regulares dos Estados, assim como os corpos voluntários e civis que as acompanham. O artigo 4 A, no parágrafo 1 dispõe sobre estas forças e em relação a elas não há dúvidas. O parágrafo 2 desse artigo refere-se às forças armadas independentes que devem preencher quatro condições para alcançarem o status de prisioneiro de guerra: estar sob um comando responsável; usar sinais distintivos fixos; carregar as armas abertamente e seguir as leis e costumes de guerra em suas operações militares.

Observa-se que é necessária certa organização e disciplina das forças independentes, sob um comando que será responsabilizado pelos atos praticados por seus subordinados; sobre o uso de sinais distintivos fixos, esse representa o critério de maior controvérsia, mas que pode ser interpretado com base no princípio da distinção entre combatentes e civis, ou seja, eles devem se diferenciar da população comum, para garantir a proteção e minimizar os danos causados pela violência, não importando se usam uniformes militares completos, desde que fique clara essa diferença. Em relação às armas, significa que quando estiverem prontos para realizar operações militares devem carregar as armas de forma visível, para que sejam leais, impedindo a perfídia. Em relação às leis e costumes de guerra, a simples violação dessas normas não é suficiente para impedir que os indivíduos recebam o status de prisioneiro de guerra. Em outras palavras, recebem o status, mas serão julgados pelas violações cometidas.

O parágrafo 6 do artigo 4 dispõe sobre os levantes em massa, nos quais a população civil espontaneamente pega em armas, sem tempo de organizar-se para combater tropas invasoras, desde que tragam armas à vista e respeitem os costumes de guerra. Exceto nos casos dos levantes em massa, os civis não tem legitimidade para participar das hostilidades e se o fazem continuam sendo civis, mas podem ser alvos legítimos de ataque.

Os combatentes ilegítimos são civis que participam das hostilidades sem ter o direito para tal, e todos aqueles que preenchem o critério da nacionalidade, contido no artigo 4 da Quarta Convenção de Genebra, são protegidos com algumas derrogações, como ser alvos de ataques. Ainda assim, podem ser julgados pela participação no conflito. Também são considerados combatentes ilegítimos ou desprivilegiados os espiões, sabotadores e mercenários devido à natureza das atividades desenvolvidas e suas motivações.

Nem sempre é possível identificar com clareza os combatentes legítimos dos ilegítimos. No caso de dúvida, aplica-se o artigo 5 da Terceira Convenção, que determina a proteção como prisioneiro de guerra para todos os indivíduos até que seu status seja devidamente definido. A Terceira Convenção cria a presunção de que todos os capturados no campo de batalha devem ser tratados como prisioneiros de guerra.

O tribunal competente deve ser definido nos termos das leis domésticas de cada Estado, e podem ter o caráter meramente administrativo, já que a competência desse tribunal é simplesmente definir uma condição e não julgar os atos de beligerância praticados. Os procedimentos desse tribunal devem estar em conformidade com as normas costumeiras contidas no artigo 75 do I Protocolo Adicional, que garante o devido processo legal.

Na última parte desse trabalho, estudou-se a Guerra do Vietnã e a guerra no Afeganistão. A Guerra do Vietnã (1959-1975) constituiu-se do conflito entre o Vietnã do Norte e o Vietnã do Sul em busca do estabelecimento do governo legítimo daquele Estado. A participação dos Estados Unidos com o apoio direto ao Governo de Saigon (Vietnã do Sul) conferiu o caráter internacional ao conflito, tornando secundária sua natureza interna. O Governo de Saigon estava às margens do colapso depois da retirada francesa e devido à falta de apoio de seu próprio povo. Já a República Democrática do Vietnã do Norte, contava com a força da Frente de Libertação Nacional e com o próprio apoio da população civil.

A este conflito aplicaram-se todas as provisões contidas nas Convenções de Genebra de 1949. A guerra contou com um alto grau de participação de forças e milícias irregulares, combatentes civis e guerrilheiros. No momento de aplicação do artigo 4 da Terceira Convenção de Genebra, os Estados Unidos estabeleceram uma interpretação extensiva da norma, abrangendo todos os membros de forças irregulares que tivessem participado diretamente das hostilidades ou provado seu envolvimento no conflito. Não conferiu,

contudo, o status de prisioneiro de guerra aos civis que cometeram atos de beligerância, aos suspeitos de espionagem, sabotagem ou terrorismo, aos desertores e aos civis inocentes.

O Vietnã do Norte recusou-se a conferir o status de prisioneiro de guerra aos soldados americanos e aos soldados do governo de Saigon sob o argumento de que os primeiros violavam o *ius in bello* e os segundos não representavam uma autoridade legítima, mas ao mesmo tempo afirmou que os mesmos eram tratados com humanidade.

A decisão dos Estados Unidos de interpretar o artigo 4 da Terceira Convenção de Genebra constitui paradigma para a análise de sua posição divergente em relação aos talibãs e membros da al Qaeda na guerra do Afeganistão. O governo desse país afirmou que em relação ao conflito empreendido entre eles e o Afeganistão aplicam-se as Convenções de Genebra; em relação à guerra contra o terror, entre eles e a al Qaeda, não são pertinentes as normas humanitárias e em relação aos talibãs e os terroristas da al Qaeda não se aplica a condição jurídica de prisioneiro de guerra.

Conclui-se que se os talibãs representam as forças regulares do governo *de facto* do Afeganistão, a eles deve ser conferido o status de prisioneiro de guerra, mesmo que tenham violado provisões contidas nas normas humanitárias. Em relação aos membros da al Qaeda capturados durante as hostilidades ativas, a eles aplicam-se as disposições contidas na Quarta Convenção de Genebra sobre a proteção da população civil, por preencherem o critério da nacionalidade contido nessa norma. Sobre os membros da al Qaeda capturados em outras situações, fora do conflito armado, não são pertinentes as normas humanitárias, sendo protegidos apenas pelos tratados internacionais de direitos humanos.

Os soldados talibãs e os membros da al Qaeda capturados no conflito e fora dele foram enviados para Guantánamo, Cuba, em uma base militar norte-americana. Este local é considerado solo americano e sobre ele recaem as leis domésticas desse país, mesmo tendo sido argumentado que sobre aquele local a jurisdição dos Estados Unidos não tem alcance. No caso de dúvidas, sejam elas levantadas pelos próprios detidos ou pelo governo que clama pela condição de prisioneiro de guerra de seus soldados, o tratamento de prisioneiro de guerra deveria ter sido fornecido, até que sua condição jurídica fosse decidida por um tribunal competente. Esses indivíduos, acusados ou não de atos terroristas, não podem ficar presos por tempo indeterminado, sob pena de violação das obrigações internacionais contidas

nos tratados humanitários e nos tratados de direitos humanos. Os Estados Unidos sofreram pressões de diversas organizações internacionais, como a Anistia Internacional e a Cruz Vermelha, no sentido de cumprir os tratados pertinentes, contudo, o Governo americano manteve-se em silêncio.

Finalmente pode ser compreendido que somente através da determinação do status de prisioneiro de guerra os indivíduos envolvidos nos conflitos armados internacionais contemporâneos recebem o tratamento e proteção adequados contidos nas normas humanitárias. As provisões do artigo 4 são interpretadas e aplicadas de forma inadequada e restritiva, conforme as necessidades políticas dos Estados. A decisão do Governo dos Estados Unidos abre precedentes para justificar violações das normas humanitárias e somente através da responsabilização internacional dos Estados a quebra das normas podem ser reprimidas.

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**ANEXO A – Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949**

**Preamble**

The undersigned Plenipotentiaries of the Governments represented at the Diplomatic Conference held at Geneva from April 21 to August 12, 1949, for the purpose of revising the Geneva Convention for the Relief of the Wounded and Sick in Armies in the Field of July 27, 1929, have agreed as follows:

**Chapter I. General Provisions**

Art 1. The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.

Art. 2. In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.

Art. 3. In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- (d) the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

Art. 4. Neutral Powers shall apply by analogy the provisions of the present Convention to the wounded and sick, and to members of the medical personnel and to chaplains of the armed forces of the Parties to the conflict, received or interned in their territory, as well as to dead persons found.

Art. 5. For the protected persons who have fallen into the hands of the enemy, the present Convention shall apply until their final repatriation.

Art. 6. In addition to the agreements expressly provided for in Articles 10, 15, 23, 28, 31, 36, 37 and 52, the High Contracting Parties may conclude other special agreements for all matters concerning which they may deem it suitable to make separate provision. No special agreement shall adversely affect the situation of the wounded and sick, of members of the medical personnel or of chaplains, as defined by the present Convention, nor restrict the rights which it confers upon them.

Wounded and sick, as well as medical personnel and chaplains, shall continue to have the benefit of such agreements as long as the Convention is applicable to them, except where express provisions to the contrary are contained in the aforesaid or in subsequent agreements, or where more favourable measures have been taken with regard to them by one or other of the Parties to the conflict.

Art. 7. Wounded and sick, as well as members of the medical personnel and chaplains, may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreements referred to in the foregoing Article, if such there be.

Art. 8. The present Convention shall be applied with the cooperation and under the scrutiny of the Protecting Powers whose duty it is to safeguard the interests of the Parties to the conflict. For this purpose, the Protecting Powers may appoint, apart from their diplomatic or consular staff, delegates from amongst their own nationals or the nationals of other neutral Powers. The said delegates shall be subject to the approval of the Power with which they are to carry out their duties.

The Parties to the conflict shall facilitate to the greatest extent possible, the task of the representatives or delegates of the Protecting Powers.

The representatives or delegates of the Protecting Powers shall not in any case exceed their mission under the present Convention. They shall, in particular, take account of the imperative necessities of security of the State wherein they carry out their duties. Their activities shall only be restricted as an exceptional and temporary measure when this is rendered necessary by imperative military necessities.

Art. 9. The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of wounded and sick, medical personnel and chaplains, and for their relief.

Art. 10. The High Contracting Parties may at any time agree to entrust to an organization which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers by virtue of the present Convention.

When wounded and sick, or medical personnel and chaplains do not benefit or cease to benefit, no matter for what reason, by the activities of a Protecting Power or of an organization provided for in the first paragraph above, the Detaining Power shall request a

neutral State, or such an organization, to undertake the functions performed under the present Convention by a Protecting Power designated by the Parties to a conflict.

If protection cannot be arranged accordingly, the Detaining Power shall request or shall accept, subject to the provisions of this Article, the offer of the services of a humanitarian organization, such as the International Committee of the Red Cross, to assume the humanitarian functions performed by Protecting Powers under the present Convention.

Any neutral Power, or any organization invited by the Power concerned or offering itself for these purposes, shall be required to act with a sense of responsibility towards the Party to the conflict on which persons protected by the present Convention depend, and shall be required to furnish sufficient assurances that it is in a position to undertake the appropriate functions and to discharge them impartially.

No derogation from the preceding provisions shall be made by special agreements between Powers one of which is restricted, even temporarily, in its freedom to negotiate with the other Power or its allies by reason of military events, more particularly where the whole, or a substantial part, of the territory of the said Power is occupied.

Whenever, in the present Convention, mention is made of a Protecting Power, such mention also applies to substitute organizations in the sense of the present Article.

Art. 11. In cases where they deem it advisable in the interest of protected persons, particularly in cases of disagreement between the Parties to the conflict as to the application or interpretation of the provisions of the present Convention, the Protecting Powers shall lend their good offices with a view to settling the disagreement.

For this purpose, each of the Protecting Powers may, either at the invitation of one Party or on its own initiative, propose to the Parties to the conflict a meeting of their representatives, in particular of the authorities responsible for the wounded and sick, members of medical personnel and chaplains, possibly on neutral territory suitably chosen. The Parties to the conflict shall be bound to give effect to the proposals made to them for this purpose. The Protecting Powers may, if necessary, propose for approval by the Parties to the conflict, a person belonging to a neutral Power or delegated by the International Committee of the Red Cross, who shall be invited to take part in such a meeting

## **Chapter II. Wounded and Sick**

Art. 12. Members of the armed forces and other persons mentioned in the following Article, who are wounded or sick, shall be respected and protected in all circumstances.

They shall be treated humanely and cared for by the Party to the conflict in whose power they may be, without any adverse distinction founded on sex, race, nationality, religion, political opinions, or any other similar criteria. Any attempts upon their lives, or violence to their persons, shall be strictly prohibited; in particular, they shall not be murdered or exterminated, subjected to torture or to biological experiments; they shall not wilfully be left without medical assistance and care, nor shall conditions exposing them to contagion or infection be created.

Only urgent medical reasons will authorize priority in the order of treatment to be administered.

Women shall be treated with all consideration due to their sex. The Party to the conflict which is compelled to abandon wounded or sick to the enemy shall, as far as military considerations permit, leave with them a part of its medical personnel and material to assist in their care.

Art. 13. The present Convention shall apply to the wounded and sick belonging to the following categories:

(1) Members of the armed forces of a Party to the conflict, as well as members of militias or volunteer corps forming part of such armed forces.

(2) Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions:

(a) that of being commanded by a person responsible for his subordinates;

(b) that of having a fixed distinctive sign recognizable at a distance;

(c) that of carrying arms openly;

(d) that of conducting their operations in accordance with the laws and customs of war.

(3) Members of regular armed forces who profess allegiance to a Government or an authority not recognized by the Detaining Power.

(4) Persons who accompany the armed forces without actually being members thereof, such as civil members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorization from the armed forces which they accompany.

(5) Members of crews, including masters, pilots and apprentices, of the merchant marine and the crews of civil aircraft of the Parties to the conflict, who do not benefit by more favourable treatment under any other provisions in international law.

(6) Inhabitants of a non-occupied territory, who on the approach of the enemy, spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.

Art. 14. Subject to the provisions of Article 12, the wounded and sick of a belligerent who fall into enemy hands shall be prisoners of war, and the provisions of international law concerning prisoners of war shall apply to them.

Art. 15. At all times, and particularly after an engagement, Parties to the conflict shall, without delay, take all possible measures to search for and collect the wounded and sick, to protect them against pillage and ill-treatment, to ensure their adequate care, and to search for the dead and prevent their being despoiled.

Whenever circumstances permit, an armistice or a suspension of fire shall be arranged, or local arrangements made, to permit the removal, exchange and transport of the wounded left on the battlefield.

Likewise, local arrangements may be concluded between Parties to the conflict for the removal or exchange of wounded and sick from a besieged or encircled area, and for the passage of medical and religious personnel and equipment on their way to that area.

Art. 16. Parties to the conflict shall record as soon as possible, in respect of each wounded, sick or dead person of the adverse Party falling into their hands, any particulars which may assist in his identification.

These records should if possible include:

(a) designation of the Power on which he depends;

(b) army, regimental, personal or serial number;

- (c) surname;
- (d) first name or names;
- (e) date of birth;
- (f) any other particulars shown on his identity card or disc;
- (g) date and place of capture or death;
- (h) particulars concerning wounds or illness, or cause of death.

As soon as possible the above mentioned information shall be forwarded to the Information Bureau described in Article 122 of the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949, which shall transmit this information to the Power on which these persons depend through the intermediary of the Protecting Power and of the Central Prisoners of War Agency.

Parties to the conflict shall prepare and forward to each other through the same bureau, certificates of death or duly authenticated lists of the dead. They shall likewise collect and forward through the same bureau one half of a double identity disc, last wills or other documents of importance to the next of kin, money and in general all articles of an intrinsic or sentimental value, which are found on the dead. These articles, together with unidentified articles, shall be sent in sealed packets, accompanied by statements giving all particulars necessary for the identification of the deceased owners, as well as by a complete list of the contents of the parcel.

Art. 17. Parties to the conflict shall ensure that burial or cremation of the dead, carried out individually as far as circumstances permit, is preceded by a careful examination, if possible by a medical examination, of the bodies, with a view to confirming death, establishing identity and enabling a report to be made. One half of the double identity disc, or the identity disc itself if it is a single disc, should remain on the body.

Bodies shall not be cremated except for imperative reasons of hygiene or for motives based on the religion of the deceased. In case of cremation, the circumstances and reasons for cremation shall be stated in detail in the death certificate or on the authenticated list of the dead.

They shall further ensure that the dead are honourably interred, if possible according to the rites of the religion to which they belonged, that their graves are respected, grouped if possible according to the nationality of the deceased, properly maintained and marked so that they may always be found. For this purpose, they shall organize at the commencement of hostilities an Official Graves Registration Service, to allow subsequent exhumations and to ensure the identification of bodies, whatever the site of the graves, and the possible transportation to the home country. These provisions shall likewise apply to the ashes, which shall be kept by the Graves Registration Service until proper disposal thereof in accordance with the wishes of the home country.

As soon as circumstances permit, and at latest at the end of hostilities, these Services shall exchange, through the Information Bureau mentioned in the second paragraph of Article 16, lists showing the exact location and markings of the graves, together with particulars of the dead interred therein.

Art. 18. The military authorities may appeal to the charity of the inhabitants voluntarily to collect and care for, under their direction, the wounded and sick, granting persons who have responded to this appeal the necessary protection and facilities. Should the adverse Party take

or retake control of the area, he shall likewise grant these persons the same protection and the same facilities.

The military authorities shall permit the inhabitants and relief societies, even in invaded or occupied areas, spontaneously to collect and care for wounded or sick of whatever nationality. The civilian population shall respect these wounded and sick, and in particular abstain from offering them violence.

No one may ever be molested or convicted for having nursed the wounded or sick.

The provisions of the present Article do not relieve the occupying Power of its obligation to give both physical and moral care to the wounded and sick.

### **Chapter III. Medical Units and Establishments**

Art. 19. Fixed establishments and mobile medical units of the Medical Service may in no circumstances be attacked, but shall at all times be respected and protected by the Parties to the conflict. Should they fall into the hands of the adverse Party, their personnel shall be free to pursue their duties, as long as the capturing Power has not itself ensured the necessary care of the wounded and sick found in such establishments and units.

The responsible authorities shall ensure that the said medical establishments and units are, as far as possible, situated in such a manner that attacks against military objectives cannot imperil their safety.

Art. 20. Hospital ships entitled to the protection of the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, shall not be attacked from the land.

Art. 21. The protection to which fixed establishments and mobile medical units of the Medical Service are entitled shall not cease unless they are used to commit, outside their humanitarian duties, acts harmful to the enemy. Protection may, however, cease only after a due warning has been given, naming, in all appropriate cases, a reasonable time limit, and after such warning has remained unheeded.

Art. 22. The following conditions shall not be considered as depriving a medical unit or establishment of the protection guaranteed by Article 19:

- (1) That the personnel of the unit or establishment are armed, and that they use the arms in their own defence, or in that of the wounded and sick in their charge.
- (2) That in the absence of armed orderlies, the unit or establishment is protected by a picket or by sentries or by an escort.
- (3) That small arms and ammunition taken from the wounded and sick and not yet handed to the proper service, are found in the unit or establishment.
- (4) That personnel and material of the veterinary service are found in the unit or establishment, without forming an integral part thereof.
- (5) That the humanitarian activities of medical units and establishments or of their personnel extend to the care of civilian wounded or sick.

Art. 23. In time of peace, the High Contracting Parties and, after the outbreak of hostilities, the Parties thereto, may establish in their own territory and, if the need arises, in occupied areas, hospital zones and localities so organized as to protect the wounded and sick from the effects of war, as well as the personnel entrusted with the organization and administration of these zones and localities and with the care of the persons therein assembled.

Upon the outbreak and during the course of hostilities, the Parties concerned may conclude agreements on mutual recognition of the hospital zones and localities they have created. They

may for this purpose implement the provisions of the Draft Agreement annexed to the present Convention, with such amendments as they may consider necessary.

The Protecting Powers and the International Committee of the Red Cross are invited to lend their good offices in order to facilitate the institution and recognition of these hospital zones and localities.

#### **Chapter IV. Personnel**

Art. 24. Medical personnel exclusively engaged in the search for, or the collection, transport or treatment of the wounded or sick, or in the prevention of disease, staff exclusively engaged in the administration of medical units and establishments, as well as chaplains attached to the armed forces, shall be respected and protected in all circumstances.

Art. 25. Members of the armed forces specially trained for employment, should the need arise, as hospital orderlies, nurses or auxiliary stretcher-bearers, in the search for or the collection, transport or treatment of the wounded and sick shall likewise be respected and protected if they are carrying out these duties at the time when they come into contact with the enemy or fall into his hands.

Art. 26. The staff of National Red Cross Societies and that of other Voluntary Aid Societies, duly recognized and authorized by their Governments, who may be employed on the same duties as the personnel named in Article 24, are placed on the same footing as the personnel named in the said Article, provided that the staff of such societies are subject to military laws and regulations.

Each High Contracting Party shall notify to the other, either in time of peace or at the commencement of or during hostilities, but in any case before actually employing them, the names of the societies which it has authorized, under its responsibility, to render assistance to the regular medical service of its armed forces.

Art. 27. A recognized Society of a neutral country can only lend the assistance of its medical personnel and units to a Party to the conflict with the previous consent of its own Government and the authorization of the Party to the conflict concerned. That personnel and those units shall be placed under the control of that Party to the conflict.

The neutral Government shall notify this consent to the adversary of the State which accepts such assistance. The Party to the conflict who accepts such assistance is bound to notify the adverse Party thereof before making any use of it.

In no circumstances shall this assistance be considered as interference in the conflict.

The members of the personnel named in the first paragraph shall be duly furnished with the identity cards provided for in Article 40 before leaving the neutral country to which they belong.

Art. 28. Personnel designated in Articles 24 and 26 who fall into the hands of the adverse Party, shall be retained only in so far as the state of health, the spiritual needs and the number of prisoners of war require.

Personnel thus retained shall not be deemed prisoners of war. Nevertheless they shall at least benefit by all the provisions of the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949. Within the framework of the military laws and regulations of the Detaining Power, and under the authority of its competent service, they shall continue to carry out, in accordance with their professional ethics, their medical and spiritual duties on behalf of prisoners of war, preferably those of the armed forces to which they themselves

belong. They shall further enjoy the following facilities for carrying out their medical or spiritual duties:

(a) They shall be authorized to visit periodically the prisoners of war in labour units or hospitals outside the camp. The Detaining Power shall put at their disposal the means of transport required.

(b) In each camp the senior medical officer of the highest rank shall be responsible to the military authorities of the camp for the professional activity of the retained medical personnel. For this purpose, from the outbreak of hostilities, the Parties to the conflict shall agree regarding the corresponding seniority of the ranks of their medical personnel, including those of the societies designated in Article 26. In all questions arising out of their duties, this medical officer, and the chaplains, shall have direct access to the military and medical authorities of the camp who shall grant them the facilities they may require for correspondence relating to these questions.

(c) Although retained personnel in a camp shall be subject to its internal discipline, they shall not, however, be required to perform any work outside their medical or religious duties.

During hostilities the Parties to the conflict shall make arrangements for relieving where possible retained personnel, and shall settle the procedure of such relief.

None of the preceding provisions shall relieve the Detaining Power of the obligations imposed upon it with regard to the medical and spiritual welfare of the prisoners of war.

Art. 29. Members of the personnel designated in Article 25 who have fallen into the hands of the enemy, shall be prisoners of war, but shall be employed on their medical duties in so far as the need arises.

Art. 30. Personnel whose retention is not indispensable by virtue of the provisions of Article 28 shall be returned to the Party to the conflict to whom they belong, as soon as a road is open for their return and military requirements permit.

Pending their return, they shall not be deemed prisoners of war. Nevertheless they shall at least benefit by all the provisions of the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949. They shall continue to fulfil their duties under the orders of the adverse Party and shall preferably be engaged in the care of the wounded and sick of the Party to the conflict to which they themselves belong.

On their departure, they shall take with them the effects, personal belongings, valuables and instruments belonging to them.

Art. 31. The selection of personnel for return under Article 30 shall be made irrespective of any consideration of race, religion or political opinion, but preferably according to the chronological order of their capture and their state of health.

As from the outbreak of hostilities, Parties to the conflict may determine by special agreement the percentage of personnel to be retained, in proportion to the number of prisoners and the distribution of the said personnel in the camps.

Art. 32. Persons designated in Article 27 who have fallen into the hands of the adverse Party may not be detained.

Unless otherwise agreed, they shall have permission to return to their country, or if this is not possible, to the territory of the Party to the conflict in whose service they were, as soon as a route for their return is open and military considerations permit.

Pending their release, they shall continue their work under the direction of the adverse Party; they shall preferably be engaged in the care of the wounded and sick of the Party to the

conflict in whose service they were. On their departure, they shall take with them their effects personal articles and valuables and the instruments, arms and if possible the means of transport belonging to them.

The Parties to the conflict shall secure to this personnel, while in their power, the same food, lodging, allowances and pay as are granted to the corresponding personnel of their armed forces. The food shall in any case be sufficient as regards quantity, quality and variety to keep the said personnel in a normal state of health.

#### **Chapter V. Buildings and Material**

Art. 33. The material of mobile medical units of the armed forces which fall into the hands of the enemy, shall be reserved for the care of wounded and sick.

The buildings, material and stores of fixed medical establishments of the armed forces shall remain subject to the laws of war, but may not be diverted from their purpose as long as they are required for the care of wounded and sick. Nevertheless, the commanders of forces in the field may make use of them, in case of urgent military necessity, provided that they make previous arrangements for the welfare of the wounded and sick who are nursed in them.

The material and stores defined in the present Article shall not be intentionally destroyed.

Art. 34. The real and personal property of aid societies which are admitted to the privileges of the Convention shall be regarded as private property.

The right of requisition recognized for belligerents by the laws and customs of war shall not be exercised except in case of urgent necessity, and only after the welfare of the wounded and sick has been ensured.

#### **Chapter VI. Medical Transports**

Art. 35. Transports of wounded and sick or of medical equipment shall be respected and protected in the same way as mobile medical units.

Should such transports or vehicles fall into the hands of the adverse Party, they shall be subject to the laws of war, on condition that the Party to the conflict who captures them shall in all cases ensure the care of the wounded and sick they contain.

The civilian personnel and all means of transport obtained by requisition shall be subject to the general rules of international law.

Art. 36. Medical aircraft, that is to say, aircraft exclusively employed for the removal of wounded and sick and for the transport of medical personnel and equipment, shall not be attacked, but shall be respected by the belligerents, while flying at heights, times and on routes specifically agreed upon between the belligerents concerned.

They shall bear, clearly marked, the distinctive emblem prescribed in Article 38, together with their national colours on their lower, upper and lateral surfaces. They shall be provided with any other markings or means of identification that may be agreed upon between the belligerents upon the outbreak or during the course of hostilities.

Unless agreed otherwise, flights over enemy or enemy-occupied territory are prohibited.

Medical aircraft shall obey every summons to land. In the event of a landing thus imposed, the aircraft with its occupants may continue its flight after examination, if any.

In the event of an involuntary landing in enemy or enemy-occupied territory, the wounded and sick, as well as the crew of the aircraft shall be prisoners of war. The medical personnel shall be treated according to Article 24 and the Articles following.

Art. 37. Subject to the provisions of the second paragraph, medical aircraft of Parties to the conflict may fly over the territory of neutral Powers, land on it in case of necessity, or use it

as a port of call. They shall give the neutral Powers previous notice of their passage over the said territory and obey all summons to alight, on land or water. They will be immune from attack only when flying on routes, at heights and at times specifically agreed upon between the Parties to the conflict and the neutral Power concerned.

The neutral Powers may, however, place conditions or restrictions on the passage or landing of medical aircraft on their territory. Such possible conditions or restrictions shall be applied equally to all Parties to the conflict.

Unless agreed otherwise between the neutral Power and the Parties to the conflict, the wounded and sick who are disembarked, with the consent of the local authorities, on neutral territory by medical aircraft, shall be detained by the neutral Power, where so required by international law, in such a manner that they cannot again take part in operations of war. The cost of their accommodation and internment shall be borne by the Power on which they depend.

#### **Chapter VII. The Distinctive Emblem**

Art. 38. As a compliment to Switzerland, the heraldic emblem of the red cross on a white ground, formed by reversing the Federal colours, is retained as the emblem and distinctive sign of the Medical Service of armed forces.

Nevertheless, in the case of countries which already use as emblem, in place of the red cross, the red crescent or the red lion and sun on a white ground, those emblems are also recognized by the terms of the present Convention.

Art. 39. Under the direction of the competent military authority, the emblem shall be displayed on the flags, armbands and on all equipment employed in the Medical Service.

Art. 40. The personnel designated in Article 24 and in Articles 26 and 27 shall wear, affixed to the left arm, a water-resistant armband bearing the distinctive emblem, issued and stamped by the military authority.

Such personnel, in addition to wearing the identity disc mentioned in Article 16, shall also carry a special identity card bearing the distinctive emblem. This card shall be water-resistant and of such size that it can be carried in the pocket. It shall be worded in the national language, shall mention at least the surname and first names, the date of birth, the rank and the service number of the bearer, and shall state in what capacity he is entitled to the protection of the present Convention. The card shall bear the photograph of the owner and also either his signature or his finger-prints or both. It shall be embossed with the stamp of the military authority.

The identity card shall be uniform throughout the same armed forces and, as far as possible, of a similar type in the armed forces of the High Contracting Parties. The Parties to the conflict may be guided by the model which is annexed, by way of example, to the present Convention. They shall inform each other, at the outbreak of hostilities, of the model they are using. Identity cards should be made out, if possible, at least in duplicate, one copy being kept by the home country.

In no circumstances may the said personnel be deprived of their insignia or identity cards nor of the right to wear the armband. In case of loss, they shall be entitled to receive duplicates of the cards and to have the insignia replaced.

Art. 41. The personnel designated in Article 25 shall wear, but only while carrying out medical duties, a white armband bearing in its centre the distinctive sign in miniature; the armband shall be issued and stamped by the military authority.

Military identity documents to be carried by this type of personnel shall specify what special training they have received, the temporary character of the duties they are engaged upon, and their authority for wearing the armlet.

Art. 42. The distinctive flag of the Convention shall be hoisted only over such medical units and establishments as are entitled to be respected under the Convention, and only with the consent of the military authorities. In mobile units, as in fixed establishments, it may be accompanied by the national flag of the Party to the conflict to which the unit or establishment belongs.

Nevertheless, medical units which have fallen into the hands of the enemy shall not fly any flag other than that of the Convention. Parties to the conflict shall take the necessary steps, in so far as military considerations permit, to make the distinctive emblems indicating medical units and establishments clearly visible to the enemy land, air or naval forces, in order to obviate the possibility of any hostile action.

Art. 43. The medical units belonging to neutral countries, which may have been authorized to lend their services to a belligerent under the conditions laid down in Article 27, shall fly, along with the flag of the Convention, the national flag of that belligerent, wherever the latter makes use of the faculty conferred on him by Article 42.

Subject to orders to the contrary by the responsible military authorities, they may on all occasions fly their national flag, even if they fall into the hands of the adverse Party.

Art. 44. With the exception of the cases mentioned in the following paragraphs of the present Article, the emblem of the red cross on a white ground and the words "Red Cross" or "Geneva Cross" may not be employed, either in time of peace or in time of war, except to indicate or to protect the medical units and establishments, the personnel and material protected by the present Convention and other Conventions dealing with similar matters. The same shall apply to the emblems mentioned in Article 38, second paragraph, in respect of the countries which use them. The National Red Cross Societies and other societies designated in Article 26 shall have the right to use the distinctive emblem conferring the protection of the Convention only within the framework of the present paragraph.

Furthermore, National Red Cross (Red Crescent, Red Lion and Sun) Societies may, in time of peace, in accordance with their national legislation, make use of the name and emblem of the Red Cross for their other activities which are in conformity with the principles laid down by the International Red Cross Conferences. When those activities are carried out in time of war, the conditions for the use of the emblem shall be such that it cannot be considered as conferring the protection of the Convention; the emblem shall be comparatively small in size and may not be placed on armlets or on the roofs of buildings.

The international Red Cross organizations and their duly authorized personnel shall be permitted to make use, at all times, of the emblem of the red cross on a white ground.

As an exceptional measure, in conformity with national legislation and with the express permission of one of the National Red Cross (Red Crescent, Red Lion and Sun) Societies, the emblem of the Convention may be employed in time of peace to identify vehicles used as ambulances and to mark the position of aid stations exclusively assigned to the purpose of giving free treatment to the wounded or sick.

### **Chapter VIII. Execution of the Convention**

Art. 45. Each Party to the conflict, acting through its Commanders-in-Chief, shall ensure the detailed execution of the preceding Articles, and provide for unforeseen cases, in conformity with the general principles of the present Convention.

Art. 46. Reprisals against the wounded, sick, personnel, buildings or equipment protected by the Convention are prohibited.

Art. 47. The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population, in particular to the armed fighting forces, the medical personnel and the chaplains.

Art. 48. The High Contracting Parties shall communicate to one another through the Swiss Federal Council and, during hostilities, through the Protecting Powers, the official translations of the present Convention, as well as the laws and regulations which they may adopt to ensure the application thereof.

### **Chapter IX. Repression of Abuses and Infractions**

Art. 49. The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case.

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.

In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following, of the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949.

Art. 50. Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

Art. 51. No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article.

Art. 52. At the request of a Party to the conflict, an enquiry shall be instituted, in a manner to be decided between the interested Parties, concerning any alleged violation of the Convention.

If agreement has not been reached concerning the procedure for the enquiry, the Parties should agree on the choice of an umpire who will decide upon the procedure to be followed.

Once the violation has been established, the Parties to the conflict shall put an end to it and shall repress it with the least possible delay.

Art. 53. The use by individuals, societies, firms or companies either public or private, other than those entitled thereto under the present Convention, of the emblem or the designation "Red Cross" or "Geneva Cross" or any sign or designation constituting an imitation thereof, whatever the object of such use, and irrespective of the date of its adoption, shall be prohibited at all times.

By reason of the tribute paid to Switzerland by the adoption of the reversed Federal colours, and of the confusion which may arise between the arms of Switzerland and the distinctive emblem of the Convention, the use by private individuals, societies or firms, of the arms of the Swiss Confederation, or of marks constituting an imitation thereof, whether as trademarks or commercial marks, or as parts of such marks, or for a purpose contrary to commercial honesty, or in circumstances capable of wounding Swiss national sentiment, shall be prohibited at all times.

Nevertheless, such High Contracting Parties as were not party to the Geneva Convention of 27 July 1929, may grant to prior users of the emblems, designations, signs or marks designated in the first paragraph, a time limit not to exceed three years from the coming into force of the present Convention to discontinue such use provided that the said use shall not be such as would appear, in time of war, to confer the protection of the Convention.

The prohibition laid down in the first paragraph of the present Article shall also apply, without effect on any rights acquired through prior use, to the emblems and marks mentioned in the second paragraph of Article 38.

Art. 54. The High Contracting Parties shall, if their legislation is not already adequate, take measures necessary for the prevention and repression, at all times, of the abuses referred to under Article 53

#### Final Provisions

Art. 55. The present Convention is established in English and in French. Both texts are equally authentic.

The Swiss Federal Council shall arrange for official translations of the Convention to be made in the Russian and Spanish languages.

Art. 56. The present Convention, which bears the date of this day, is open to signature until 12 February 1950, in the name of the Powers represented at the Conference which opened at Geneva on 21 April 1949; furthermore, by Powers not represented at that Conference but which are Parties to the Geneva Conventions of 1864, 1906 or 1929 for the Relief of the Wounded and Sick in Armies in the Field.

Art. 57. The present Convention shall be ratified as soon as possible and the ratifications shall be deposited at Berne. A record shall be drawn up of the deposit of each instrument of ratification and certified copies of this record shall be transmitted by the Swiss Federal Council to all the Powers in whose name the Convention has been signed, or whose accession has been notified.

Art. 58. The present Convention shall come into force six months after not less than two instruments of ratification have been deposited.

Thereafter, it shall come into force for each High Contracting Party six months after the deposit of the instrument of ratification.

Art. 59. The present Convention replaces the Conventions of 22 August 1864, 6 July 1906, and 27 July 1929, in relations between the High Contracting Parties.

Art. 60. From the date of its coming into force, it shall be open to any Power in whose name the present Convention has not been signed, to accede to this Convention.

Art. 61. Accessions shall be notified in writing to the Swiss Federal Council, and shall take effect six months after the date on which they are received.

The Swiss Federal Council shall communicate the accessions to all the Powers in whose name the Convention has been signed, or whose accession has been notified.

Art. 62. The situations provided for in Articles 2 and 3 shall give immediate effect to ratifications deposited and accessions notified by the Parties to the conflict before or after the beginning of hostilities or occupation. The Swiss Federal Council shall communicate by the quickest method any ratifications or accessions received from Parties to the conflict.

Art. 63. Each of the High Contracting Parties shall be at liberty to denounce the present Convention.

The denunciation shall be notified in writing to the Swiss Federal Council, which shall transmit it to the Governments of all the High Contracting Parties.

The denunciation shall take effect one year after the notification thereof has been made to the Swiss Federal Council. However, a denunciation of which notification has been made at a time when the denouncing Power is involved in a conflict shall not take effect until peace has been concluded, and until after operations connected with release and repatriation of the persons protected by the present Convention have been terminated.

The denunciation shall have effect only in respect of the denouncing Power. It shall in no way impair the obligations which the Parties to the conflict shall remain bound to fulfil by virtue of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity and the dictates of the public conscience.

Art. 64. The Swiss Federal Council shall register the present Convention with the Secretariat of the United Nations. The Swiss Federal Council shall also inform the Secretariat of the United Nations of all ratifications, accessions and denunciations received by it with respect to the present Convention.

In witness whereof the undersigned, having deposited their respective full powers, have signed the present Convention.

Done at Geneva this twelfth day of August 1949, in the English and French languages. The original shall be deposited in the archives of the Swiss Confederation. The Swiss Federal Council shall transmit certified copies thereof to each of the Signatory and Acceding States.

#### Annex I. Draft Agreement Relating to Hospital Zones and Localities

Article 1. Hospital zones shall be strictly observed for the persons named in Article 23 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in the Armed Forces in the Field of 12 August 1949, and for the personnel entrusted with the organization and administration of these zones and localities, and with the care of the persons therein assembled.

Nevertheless, persons whose permanent residence is within such zones shall have the right to stay there.

Art. 2. No persons residing, in whatever capacity, in a hospital zone shall perform any work, either within or without the zone, directly connected with military operations or the production of war material.

Art. 3. The Power establishing a hospital zone shall take all necessary measures to prohibit access to all persons who have no right of residence or entry therein.

Art. 4. Hospital zones shall fulfil the following conditions:

(a) They shall comprise only a small part of the territory governed by the Power which has established them.

(b) They shall be thinly populated in relation to the possibilities of accommodation.

(c) They shall be far removed and free from all military objectives, or large industrial or administrative establishments.

(d) They shall not be situated in areas which, according to every probability, may become important for the conduct of the war.

Art. 5. Hospital zones shall be subject to the following obligations:

(a) The lines of communication and means of transport which they possess shall not be used for the transport of military personnel or material, even in transit.

(b) They shall in no case be defended by military means.

Art. 6. Hospital zones shall be marked by means of red crosses (red crescents, red lions and suns) on a white background placed on the outer precincts and on the buildings. They may be similarly marked at night by means of appropriate illumination.

Art. 7. The Powers shall communicate to all High Contracting Parties in peacetime or on the outbreak of hostilities, a list of the hospital zones in the territories governed by them. They shall also give notice of any new zones set up during hostilities.

As soon as the adverse Party has received the above-mentioned notification, the zone shall be regularly constituted.

If, however, the adverse Party considers that the conditions of the present agreement have not been fulfilled, it may refuse to recognize the zone by giving immediate notice thereof to the Party responsible for the said Zone, or may make its recognition of such zone dependent upon the institution of the control provided for in Article 8.

Art. 8. Any Power having recognized one of several hospital zones instituted by the adverse Party shall be entitled to demand control by one or more Special Commissioners, for the purpose of ascertaining if the zones fulfil the conditions and obligations stipulated in the present agreement.

For this purpose, the members of the Special Commissions shall at all times have free access to the various zones and may even reside there permanently. They shall be given all facilities for their duties of inspection.

Art. 9. Should the Special Commissions note any facts which they consider contrary to the stipulations of the present agreement, they shall at once draw the attention of the Power governing the said zone to these facts, and shall fix a time limit of five days within which the matter should be rectified. They shall duly notify the Power who has recognized the zone.

If, when the time limit has expired, the Power governing the zone has not complied with the warning, the adverse Party may declare that it is no longer bound by the present agreement in respect of the said zone.

Art. 10. Any Power setting up one or more hospital zones and localities, and the adverse Parties to whom their existence has been notified, shall nominate or have nominated by neutral Powers, the persons who shall be members of the Special Commissions mentioned in Articles 8 and 9,

Art. 11. In no circumstances may hospital zones be the object of attack. They shall be protected and respected at all times by the Parties to the conflict.

Art. 12. In the case of occupation of a territory, the hospital zones therein shall continue to be respected and utilized as such.



Their purpose may, however, be modified by the Occupying Power, on condition that all measures are taken to ensure the safety of the persons accommodated.

Art. 13. The present agreement shall also apply to localities which the Powers may utilize for the same purposes as hospital zones.


Annex II.

Identity Card for Members of Medical and Religious Personnel attached to the Armed Forces

Front

	<small>Space reserved for the name of the country and military authority issuing this card</small>	
<h2>IDENTITY CARD</h2> <p>for members of medical and religious personnel attached to the armed forces</p>		
Surname .....		
First names .....		
Date of Birth .....		
Rank .....		
Army Number .....		
<p>The bearer of this card is protected by the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, in his capacity as:</p> <p>.....</p>		
Date of Issue .....	Number of Card .....	

Reverse Side

Photo of bearer  	Signature of bearer or fingerprints or both	
Height	Eyes	Hair
Other distinguishing marks ..... ..... .....		

**ANEXO B – Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, 12 August 1949**

Preamble

The undersigned Plenipotentiaries of the Governments represented at the Diplomatic Conference held at Geneva from April 21 to August 12, 1949, for the purpose of revising the Xth Hague Convention of October 18, 1907 for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 1906, have agreed as follows:

**Chapter I. General Provisions**

Art 1. The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.

Art 2. In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.

Art 3. In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular, humiliating and degrading treatment;
- (d) the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded, sick and shipwrecked shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

Art 4. In case of hostilities between land and naval forces of Parties to the conflict, the provisions of the present Convention shall apply only to forces on board ship.

Forces put ashore shall immediately become subject to the provisions of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949.

Art 5. Neutral Powers shall apply by analogy the provisions of the present Convention to the wounded, sick and shipwrecked, and to members of the medical personnel and to chaplains of the armed forces of the Parties to the conflict received or interned in their territory, as well as to dead persons found.

Art 6. In addition to the agreements expressly provided for in Articles 10, 18, 31, 38, 39, 40, 43 and 53, the High Contracting Parties may conclude other special agreements for all matters concerning which they may deem it suitable to make separate provision. No special agreement shall adversely affect the situation of wounded, sick and shipwrecked persons, of members of the medical personnel or of chaplains, as defined by the present Convention, nor restrict the rights which it confers upon them.

Wounded, sick and shipwrecked persons, as well as medical personnel and chaplains, shall continue to have the benefit of such agreements as long as the Convention is applicable to them, except where express provisions to the contrary are contained in the aforesaid or in subsequent agreements, or where more favourable measures have been taken with regard to them by one or other of the Parties to the conflict.

Art 7. Wounded, sick and shipwrecked persons, as well as members of the medical personnel and chaplains, may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreements referred to in the foregoing Article, if such there be.

Art 8. The present Convention shall be applied with the cooperation and under the scrutiny of the Protecting Powers whose duty it is to safeguard the interests of the Parties to the conflict. For this purpose, the Protecting Powers may appoint, apart from their diplomatic or consular staff, delegates from amongst their own nationals or the nationals of other neutral Powers. The said delegates shall be subject to the approval of the Power with which they are to carry out their duties.

The Parties to the conflict shall facilitate to the greatest extent possible the task of the representatives or delegates of the Protecting Powers.

The representatives or delegates of the Protecting Powers shall not in any case exceed their mission under the present Convention. They shall, in particular, take account of the imperative necessities of security of the State wherein they carry out their duties. Their activities shall only be restricted as an exceptional and temporary measure when this is rendered necessary by imperative military necessities.

Art 9. The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of wounded, sick and shipwrecked persons, medical personnel and chaplains, and for their relief.

Art 10. The High Contracting Parties may at any time agree to entrust to an organization which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers by virtue of the present Convention.

When wounded, sick and shipwrecked, or medical personnel and chaplains do not benefit or cease to benefit, no matter for what reason, by the activities of a Protecting Power or of an organization provided for in the first paragraph above, the Detaining Power shall request a neutral State, or such an organization, to undertake the functions performed under the present Convention by a Protecting Power designated by the Parties to a conflict.

If protection cannot be arranged accordingly, the Detaining Power shall request or shall accept, subject to the provisions of this Article, the offer of the services of a humanitarian organization, such as the International Committee of the Red Cross, to assume the humanitarian functions performed by Protecting Powers under the present Convention.

Any neutral Power, or any organization invited by the Power concerned or offering itself for these purposes, shall be required to act with a sense of responsibility towards the Party to the conflict on which persons protected by the present Convention depend, and shall be required to furnish sufficient assurances that it is in a position to undertake the appropriate functions and to discharge them impartially.

No derogation from the preceding provisions shall be made by special agreements between Powers one of which is restricted, even temporarily, in its freedom to negotiate with the other Power or its allies by reason of military events, more particularly where the whole, or a substantial part, of the territory of the said Power is occupied.

Whenever, in the present Convention, mention is made of a Protecting Power, such mention also applies to substitute organizations in the sense of the present Article.

Art 11. In cases where they deem it advisable in the interest of protected persons, particularly in cases of disagreement between the Parties to the conflict as to the application or interpretation of the provisions of the present Convention, the Protecting Powers shall lend their good offices with a view to settling the disagreement.

For this purpose, each of the Protecting Powers may, either at the invitation of one Party or on its own initiative, propose to the Parties to the conflict a meeting of their representatives, in particular of the authorities responsible for the wounded, sick and shipwrecked, medical personnel and chaplains, possibly on neutral territory suitably chosen. The Parties to the conflict shall be bound to give effect to the proposals made to them for this purpose. The Protecting Powers may, if necessary, propose for approval by the Parties to the conflict, a person belonging to a neutral Power or delegated by the International Committee of the Red Cross, who shall be invited to take part in such a meeting.

## **Chapter II. Wounded, Sick and Shipwrecked**

Art 12. Members of the armed forces and other persons mentioned in the following Article, who are at sea and who are wounded, sick or shipwrecked, shall be respected and protected in all circumstances, it being understood that the term “shipwreck” means shipwreck from any cause and includes forced landings at sea by or from aircraft.

Such persons shall be treated humanely and cared for by the Parties to the conflict in whose power they may be, without any adverse distinction founded on sex, race, nationality, religion, political opinions, or any other similar criteria. Any attempts upon their lives, or violence to their persons, shall be strictly prohibited; in particular, they shall not be murdered or exterminated, subjected to torture or to biological experiments; they shall not wilfully be

left without medical assistance and care, nor shall conditions exposing them to contagion or infection be created.

Only urgent medical reasons will authorize priority in the order of treatment to be administered.

Women shall be treated with all consideration due to their sex.

Art 13. The present Convention shall apply to the wounded, sick and shipwrecked at sea belonging to the following categories:

(1) Members of the armed forces of a Party to the conflict, as well as members of militias or volunteer corps forming part of such armed forces.

(2) Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions:

(a) that of being commanded by a person responsible for his subordinates;

(b) that of having a fixed distinctive sign recognizable at a distance;

(c) that of carrying arms openly;

(d) that of conducting their operations in accordance with the laws and customs of war.

(3) Members of regular armed forces who profess allegiance to a Government or an authority not recognized by the Detaining Power.

(4) Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorization from the armed forces which they accompany.

(5) Members of crews, including masters, pilots and apprentices, of the merchant marine and the crews of civil aircraft of the Parties to the conflict, who do not benefit by more favourable treatment under any other provisions of international law.

(6) Inhabitants of a non-occupied territory who, on the approach of the enemy, spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.

Art 14. All warships of a belligerent Party shall have the right to demand that the wounded, sick or shipwrecked on board military hospital ships, and hospital ships belonging to relief societies or to private individuals, as well as merchant vessels, yachts and other craft shall be surrendered, whatever their nationality, provided that the wounded and sick are in a fit state to be moved and that the warship can provide adequate facilities for necessary medical treatment.

Art 15. If wounded, sick or shipwrecked persons are taken on board a neutral warship or a neutral military aircraft, it shall be ensured, where so required by international law, that they can take no further part in operations of war.

Art 16. Subject to the provisions of Article 12, the wounded, sick and shipwrecked of a belligerent who fall into enemy hands shall be prisoners of war, and the provisions of international law concerning prisoners of war shall apply to them. The captor may decide, according to circumstances, whether it is expedient to hold them, or to convey them to a port in the captor's own country, to a neutral port or even to a port in enemy territory. In the last

case, prisoners of war thus returned to their home country may not serve for the duration of the war.

Art 17. Wounded, sick or shipwrecked persons who are landed in neutral ports with the consent of the local authorities, shall, failing arrangements to the contrary between the neutral and the belligerent Powers, be so guarded by the neutral Power, where so required by international law, that the said persons cannot again take part in operations of war.

The costs of hospital accommodation and internment shall be borne by the Power on whom the wounded, sick or shipwrecked persons depend.

Art 18. After each engagement, Parties to the conflict shall, without delay, take all possible measures to search for and collect the shipwrecked, wounded and sick, to protect them against pillage and ill-treatment, to ensure their adequate care, and to search for the dead and prevent their being despoiled.

Whenever circumstances permit, the Parties to the conflict shall conclude local arrangements for the removal of the wounded and sick by sea from a besieged or encircled area and for the passage of medical and religious personnel and equipment on their way to that area.

Art 19. The Parties to the conflict shall record as soon as possible, in respect of each shipwrecked, wounded, sick or dead person of the adverse Party falling into their hands, any particulars which may assist in his identification. These records should if possible include:

- (a) designation of the Power on which he depends;
- (b) army, regimental, personal or serial number;
- (c) surname;
- (d) first name or names;
- (e) date of birth;
- (f) any other particulars shown on his identity card or disc;
- (g) date and place of capture or death;
- (h) particulars concerning wounds or illness, or cause of death.

As soon as possible the above-mentioned information shall be forwarded to the information bureau described in Article 122 of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949, which shall transmit this information to the Power on which these persons depend through the intermediary of the Protecting Power and of the Central Prisoners of War Agency.

Parties to the conflict shall prepare and forward to each other through the same bureau, certificates of death or duly authenticated lists of the dead. They shall likewise collect and forward through the same bureau one half of the double identity disc, or the identity disc itself if it is a single disc, last wills or other documents of importance to the next of kin, money and in general all articles of an intrinsic or sentimental value, which are found on the dead. These articles, together with unidentified articles, shall be sent in sealed packets, accompanied by statements giving all particulars necessary for the identification of the deceased owners, as well as by a complete list of the contents of the parcel.

Art 20. Parties to the conflict shall ensure that burial at sea of the dead, carried out individually as far as circumstances permit, is preceded by a careful examination, if possible by a medical examination, of the bodies, with a view to confirming death, establishing identity and enabling a report to be made. Where a double identity disc is used, one half of the disc should remain on the body.

If dead persons are landed, the provisions of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949 shall be applicable.

Art 21. The Parties to the conflict may appeal to the charity of commanders of neutral merchant vessels, yachts or other craft, to take on board and care for wounded, sick or shipwrecked persons, and to collect the dead.

Vessels of any kind responding to this appeal, and those having of their own accord collected wounded, sick or shipwrecked persons, shall enjoy special protection and facilities to carry out such assistance.

They may, in no case, be captured on account of any such transport; but, in the absence of any promise to the contrary, they shall remain liable to capture for any violations of neutrality they may have committed.

### **Chapter III. Hospital Ships**

Art 22. Military hospital ships, that is to say, ships built or equipped by the Powers specially and solely with a view to assisting the wounded, sick and shipwrecked, to treating them and to transporting them, may in no circumstances be attacked or captured, but shall at all times be respected and protected, on condition that their names and descriptions have been notified to the Parties to the conflict ten days before those ships are employed.

The characteristics which must appear in the notification shall include registered gross tonnage, the length from stem to stern and the number of masts and funnels.

Art 23. Establishments ashore entitled to the protection of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949 shall be protected from bombardment or attack from the sea.

Art 24. Hospital ships utilized by National Red Cross Societies, by officially recognized relief societies or by private persons shall have the same protection as military hospital ships and shall be exempt from capture, if the Party to the conflict on which they depend has given them an official commission and in so far as the provisions of Article 22 concerning notification have been complied with.

These ships must be provided with certificates from the responsible authorities, stating that the vessels have been under their control while fitting out and on departure.

Art 25. Hospital ships utilized by National Red Cross Societies, officially recognized relief societies, or private persons of neutral countries shall have the same protection as military hospital ships and shall be exempt from capture, on condition that they have placed themselves under the control of one of the Parties to the conflict, with the previous consent of their own governments and with the authorization of the Party to the conflict concerned, in so far as the provisions of Article 22 concerning notification have been complied with.

Art 26. The protection mentioned in Articles 22, 24 and 25 shall apply to hospital ships of any tonnage and to their lifeboats, wherever they are operating. Nevertheless, to ensure the maximum comfort and security, the Parties to the conflict shall endeavour to utilize, for the transport of wounded, sick and shipwrecked over long distances and on the high seas, only hospital ships of over 2,000 tons gross.

Art 27. Under the same conditions as those provided for in Articles 22 and 24, small craft employed by the State or by the officially recognized lifeboat institutions for coastal rescue operations, shall also be respected and protected, so far as operational requirements permit.

The same shall apply so far as possible to fixed coastal installations used exclusively by these craft for their humanitarian missions.

Art 28. Should fighting occur on board a warship, the sick-bays shall be respected and spared as far as possible. Sick-bays and their equipment shall remain subject to the laws of warfare, but may not be diverted from their purpose so long as they are required for the wounded and sick. Nevertheless, the commander into whose power they have fallen may, after ensuring the proper care of the wounded and sick who are accommodated therein, apply them to other purposes in case of urgent military necessity.

Art 29. Any hospital ship in a port which falls into the hands of the enemy shall be authorized to leave the said port.

Art 30. The vessels described in Articles 22, 24, 25 and 27 shall afford relief and assistance to the wounded, sick and shipwrecked without distinction of nationality.

The High Contracting Parties undertake not to use these vessels for any military purpose.

Such vessels shall in no wise hamper the movements of the combatants.

During and after an engagement, they will act at their own risk.

Art 31. The Parties to the conflict shall have the right to control and search the vessels mentioned in Articles 22, 24, 25 and 27. They can refuse assistance from these vessels, order them off, make them take a certain course, control the use of their wireless and other means of communication, and even detain them for a period not exceeding seven days from the time of interception, if the gravity of the circumstances so requires.

They may put a commissioner temporarily on board whose sole task shall be to see that orders given in virtue of the provisions of the preceding paragraph are carried out.

As far as possible, the Parties to the conflict shall enter in the log of the hospital ship in a language he can understand, the orders they have given the captain of the vessel.

Parties to the conflict may, either unilaterally or by particular agreements, put on board their ships neutral observers who shall verify the strict observation of the provisions contained in the present Convention.

Art 32. Vessels described in Articles 22, 24, 25 and 27 are not classed as warships as regards their stay in a neutral port.

Art 33. Merchant vessels which have been transformed into hospital ships cannot be put to any other use throughout the duration of hostilities.

Art 34. The protection to which hospital ships and sick-bays are entitled shall not cease unless they are used to commit, outside their humanitarian duties, acts harmful to the enemy. Protection may, however, cease only after due warning has been given, naming in all appropriate cases a reasonable time limit, and after such warning has remained unheeded.

In particular, hospital ships may not possess or use a secret code for their wireless or other means of communication.

Art 35. The following conditions shall not be considered as depriving hospital ships or sick-bays of vessels of the protection due to them:

- (1) The fact that the crews of ships or sick-bays are armed for the maintenance of order, for their own defence or that of the sick and wounded.
- (2) The presence on board of apparatus exclusively intended to facilitate navigation or communication.
- (3) The discovery on board hospital ships or in sick-bays of portable arms and ammunition taken from the wounded, sick and shipwrecked and not yet handed to the proper service.

(4) The fact that the humanitarian activities of hospital ships and sick-bays of vessels or of the crews extend to the care of wounded, sick or shipwrecked civilians.

(5) The transport of equipment and of personnel intended exclusively for medical duties, over and above the normal requirements.

#### **Chapter IV. Personnel**

Art 36. The religious, medical and hospital personnel of hospital ships and their crews shall be respected and protected; they may not be captured during the time they are in the service of the hospital ship, whether or not there are wounded and sick on board.

Art 37. The religious, medical and hospital personnel assigned to the medical or spiritual care of the persons designated in Articles 12 and 13 shall, if they fall into the hands of the enemy, be respected and protected; they may continue to carry out their duties as long as this is necessary for the care of the wounded and sick. They shall afterwards be sent back as soon as the Commander-in-Chief, under whose authority they are, considers it practicable. They may take with them, on leaving the ship, their personal property.

If, however, it prove necessary to retain some of this personnel owing to the medical or spiritual needs of prisoners of war, everything possible shall be done for their earliest possible landing.

Retained personnel shall be subject, on landing, to the provisions of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949.

#### **Chapter V. Medical Transports**

Art 38. Ships chartered for that purpose shall be authorized to transport equipment exclusively intended for the treatment of wounded and sick members of armed forces or for the prevention of disease, provided that the particulars regarding their voyage have been notified to the adverse Power and approved by the latter. The adverse Power shall preserve the right to board the carrier ships, but not to capture them or seize the equipment carried.

By agreement amongst the Parties to the conflict, neutral observers may be placed on board such ships to verify the equipment carried. For this purpose, free access to the equipment shall be given.

Art 39. Medical aircraft, that is to say, aircraft exclusively employed for the removal of the wounded, sick and shipwrecked, and for the transport of medical personnel and equipment, may not be the object of attack, but shall be respected by the Parties to the conflict, while flying at heights, at times and on routes specifically agreed upon between the Parties to the conflict concerned.

They shall be clearly marked with the distinctive emblem prescribed in Article 41, together with their national colours, on their lower, upper and lateral surfaces. They shall be provided with any other markings or means of identification which may be agreed upon between the Parties to the conflict upon the outbreak or during the course of hostilities.

Unless agreed otherwise, flights over enemy or enemy-occupied territory are prohibited.

Medical aircraft shall obey every summons to alight on land or water. In the event of having thus to alight, the aircraft with its occupants may continue its flight after examination, if any.

In the event of alighting involuntarily on land or water in enemy or enemy-occupied territory, the wounded, sick and shipwrecked, as well as the crew of the aircraft shall be prisoners of war. The medical personnel shall be treated according to Articles 36 and 37.

Art 40. Subject to the provisions of the second paragraph, medical aircraft of Parties to the conflict may fly over the territory of neutral Powers, land thereon in case of necessity, or use it as a port of call. They shall give neutral Powers prior notice of their passage over the said territory, and obey every summons to alight, on land or water. They will be immune from attack only when flying on routes, at heights and at times specifically agreed upon between the Parties to the conflict and the neutral Power concerned.

The neutral Powers may, however, place conditions or restrictions on the passage or landing of medical aircraft on their territory. Such possible conditions or restrictions shall be applied equally to all Parties to the conflict.

Unless otherwise agreed between the neutral Powers and the Parties to the conflict, the wounded, sick or shipwrecked who are disembarked with the consent of the local authorities on neutral territory by medical aircraft shall be detained by the neutral Power, where so required by international law, in such a manner that they cannot again take part in operations of war. The cost of their accommodation and internment shall be borne by the Power on which they depend.

#### **Chapter VI. The Distinctive Emblem**

Art 41. Under the direction of the competent military authority, the emblem of the red cross on a white ground shall be displayed on the flags, armlets and on all equipment employed in the Medical Service.

Nevertheless, in the case of countries which already use as emblem, in place of the red cross, the red crescent or the red lion and sun on a white ground, these emblems are also recognized by the terms of the present Convention.

Art 42. The personnel designated in Articles 36 and 37 shall wear, affixed to the left arm, a water-resistant armlet bearing the distinctive emblem, issued and stamped by the military authority.

Such personnel, in addition to wearing the identity disc mentioned in Article 19, shall also carry a special identity card bearing the distinctive emblem. This card shall be water-resistant and of such size that it can be carried in the pocket. It shall be worded in the national language, shall mention at least the surname and first names, the date of birth, the rank and the service number of the bearer, and shall state in what capacity he is entitled to the protection of the present Convention. The card shall bear the photograph of the owner and also either his signature or his fingerprints or both. It shall be embossed with the stamp of the military authority.

The identity card shall be uniform throughout the same armed forces and, as far as possible, of a similar type in the armed forces of the High Contracting Parties. The Parties to the conflict may be guided by the model which is annexed, by way of example, to the present Convention. They shall inform each other, at the outbreak of hostilities, of the model they are using. Identity cards should be made out, if possible, at least in duplicate, one copy being kept by the home country.

In no circumstances may the said personnel be deprived of their insignia or identity cards nor of the right to wear the armlet. In case of loss they shall be entitled to receive duplicates of the cards and to have the insignia replaced.

Art 43. The ships designated in Articles 22, 24, 25 and 27 shall be distinctively marked as follows:

- (a) All exterior surfaces shall be white.

(b) One or more dark red crosses, as large as possible, shall be painted and displayed on each side of the hull and on the horizontal surfaces, so placed as to afford the greatest possible visibility from the sea and from the air.

All hospital ships shall make themselves known by hoisting their national flag and further, if they belong to a neutral state, the flag of the Party to the conflict whose direction they have accepted. A white flag with a red cross shall be flown at the mainmast as high as possible.

Lifeboats of hospital ships, coastal lifeboats and all small craft used by the Medical Service shall be painted white with dark red crosses prominently displayed and shall, in general, comply with the identification system prescribed above for hospital ships.

The above-mentioned ships and craft, which may wish to ensure by night and in times of reduced visibility the protection to which they are entitled, must, subject to the assent of the Party to the conflict under whose power they are, take the necessary measures to render their painting and distinctive emblems sufficiently apparent.

Hospital ships which, in accordance with Article 31, are provisionally detained by the enemy, must haul down the flag of the Party to the conflict in whose service they are or whose direction they have accepted.

Coastal lifeboats, if they continue to operate with the consent of the Occupying Power from a base which is occupied, may be allowed, when away from their base, to continue to fly their own national colours along with a flag carrying a red cross on a white ground, subject to prior notification to all the Parties to the conflict concerned.

All the provisions in this Article relating to the red cross shall apply equally to the other emblems mentioned in Article 41.

Parties to the conflict shall at all times endeavour to conclude mutual agreements in order to use the most modern methods available to facilitate the identification of hospital ships.

Art 44. The distinguishing signs referred to in Article 43 can only be used, whether in time of peace or war, for indicating or protecting the ships therein mentioned, except as may be provided in any other international Convention or by agreement between all the Parties to the conflict concerned.

Art 45. The High Contracting Parties shall, if their legislation is not already adequate, take the measures necessary for the prevention and repression, at all times, of any abuse of the distinctive signs provided for under Article 43.

#### **Chapter VII. Execution of the Convention**

Art 46. Each Party to the conflict, acting through its Commanders-in-Chief, shall ensure the detailed execution of the preceding Articles and provide for unforeseen cases, in conformity with the general principles of the present Convention.

Art 47. Reprisals against the wounded, sick and shipwrecked persons, the personnel, the vessels or the equipment protected by the Convention are prohibited.

Art 48. The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population, in particular to the armed fighting forces, the medical personnel and the chaplains.

Art 49. The High Contracting Parties shall communicate to one another through the Swiss Federal Council and, during hostilities, through the Protecting Powers, the official

translations of the present Convention, as well as the laws and regulations which they may adopt to ensure the application thereof.

### **Chapter VIII. Repression of Abuses and Infractions**

Art 50. The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case.

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.

In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949.

Art 51. Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

Art 52. No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article.

Art 53. At the request of a Party to the conflict, an enquiry shall be instituted, in a manner to be decided between the interested Parties, concerning any alleged violation of the Convention.

If agreement has not been reached concerning the procedure for the enquiry, the Parties should agree on the choice of an umpire, who will decide upon the procedure to be followed.

Once the violation has been established, the Parties to the conflict shall put an end to it and shall repress it with the least possible delay.

#### **Final Provisions**

Art 54. The present Convention is established in English and in French. Both texts are equally authentic.

The Swiss Federal Council shall arrange for official translations of the Convention to be made in the Russian and Spanish languages.

Art 55. The present Convention, which bears the date of this day, is open to signature until February 12, 1950, in the name of the Powers represented at the Conference which opened at Geneva on April 21, 1949; furthermore, by Powers not represented at that Conference, but which are parties to the Xth Hague Convention of October 13, 1907 for the adaptation to Maritime Warfare of the Principles of the Geneva Convention of 1906, or to the Geneva

Conventions of 1864, 1906 or 1929 for the Relief of the Wounded and Sick in Armies in the Field.

Art 56. The present Convention shall be ratified as soon as possible and the ratifications shall be deposited at Berne.

A record shall be drawn up of the deposit of each instrument of ratification and certified copies of this record shall be transmitted by the Swiss Federal Council to all the Powers in whose name the Convention has been signed, or whose accession has been notified.

Art 57. The present Convention shall come into force six months after not less than two instruments of ratification have been deposited.

Thereafter, it shall come into force for each High Contracting Party six months after the deposit of the instrument of ratification.

Art 58. The present Convention replaces the Xth Hague Convention of October 18, 1907, for the adaptation to Maritime Warfare of the principles of the Geneva Convention of 1906, in relations between the High Contracting Parties.

Art 59. From the date of its coming into force, it shall be open to any Power in whose name the present Convention has not been signed, to accede to this Convention.

Art 60. Accessions shall be notified in writing to the Swiss Federal Council, and shall take effect six months after the date on which they are received.

The Swiss Federal Council shall communicate the accessions to all the Powers in whose name the Convention has been signed, or whose accession has been notified.

Art 61. The situations provided for in Articles 2 and 3 shall give immediate effect to ratifications deposited and accessions notified by the Parties to the conflict before or after the beginning of hostilities or occupation. The Swiss Federal Council shall communicate by the quickest method any ratifications or accessions received from Parties to the conflict.

Art 62. Each of the High Contracting Parties shall be at liberty to denounce the present Convention.

The denunciation shall be notified in writing to the Swiss Federal Council, which shall transmit it to the Governments of all the High Contracting Parties.

The denunciation shall take effect one year after the notification thereof has been made to the Swiss Federal Council. However, a denunciation of which notification has been made at a time when the denouncing Power is involved in a conflict shall not take effect until peace has been concluded, and until after operations connected with the release and repatriation of the persons protected by the present Convention have been terminated.

The denunciation shall have effect only in respect of the denouncing Power. It shall in no way impair the obligations which the Parties to the conflict shall remain bound to fulfil by virtue of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity and the dictates of the public conscience.

Art 63. The Swiss Federal Council shall register the present Convention with the Secretariat of the United Nations. The Swiss Federal Council shall also inform the Secretariat of the United Nations of all ratifications, accessions and denunciations received by it with respect to the present Convention.

IN WITNESS WHEREOF the undersigned, having deposited their respective full powers, have signed the present Convention.



DONE at Geneva this twelfth day of August 1949, in the English and French languages. The original shall be deposited in the Archives of the Swiss Confederation. The Swiss Federal Council shall transmit certified copies thereof to each of the signatory and acceding States.

Annex

Identity Card for Members of Medical and Religious Personnel attached to the Armed Forces at Sea

Front

(Space reserved for the name of the country and military authority issuing this card)

## IDENTITY CARD

for members of medical and religious personnel attached to the armed forces at sea

Surname.....

First names.....

Date of Birth.....

Rank.....

Army Number.....

The bearer of this card is protected by the Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949, in his capacity as

Date of issue..... Number of Card.....

Reverse Side

Photo of bearer

Signature of bearer or fingerprints or both

Embossed stamp of military authority issuing card

Height	Eyes	Hair
--------	------	------

Other distinguishing marks

.....

.....

.....

## **ANEXO C – Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949**

### Preamble

The undersigned Plenipotentiaries of the Governments represented at the Diplomatic Conference held at Geneva from April 21 to August 12, 1949, for the purpose of revising the Convention concluded at Geneva on July 27, 1929, relative to the Treatment of Prisoners of War, have agreed as follows:

### Part I. General Provisions

Art 1. The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.

Art 2. In addition to the provisions which shall be implemented in peace time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.

Art 3. In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) taking of hostages;

(c) outrages upon personal dignity, in particular, humiliating and degrading treatment;

(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

Art 4. A. Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy:

(1) Members of the armed forces of a Party to the conflict, as well as members of militias or volunteer corps forming part of such armed forces.

(2) Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions: [

(a) that of being commanded by a person responsible for his subordinates;

(b) that of having a fixed distinctive sign recognizable at a distance;

(c) that of carrying arms openly;

(d) that of conducting their operations in accordance with the laws and customs of war.

(3) Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power.

(4) Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorization, from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model.

(5) Members of crews, including masters, pilots and apprentices, of the merchant marine and the crews of civil aircraft of the Parties to the conflict, who do not benefit by more favourable treatment under any other provisions of international law.

(6) Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.

B. The following shall likewise be treated as prisoners of war under the present Convention:

(1) Persons belonging, or having belonged, to the armed forces of the occupied country, if the occupying Power considers it necessary by reason of such allegiance to intern them, even though it has originally liberated them while hostilities were going on outside the territory it occupies, in particular where such persons have made an unsuccessful attempt to rejoin the armed forces to which they belong and which are engaged in combat, or where they fail to comply with a summons made to them with a view to internment.

(2) The persons belonging to one of the categories enumerated in the present Article, who have been received by neutral or non-belligerent Powers on their territory and whom these Powers are required to intern under international law, without prejudice to any more favourable treatment which these Powers may choose to give and with the exception of Articles 8, 10, 15, 30, fifth paragraph, 58-67, 92, 126 and, where diplomatic relations exist between the Parties to the conflict and the neutral or non-belligerent Power concerned, those Articles concerning the Protecting Power. Where such diplomatic relations exist, the Parties to a conflict on whom these persons depend shall be allowed to perform towards them the functions of a Protecting Power as provided in the present Convention, without prejudice to the functions which these Parties normally exercise in conformity with diplomatic and consular usage and treaties.

C. This Article shall in no way affect the status of medical personnel and chaplains as provided for in Article 33 of the present Convention.

Art 5. The present Convention shall apply to the persons referred to in Article 4 from the time they fall into the power of the enemy and until their final release and repatriation.

Should any doubt arise as to whether persons, having committed a belligerent act and having fallen into the hands of the enemy, belong to any of the categories enumerated in Article 4, such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal.

Art 6. In addition to the agreements expressly provided for in Articles 10, 23, 28, 33, 60, 65, 66, 67, 72, 73, 75, 109, 110, 118, 119, 122 and 132, the High Contracting Parties may conclude other special agreements for all matters concerning which they may deem it suitable to make separate provision. No special agreement shall adversely affect the situation of prisoners of war, as defined by the present Convention, nor restrict the rights which it confers upon them.

Prisoners of war shall continue to have the benefit of such agreements as long as the Convention is applicable to them, except where express provisions to the contrary are contained in the aforesaid or in subsequent agreements, or where more favourable measures have been taken with regard to them by one or other of the Parties to the conflict.

Art 7. Prisoners of war may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreements referred to in the foregoing Article, if such there be.

Art 8. The present Convention shall be applied with the cooperation and under the scrutiny of the Protecting Powers whose duty it is to safeguard the interests of the Parties to the conflict. For this purpose, the Protecting Powers may appoint, apart from their diplomatic or consular staff, delegates from amongst their own nationals or the nationals of other neutral Powers. The said delegates shall be subject to the approval of the Power with which they are to carry out their duties.

The Parties to the conflict shall facilitate to the greatest extent possible the task of the representatives or delegates of the Protecting Powers.

The representatives or delegates of the Protecting Powers shall not in any case exceed their mission under the present Convention. They shall, in particular, take account of the imperative necessities of security of the State wherein they carry out their duties.

Art 9. The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of prisoners of war and for their relief.

Art 10. The High Contracting Parties may at any time agree to entrust to an organization which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers by virtue of the present Convention.

When prisoners of war do not benefit or cease to benefit, no matter for what reason, by the activities of a Protecting Power or of an organization provided for in the first paragraph above, the Detaining Power shall request a neutral State, or such an organization, to undertake the functions performed under the present Convention by a Protecting Power designated by the Parties to a conflict.

If protection cannot be arranged accordingly, the Detaining Power shall request or shall accept, subject to the provisions of this Article, the offer of the services of a humanitarian organization, such as the International Committee of the Red Cross to assume the humanitarian functions performed by Protecting Powers under the present Convention.

Any neutral Power or any organization invited by the Power concerned or offering itself for these purposes, shall be required to act with a sense of responsibility towards the Party to the conflict on which persons protected by the present Convention depend, and shall be required to furnish sufficient assurances that it is in a position to undertake the appropriate functions and to discharge them impartially.

No derogation from the preceding provisions shall be made by special agreements between Powers one of which is restricted, even temporarily, in its freedom to negotiate with the other Power or its allies by reason of military events, more particularly where the whole, or a substantial part, of the territory of the said Power is occupied.

Whenever in the present Convention mention is made of a Protecting Power, such mention applies to substitute organizations in the sense of the present Article.

Art 11. In cases where they deem it advisable in the interest of protected persons, particularly in cases of disagreement between the Parties to the conflict as to the application or interpretation of the provisions of the present Convention, the Protecting Powers shall lend their good offices with a view to settling the disagreement.

For this purpose, each of the Protecting Powers may, either at the invitation of one Party or on its own initiative, propose to the Parties to the conflict a meeting of their representatives, and in particular of the authorities responsible for prisoners of war, possibly on neutral territory suitably chosen. The Parties to the conflict shall be bound to give effect to the proposals made to them for this purpose. The Protecting Powers may, if necessary, propose for approval by the Parties to the conflict a person belonging to a neutral Power, or delegated by the International Committee of the Red Cross, who shall be invited to take part in such a meeting.

#### Part II. General Protection of Prisoners of War

Art 12. Prisoners of war are in the hands of the enemy Power, but not of the individuals or military units who have captured them. Irrespective of the individual responsibilities that may exist, the Detaining Power is responsible for the treatment given them.

Prisoners of war may only be transferred by the Detaining Power to a Power which is a party to the Convention and after the Detaining Power has satisfied itself of the willingness and ability of such transferee Power to apply the Convention. When prisoners of war are transferred under such circumstances, responsibility for the application of the Convention rests on the Power accepting them while they are in its custody.

Nevertheless, if that Power fails to carry out the provisions of the Convention in any important respect, the Power by whom the prisoners of war were transferred shall, upon being notified by the Protecting Power, take effective measures to correct the situation or shall request the return of the prisoners of war. Such requests must be complied with.

Art 13. Prisoners of war must at all times be humanely treated. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited, and will be regarded as a serious breach of the present Convention. In particular, no prisoner of war may be subjected to physical mutilation or to

medical or scientific experiments of any kind which are not justified by the medical, dental or hospital treatment of the prisoner concerned and carried out in his interest.

Likewise, prisoners of war must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity.

Measures of reprisal against prisoners of war are prohibited.

Art 14. Prisoners of war are entitled in all circumstances to respect for their persons and their honour.

Women shall be treated with all the regard due to their sex and shall in all cases benefit by treatment as favourable as that granted to men.

Prisoners of war shall retain the full civil capacity which they enjoyed at the time of their capture. The Detaining Power may not restrict the exercise, either within or without its own territory, of the rights such capacity confers except in so far as the captivity requires.

Art 15. The Power detaining prisoners of war shall be bound to provide free of charge for their maintenance and for the medical attention required by their state of health.

Art 16. Taking into consideration the provisions of the present Convention relating to rank and sex, and subject to any privileged treatment which may be accorded to them by reason of their state of health, age or professional qualifications, all prisoners of war shall be treated alike by the Detaining Power, without any adverse distinction based on race, nationality, religious belief or political opinions, or any other distinction founded on similar criteria.

### Part III. Captivity

#### Section 1. Beginning of Captivity

Art 17. Every prisoner of war, when questioned on the subject, is bound to give only his surname, first names and rank, date of birth, and army, regimental, personal or serial number, or failing this, equivalent information.

If he wilfully infringes this rule, he may render himself liable to a restriction of the privileges accorded to his rank or status.

Each Party to a conflict is required to furnish the persons under its jurisdiction who are liable to become prisoners of war, with an identity card showing the owner's surname, first names, rank, army, regimental, personal or serial number or equivalent information, and date of birth. The identity card may, furthermore, bear the signature or the fingerprints, or both, of the owner, and may bear, as well, any other information the Party to the conflict may wish to add concerning persons belonging to its armed forces. As far as possible the card shall measure 6.5 x 10 cm. and shall be issued in duplicate. The identity card shall be shown by the prisoner of war upon demand, but may in no case be taken away from him.

No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind.

Prisoners of war who, owing to their physical or mental condition, are unable to state their identity, shall be handed over to the medical service. The identity of such prisoners shall be established by all possible means, subject to the provisions of the preceding paragraph.

The questioning of prisoners of war shall be carried out in a language which they understand.

Art 18. All effects and articles of personal use, except arms, horses, military equipment and military documents, shall remain in the possession of prisoners of war, likewise their metal helmets and gas masks and like articles issued for personal protection. Effects and articles

used for their clothing or feeding shall likewise remain in their possession, even if such effects and articles belong to their regulation military equipment.

At no time should prisoners of war be without identity documents. The Detaining Power shall supply such documents to prisoners of war who possess none.

Badges of rank and nationality, decorations and articles having above all a personal or sentimental value may not be taken from prisoners of war.

Sums of money carried by prisoners of war may not be taken away from them except by order of an officer, and after the amount and particulars of the owner have been recorded in a special register and an itemized receipt has been given, legibly inscribed with the name, rank and unit of the person issuing the said receipt. Sums in the currency of the Detaining Power, or which are changed into such currency at the prisoner's request, shall be placed to the credit of the prisoner's account as provided in Article 64.

The Detaining Power may withdraw articles of value from prisoners of war only for reasons of security; when such articles are withdrawn, the procedure laid down for sums of money impounded shall apply.

Such objects, likewise sums taken away in any currency other than that of the Detaining Power and the conversion of which has not been asked for by the owners, shall be kept in the custody of the Detaining Power and shall be returned in their initial shape to prisoners of war at the end of their captivity.

Art 19. Prisoners of war shall be evacuated, as soon as possible after their capture, to camps situated in an area far enough from the combat zone for them to be out of danger.

Only those prisoners of war who, owing to wounds or sickness, would run greater risks by being evacuated than by remaining where they are, may be temporarily kept back in a danger zone.

Prisoners of war shall not be unnecessarily exposed to danger while awaiting evacuation from a fighting zone.

Art 20. The evacuation of prisoners of war shall always be effected humanely and in conditions similar to those for the forces of the Detaining Power in their changes of station.

The Detaining Power shall supply prisoners of war who are being evacuated with sufficient food and potable water, and with the necessary clothing and medical attention. The Detaining Power shall take all suitable precautions to ensure their safety during evacuation, and shall establish as soon as possible a list of the prisoners of war who are evacuated.

If prisoners of war must, during evacuation, pass through transit camps, their stay in such camps shall be as brief as possible.

## Section II. Internment of Prisoners of War

### Chapter I. General Observations

Art 21. The Detaining Power may subject prisoners of war to internment. It may impose on them the obligation of not leaving, beyond certain limits, the camp where they are interned, or if the said camp is fenced in, of not going outside its perimeter. Subject to the provisions of the present Convention relative to penal and disciplinary sanctions, prisoners of war may not be held in close confinement except where necessary to safeguard their health and then only during the continuation of the circumstances which make such confinement necessary.

Prisoners of war may be partially or wholly released on parole or promise, in so far as is allowed by the laws of the Power on which they depend. Such measures shall be taken

particularly in cases where this may contribute to the improvement of their state of health. No prisoner of war shall be compelled to accept liberty on parole or promise.

Upon the outbreak of hostilities, each Party to the conflict shall notify the adverse Party of the laws and regulations allowing or forbidding its own nationals to accept liberty on parole or promise. Prisoners of war who are paroled or who have given their promise in conformity with the laws and regulations so notified, are bound on their personal honour scrupulously to fulfil, both towards the Power on which they depend and towards the Power which has captured them, the engagements of their paroles or promises. In such cases, the Power on which they depend is bound neither to require nor to accept from them any service incompatible with the parole or promise given.

Art 22. Prisoners of war may be interned only in premises located on land and affording every guarantee of hygiene and healthfulness. Except in particular cases which are justified by the interest of the prisoners themselves, they shall not be interned in penitentiaries.

Prisoners of war interned in unhealthy areas, or where the climate is injurious for them, shall be removed as soon as possible to a more favourable climate.

The Detaining Power shall assemble prisoners of war in camps or camp compounds according to their nationality, language and customs, provided that such prisoners shall not be separated from prisoners of war belonging to the armed forces with which they were serving at the time of their capture, except with their consent.

Art 23. No prisoner of war may at any time be sent to, or detained in areas where he may be exposed to the fire of the combat zone, nor may his presence be used to render certain points or areas immune from military operations.

Prisoners of war shall have shelters against air bombardment and other hazards of war, to the same extent as the local civilian population. With the exception of those engaged in the protection of their quarters against the aforesaid hazards, they may enter such shelters as soon as possible after the giving of the alarm. Any other protective measure taken in favour of the population shall also apply to them.

Detaining Powers shall give the Powers concerned, through the intermediary of the Protecting Powers, all useful information regarding the geographical location of prisoner of war camps.

Whenever military considerations permit, prisoner of war camps shall be indicated in the day-time by the letters PW or PG, placed so as to be clearly visible from the air. The Powers concerned may, however, agree upon any other system of marking. Only prisoner of war camps shall be marked as such.

Art 24. Transit or screening camps of a permanent kind shall be fitted out under conditions similar to those described in the present Section, and the prisoners therein shall have the same treatment as in other camps.

## **Chapter II. Quarters, Food and Clothing of Prisoners of War**

Art 25. Prisoners of war shall be quartered under conditions as favourable as those for the forces of the Detaining Power who are billeted in the same area. The said conditions shall make allowance for the habits and customs of the prisoners and shall in no case be prejudicial to their health.

The foregoing provisions shall apply in particular to the dormitories of prisoners of war as regards both total surface and minimum cubic space, and the general installations, bedding and blankets.

The premises provided for the use of prisoners of war individually or collectively, shall be entirely protected from dampness and adequately heated and lighted, in particular between dusk and lights out. All precautions must be taken against the danger of fire.

In any camps in which women prisoners of war, as well as men, are accommodated, separate dormitories shall be provided for them.

Art 26. The basic daily food rations shall be sufficient in quantity, quality and variety to keep prisoners of war in good health and to prevent loss of weight or the development of nutritional deficiencies. Account shall also be taken of the habitual diet of the prisoners.

The Detaining Power shall supply prisoners of war who work with such additional rations as are necessary for the labour on which they are employed.

Sufficient drinking water shall be supplied to prisoners of war. The use of tobacco shall be permitted.

Prisoners of war shall, as far as possible, be associated with the preparation of their meals; they may be employed for that purpose in the kitchens. Furthermore, they shall be given the means of preparing, themselves, the additional food in their possession.

Adequate premises shall be provided for messing.

Collective disciplinary measures affecting food are prohibited.

Art 27. Clothing, underwear and footwear shall be supplied to prisoners of war in sufficient quantities by the Detaining Power, which shall make allowance for the climate of the region where the prisoners are detained. Uniforms of enemy armed forces captured by the Detaining Power should, if suitable for the climate, be made available to clothe prisoners of war.

The regular replacement and repair of the above articles shall be assured by the Detaining Power. In addition, prisoners of war who work shall receive appropriate clothing, wherever the nature of the work demands.

Art 28. Canteens shall be installed in all camps, where prisoners of war may procure foodstuffs, soap and tobacco and ordinary articles in daily use. The tariff shall never be in excess of local market prices.

The profits made by camp canteens shall be used for the benefit of the prisoners; a special fund shall be created for this purpose. The prisoners' representative shall have the right to collaborate in the management of the canteen and of this fund.

When a camp is closed down, the credit balance of the special fund shall be handed to an international welfare organization, to be employed for the benefit of prisoners of war of the same nationality as those who have contributed to the fund. In case of a general repatriation, such profits shall be kept by the Detaining Power, subject to any agreement to the contrary between the Powers concerned.

### **Chapter III. Hygiene and Medical Attention**

Art 29. The Detaining Power shall be bound to take all sanitary measures necessary to ensure the cleanliness and healthfulness of camps and to prevent epidemics.

Prisoners of war shall have for their use, day and night, conveniences which conform to the rules of hygiene and are maintained in a constant state of cleanliness. In any camps in which women prisoners of war are accommodated, separate conveniences shall be provided for them.

Also, apart from the baths and showers with which the camps shall be furnished prisoners of war shall be provided with sufficient water and soap for their personal toilet and for washing

their personal laundry; the necessary installations, facilities and time shall be granted them for that purpose.

Art 30. Every camp shall have an adequate infirmary where prisoners of war may have the attention they require, as well as appropriate diet. Isolation wards shall, if necessary, be set aside for cases of contagious or mental disease.

Prisoners of war suffering from serious disease, or whose condition necessitates special treatment, a surgical operation or hospital care, must be admitted to any military or civilian medical unit where such treatment can be given, even if their repatriation is contemplated in the near future. Special facilities shall be afforded for the care to be given to the disabled, in particular to the blind, and for their rehabilitation, pending repatriation.

Prisoners of war shall have the attention, preferably, of medical personnel of the Power on which they depend and, if possible, of their nationality.

Prisoners of war may not be prevented from presenting themselves to the medical authorities for examination. The detaining authorities shall, upon request, issue to every prisoner who has undergone treatment, an official certificate indicating the nature of his illness or injury, and the duration and kind of treatment received. A duplicate of this certificate shall be forwarded to the Central Prisoners of War Agency.

The costs of treatment, including those of any apparatus necessary for the maintenance of prisoners of war in good health, particularly dentures and other artificial appliances, and spectacles, shall be borne by the Detaining Power.

Art 31. Medical inspections of prisoners of war shall be held at least once a month. They shall include the checking and the recording of the weight of each prisoner of war.

Their purpose shall be, in particular, to supervise the general state of health, nutrition and cleanliness of prisoners and to detect contagious diseases, especially tuberculosis, malaria and venereal disease. For this purpose the most efficient methods available shall be employed, e.g. periodic mass miniature radiography for the early detection of tuberculosis.

Art 32. Prisoners of war who, though not attached to the medical service of their armed forces, are physicians, surgeons, dentists, nurses or medical orderlies, may be required by the Detaining Power to exercise their medical functions in the interests of prisoners of war dependent on the same Power. In that case they shall continue to be prisoners of war, but shall receive the same treatment as corresponding medical personnel retained by the Detaining Power. They shall be exempted from any other work under Article 49.

#### **Chapter IV. Medical Personnel and Chaplains Retained to Assist Prisoners of War**

Art 33. Members of the medical personnel and chaplains while retained by the Detaining Power with a view to assisting prisoners of war, shall not be considered as prisoners of war. They shall, however, receive as a minimum the benefits and protection of the present Convention, and shall also be granted all facilities necessary to provide for the medical care of, and religious ministrations to prisoners of war.

They shall continue to exercise their medical and spiritual functions for the benefit of prisoners of war, preferably those belonging to the armed forces upon which they depend, within the scope of the military laws and regulations of the Detaining Power and under the control of its competent services, in accordance with their professional etiquette. They shall also benefit by the following facilities in the exercise of their medical or spiritual functions:

(a) They shall be authorized to visit periodically prisoners of war situated in working detachments or in hospitals outside the camp. For this purpose, the Detaining Power shall place at their disposal the necessary means of transport.

(b) The senior medical officer in each camp shall be responsible to the camp military authorities for everything connected with the activities of retained medical personnel. For this purpose, Parties to the conflict shall agree at the outbreak of hostilities on the subject of the corresponding ranks of the medical personnel, including that of societies mentioned in Article 26 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949. This senior medical officer, as well as chaplains, shall have the right to deal with the competent authorities of the camp on all questions relating to their duties. Such authorities shall afford them all necessary facilities for correspondence relating to these questions.

(c) Although they shall be subject to the internal discipline of the camp in which they are retained, such personnel may not be compelled to carry out any work other than that concerned with their medical or religious duties.

During hostilities, the Parties to the conflict shall agree concerning the possible relief of retained personnel and shall settle the procedure to be followed.

None of the preceding provisions shall relieve the Detaining Power of its obligations with regard to prisoners of war from the medical or spiritual point of view.

#### **Chapter V. Religious, Intellectual and Physical Activities**

Art 34. Prisoners of war shall enjoy complete latitude in the exercise of their religious duties, including attendance at the service of their faith, on condition that they comply with the disciplinary routine prescribed by the military authorities.

Adequate premises shall be provided where religious services may be held.

Art 35. Chaplains who fall into the hands of the enemy Power and who remain or are retained with a view to assisting prisoners of war, shall be allowed to minister to them and to exercise freely their ministry amongst prisoners of war of the same religion, in accordance with their religious conscience. They shall be allocated among the various camps and labour detachments containing prisoners of war belonging to the same forces, speaking the same language or practising the same religion. They shall enjoy the necessary facilities, including the means of transport provided for in Article 33, for visiting the prisoners of war outside their camp. They shall be free to correspond, subject to censorship, on matters concerning their religious duties with the ecclesiastical authorities in the country of detention and with international religious organizations. Letters and cards which they may send for this purpose shall be in addition to the quota provided for in Article 71.

Art 36. Prisoners of war who are ministers of religion, without having officiated as chaplains to their own forces, shall be at liberty, whatever their denomination, to minister freely to the members of their community. For this purpose, they shall receive the same treatment as the chaplains retained by the Detaining Power. They shall not be obliged to do any other work.

Art 37. When prisoners of war have not the assistance of a retained chaplain or of a prisoner of war minister of their faith, a minister belonging to the prisoners' or a similar denomination, or in his absence a qualified layman, if such a course is feasible from a confessional point of view, shall be appointed, at the request of the prisoners concerned, to fill this office. This appointment, subject to the approval of the Detaining Power, shall take place with the agreement of the community of prisoners concerned and, wherever necessary, with the

approval of the local religious authorities of the same faith. The person thus appointed shall comply with all regulations established by the Detaining Power in the interests of discipline and military security.

Art 38. While respecting the individual preferences of every prisoner, the Detaining Power shall encourage the practice of intellectual, educational, and recreational pursuits, sports and games amongst prisoners, and shall take the measures necessary to ensure the exercise thereof by providing them with adequate premises and necessary equipment.

Prisoners shall have opportunities for taking physical exercise, including sports and games, and for being out of doors. Sufficient open spaces shall be provided for this purpose in all camps.

### **Chapter VI. Discipline**

Art 39. Every prisoner of war camp shall be put under the immediate authority of a responsible commissioned officer belonging to the regular armed forces of the Detaining Power. Such officer shall have in his possession a copy of the present Convention; he shall ensure that its provisions are known to the camp staff and the guard and shall be responsible, under the direction of his government, for its application.

Prisoners of war, with the exception of officers, 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 forces.

Officer prisoners of war are bound to salute only officers of a higher rank of the Detaining Power; they must, however, salute the camp commander regardless of his rank.

Art 40. The wearing of badges of rank and nationality, as well as of decorations, shall be permitted.

Art 41. In every camp the text of the present Convention and its Annexes and the contents of any special agreement provided for in Article 6, shall be posted, in the prisoners' own language, in places where all may read them. Copies shall be supplied, on request, to the prisoners who cannot have access to the copy which has been posted.

Regulations, orders, notices and publications of every kind relating to the conduct of prisoners of war shall be issued to them in a language which they understand. Such regulations, orders and publications shall be posted in the manner described above and copies shall be handed to the prisoners' representative. Every order and command addressed to prisoners of war individually must likewise be given in a language which they understand.

Art 42. The use of weapons against prisoners of war, especially against those who are escaping or attempting to escape, shall constitute an extreme measure, which shall always be preceded by warnings appropriate to the circumstances.

### **Chapter VII. Rank of Prisoners of War**

Art 43. Upon the outbreak of hostilities, the Parties to the conflict shall communicate to one another the titles and ranks of all the persons mentioned in Article 4 of the present Convention, in order to ensure equality of treatment between prisoners of equivalent rank. Titles and ranks which are subsequently created shall form the subject of similar communications.

The Detaining Power shall recognize promotions in rank which have been accorded to prisoners of war and which have been duly notified by the Power on which these prisoners depend.

Art 44. Officers and prisoners of equivalent status shall be treated with the regard due to their rank and age.

In order to ensure service in officers' camps, other ranks of the same armed forces who, as far as possible, speak the same language, shall be assigned in sufficient numbers, account being taken of the rank of officers and prisoners of equivalent status. Such orderlies shall not be required to perform any other work.

Supervision of the mess by the officers themselves shall be facilitated in every way.

Art 45. Prisoners of war other than officers and prisoners of equivalent status shall be treated with the regard due to their rank and age.

Supervision of the mess by the prisoners themselves shall be facilitated in every way.

### **Chapter VIII. Transfer of Prisoners of War after their Arrival in Camp**

Art 46. The Detaining Power, when deciding upon the transfer of prisoners of war, shall take into account the interests of the prisoners themselves, more especially so as not to increase the difficulty of their repatriation.

The transfer of prisoners of war shall always be effected humanely and in conditions not less favourable than those under which the forces of the Detaining Power are transferred. Account shall always be taken of the climatic conditions to which the prisoners of war are accustomed and the conditions of transfer shall in no case be prejudicial to their health.

The Detaining Power shall supply prisoners of war during transfer with sufficient food and drinking water to keep them in good health, likewise with the necessary clothing, shelter and medical attention. The Detaining Power shall take adequate precautions especially in case of transport by sea or by air, to ensure their safety during transfer, and shall draw up a complete list of all transferred prisoners before their departure.

Art 47. Sick or wounded prisoners of war shall not be transferred as long as their recovery may be endangered by the journey, unless their safety imperatively demands it.

If the combat zone draws closer to a camp, the prisoners of war in the said camp shall not be transferred unless their transfer can be carried out in adequate conditions of safety, or unless they are exposed to greater risks by remaining on the spot than by being transferred.

Art 48. In the event of transfer, prisoners of war shall be officially advised of their departure and of their new postal address. Such notifications shall be given in time for them to pack their luggage and inform their next of kin.

They shall be allowed to take with them their personal effects, and the correspondence and parcels which have arrived for them. The weight of such baggage may be limited, if the conditions of transfer so require, to what each prisoner can reasonably carry, which shall in no case be more than twenty-five kilograms per head.

Mail and parcels addressed to their former camp shall be forwarded to them without delay. The camp commander shall take, in agreement with the prisoners' representative, any measures needed to ensure the transport of the prisoners' community property and of the luggage they are unable to take with them in consequence of restrictions imposed by virtue of the second paragraph of this Article.

The costs of transfers shall be borne by the Detaining Power.

### **Section III. Labour of Prisoners of War**

Art 49. 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 particularly to maintaining them in a good state of physical and mental health.

Non-commissioned officers who are prisoners of war shall only be required to do supervisory work. Those not so required may ask for other suitable work which shall, so far as possible, be found for them.

If officers or persons of equivalent status ask for suitable work, it shall be found for them, so far as possible, but they may in no circumstances be compelled to work.

Art 50. Besides work connected with camp administration, installation or maintenance, prisoners of war may be compelled to do only such work as is included in the following classes:

- (a) agriculture;
- (b) industries connected with the production or the extraction of raw materials, and manufacturing industries, with the exception of metallurgical, machinery and chemical industries; public works and building operations which have no military character or purpose;
- (c) transport and handling of stores which are not military in character or purpose;
- (d) commercial business, and arts and crafts;
- (e) domestic service;
- (f) public utility services having no military character or purpose.

Should the above provisions be infringed, prisoners of war shall be allowed to exercise their right of complaint, in conformity with Article 78.

Art 51. Prisoners of war must be granted suitable working conditions, especially as regards accommodation, food, clothing and equipment; such conditions shall not be inferior to those enjoyed by nationals of the Detaining Power employed in similar work; account shall also be taken of climatic conditions.

The Detaining Power, in utilizing the labour of prisoners of war, shall ensure that in areas in which such prisoners are employed, the national legislation concerning the protection of labour, and, more particularly, the regulations for the safety of workers, are duly applied.

Prisoners of war shall receive training and be provided with the means of protection suitable to the work they will have to do and similar to those accorded to the nationals of the Detaining Power. Subject to the provisions of Article 52, prisoners may be submitted to the normal risks run by these civilian workers.

Conditions of labour shall in no case be rendered more arduous by disciplinary measures.

Art 52. Unless he be a volunteer, no prisoner of war may be employed on labour which is of an unhealthy or dangerous nature.

No prisoner of war shall be assigned to labour which would be looked upon as humiliating for a member of the Detaining Power's own forces.

The removal of mines or similar devices shall be considered as dangerous labour.

Art 53. The duration of the daily labour of prisoners of war, including the time of the journey to and fro, shall not be excessive, and must in no case exceed that permitted for civilian workers in the district, who are nationals of the Detaining Power and employed on the same work.

Prisoners of war must be allowed, in the middle of the day's work, a rest of not less than one hour. This rest will be the same as that to which workers of the Detaining Power are entitled, if the latter is of longer duration. They shall be allowed in addition a rest of twenty-four consecutive hours every week, preferably on Sunday or the day of rest in their country of origin. Furthermore, every prisoner who has worked for one year shall be granted a rest of eight consecutive days, during which his working pay shall be paid him.

If methods of labour such as piece work are employed, the length of the working period shall not be rendered excessive thereby.

Art 54. The working pay due to prisoners of war shall be fixed in accordance with the provisions of Article 62 of the present Convention.

Prisoners of war who sustain accidents in connection with work, or who contract a disease in the course, or in consequence of their work, shall receive all the care their condition may require. The Detaining Power shall furthermore deliver to such prisoners of war a medical certificate enabling them to submit their claims to the Power on which they depend, and shall send a duplicate to the Central Prisoners of War Agency provided for in Article 123.

Art 55. The fitness of prisoners of war for work shall be periodically verified by medical examinations at least once a month. The examinations shall have particular regard to the nature of the work which prisoners of war are required to do.

If any prisoner of war considers himself incapable of working, he shall be permitted to appear before the medical authorities of his camp. Physicians or surgeons may recommend that the prisoners who are, in their opinion, unfit for work, be exempted therefrom.

Art 56. The organization and administration of labour detachments shall be similar to those of prisoner of war camps.

Every labour detachment shall remain under the control of and administratively part of a prisoner of war camp. The military authorities and the commander of the said camp shall be responsible, under the direction of their government, for the observance of the provisions of the present Convention in labour detachments.

The camp commander shall keep an up-to-date record of the labour detachments dependent on his camp, and shall communicate it to the delegates of the Protecting Power, of the International Committee of the Red Cross, or of other agencies giving relief to prisoners of war, who may visit the camp.

Art 57. The treatment of prisoners of war who work for private persons, even if the latter are responsible for guarding and protecting them, shall not be inferior to that which is provided for by the present Convention. The Detaining Power, the military authorities and the commander of the camp to which such prisoners belong shall be entirely responsible for the maintenance, care, treatment, and payment of the working pay of such prisoners of war.

Such prisoners of war shall have the right to remain in communication with the prisoners' representatives in the camps on which they depend.

#### Section IV. Financial Resources of Prisoners of War

Art 58. Upon the outbreak of hostilities, and pending an arrangement on this matter with the Protecting Power, the Detaining Power may determine the maximum amount of money in cash or in any similar form, that prisoners may have in their possession. Any amount in excess, which was properly in their possession and which has been taken or withheld from them, shall be placed to their account, together with any monies deposited by them, and shall not be converted into any other currency without their consent.

If prisoners of war are permitted to purchase services or commodities outside the camp against payment in cash, such payments shall be made by the prisoner himself or by the camp administration who will charge them to the accounts of the prisoners concerned. The Detaining Power will establish the necessary rules in this respect.

Art 59. Cash which was taken from prisoners of war, in accordance with Article 18, at the time of their capture, and which is in the currency of the Detaining Power, shall be placed to their separate accounts, in accordance with the provisions of Article 64 of the present Section. The amounts, in the currency of the Detaining Power, due to the conversion of sums in other currencies that are taken from the prisoners of war at the same time, shall also be credited to their separate accounts.

Art 60. The Detaining Power shall grant all prisoners of war a monthly advance of pay, the amount of which shall be fixed by conversion, into the currency of the said Power, of the following amounts:

Category I : Prisoners ranking below sergeants: eight Swiss francs.

Category II : Sergeants and other non-commissioned officers, or prisoners of equivalent rank: twelve Swiss francs.

Category III: Warrant officers and commissioned officers below the rank of major or prisoners of equivalent rank: fifty Swiss francs.

Category IV : Majors, lieutenant-colonels, colonels or prisoners of equivalent rank: sixty Swiss francs.

Category V : General officers or prisoners of war of equivalent rank: seventy-five Swiss francs.

However, the Parties to the conflict concerned may by special agreement modify the amount of advances of pay due to prisoners of the preceding categories.

Furthermore, if the amounts indicated in the first paragraph above would be unduly high compared with the pay of the Detaining Power's armed forces or would, for any reason, seriously embarrass the Detaining Power, then, pending the conclusion of a special agreement with the Power on which the prisoners depend to vary the amounts indicated above, the Detaining Power:

(a) shall continue to credit the accounts of the prisoners with the amounts indicated in the first paragraph above;

(b) may temporarily limit the amount made available from these advances of pay to prisoners of war for their own use, to sums which are reasonable, but which, for Category I, shall never be inferior to the amount that the Detaining Power gives to the members of its own armed forces.

The reasons for any limitations will be given without delay to the Protecting Power.

Art 61. The Detaining Power shall accept for distribution as supplementary pay to prisoners of war sums which the Power on which the prisoners depend may forward to them, on condition that the sums to be paid shall be the same for each prisoner of the same category, shall be payable to all prisoners of that category depending on that Power, and shall be placed in their separate accounts, at the earliest opportunity, in accordance with the provisions of Article 64. Such supplementary pay shall not relieve the Detaining Power of any obligation under this Convention.

Art 62. Prisoners of war shall be paid a fair working rate of pay by the detaining authorities direct. The rate shall be fixed by the said authorities, but shall at no time be less than one-fourth of one Swiss franc for a full working day. The Detaining Power shall inform prisoners of war, as well as the Power on which they depend, through the intermediary of the Protecting Power, of the rate of daily working pay that it has fixed.

Working pay shall likewise be paid by the detaining authorities to prisoners of war permanently detailed to duties or to a skilled or semi-skilled occupation in connection with the administration, installation or maintenance of camps, and to the prisoners who are required to carry out spiritual or medical duties on behalf of their comrades.

The working pay of the prisoners' representative, of his advisers, if any, and of his assistants, shall be paid out of the fund maintained by canteen profits. The scale of this working pay shall be fixed by the prisoners' representative and approved by the camp commander. If there is no such fund, the detaining authorities shall pay these prisoners a fair working rate of pay.

Art. 63. Prisoners of war shall be permitted to receive remittances of money addressed to them individually or collectively.

Every prisoner of war shall have at his disposal the credit balance of his account as provided for in the following Article, within the limits fixed by the Detaining Power, which shall make such payments as are requested. Subject to financial or monetary restrictions which the Detaining Power regards as essential, prisoners of war may also have payments made abroad. In this case payments addressed by prisoners of war to dependents shall be given priority.

In any event, and subject to the consent of the Power on which they depend, prisoners may have payments made in their own country, as follows: the Detaining Power shall send to the aforesaid Power through the Protecting Power, a notification giving all the necessary particulars concerning the prisoners of war, the beneficiaries of the payments, and the amount of the sums to be paid, expressed in the Detaining Power's currency. The said notification shall be signed by the prisoners and countersigned by the camp commander. The Detaining Power shall debit the prisoners' account by a corresponding amount; the sums thus debited shall be placed by it to the credit of the Power on which the prisoners depend.

To apply the foregoing provisions, the Detaining Power may usefully consult the Model Regulations in Annex V of the present Convention.

Art. 64 The Detaining Power shall hold an account for each prisoner of war, showing at least the following:

(1) The amounts due to the prisoner or received by him as advances of pay, as working pay or derived from any other source; the sums in the currency of the Detaining Power which were taken from him; the sums taken from him and converted at his request into the currency of the said Power.

(2) The payments made to the prisoner in cash, or in any other similar form; the payments made on his behalf and at his request; the sums transferred under Article 63, third paragraph.

Art 65. Every item entered in the account of a prisoner of war shall be countersigned or initialled by him, or by the prisoners' representative acting on his behalf.

Prisoners of war shall at all times be afforded reasonable facilities for consulting and obtaining copies of their accounts, which may likewise be inspected by the representatives of the Protecting Powers at the time of visits to the camp.

When prisoners of war are transferred from one camp to another, their personal accounts will follow them. In case of transfer from one Detaining Power to another, the monies which are their property and are not in the currency of the Detaining Power will follow them. They shall be given certificates for any other monies standing to the credit of their accounts.

The Parties to the conflict concerned may agree to notify to each other at specific intervals through the Protecting Power, the amount of the accounts of the prisoners of war.

Art 66. On the termination of captivity, through the release of a prisoner of war or his repatriation, the Detaining Power shall give him a statement, signed by an authorized officer of that Power, showing the credit balance then due to him. The Detaining Power shall also send through the Protecting Power to the government upon which the prisoner of war depends, lists giving all appropriate particulars of all prisoners of war whose captivity has been terminated by repatriation, release, escape, death or any other means, and showing the amount of their credit balances. Such lists shall be certified on each sheet by an authorized representative of the Detaining Power.

Any of the above provisions of this Article may be varied by mutual agreement between any two Parties to the conflict.

The Power on which the prisoner of war depends shall be responsible for settling with him any credit balance due to him from the Detaining Power on the termination of his captivity.

Art 67. Advances of pay, issued to prisoners of war in conformity with Article 60, shall be considered as made on behalf of the Power on which they depend. Such advances of pay, as well as all payments made by the said Power under Article 63, third paragraph, and Article 68, shall form the subject of arrangements between the Powers concerned, at the close of hostilities.

Art 68. Any claim by a prisoner of war for compensation in respect of any injury or other disability arising out of work shall be referred to the Power on which he depends, through the Protecting Power. In accordance with Article 54, the Detaining Power will, in all cases, provide the prisoner of war concerned with a statement showing the nature of the injury or disability, the circumstances in which it arose and particulars of medical or hospital treatment given for it. This statement will be signed by a responsible officer of the Detaining Power and the medical particulars certified by a medical officer.

Any claim by a prisoner of war for compensation in respect of personal effects monies or valuables impounded by the Detaining Power under Article 18 and not forthcoming on his repatriation, or in respect of loss alleged to be due to the fault of the Detaining Power or any of its servants, shall likewise be referred to the Power on which he depends. Nevertheless, any such personal effects required for use by the prisoners of war whilst in captivity shall be replaced at the expense of the Detaining Power. The Detaining Power will, in all cases, provide the prisoner of war with a statement, signed by a responsible officer, showing all available information regarding the reasons why such effects, monies or valuables have not been restored to him. A copy of this statement will be forwarded to the Power on which he depends through the Central Prisoners of War Agency provided for in Article 123.

#### Section V. Relations of Prisoners of War With the Exterior

Art 69. Immediately upon prisoners of war falling into its power, the Detaining Power shall inform them and the Powers on which they depend, through the Protecting Power, of the measures taken to carry out the provisions of the present Section. They shall likewise inform the parties concerned of any subsequent modifications of such measures.

Art 70. Immediately upon capture, or not more than one week after arrival at a camp, even if it is a transit camp, likewise in case of sickness or transfer to hospital or to another camp, every prisoner of war shall be enabled to write direct to his family, on the one hand, and to the Central Prisoners of War Agency provided for in Article 123, on the other hand, a card similar, if possible, to the model annexed to the present Convention, informing his relatives

of his capture, address and state of health. The said cards shall be forwarded as rapidly as possible and may not be delayed in any manner.

Art 71. Prisoners of war shall be allowed to send and receive letters and cards. If the Detaining Power deems it necessary to limit the number of letters and cards sent by each prisoner of war, the said number shall not be less than two letters and four cards monthly, exclusive of the capture cards provided for in Article 70, and conforming as closely as possible to the models annexed to the present Convention. Further limitations may be imposed only if the Protecting Power is satisfied that it would be in the interests of the prisoners of war concerned to do so owing to difficulties of translation caused by the Detaining Power's inability to find sufficient qualified linguists to carry out the necessary censorship. If limitations must be placed on the correspondence addressed to prisoners of war, they may be ordered only by the Power on which the prisoners depend, possibly at the request of the Detaining Power. Such letters and cards must be conveyed by the most rapid method at the disposal of the Detaining Power; they may not be delayed or retained for disciplinary reasons.

Prisoners of war who have been without news for a long period, or who are unable to receive news from their next of kin or to give them news by the ordinary postal route, as well as those who are at a great distance from their homes, shall be permitted to send telegrams, the fees being charged against the prisoners of war's accounts with the Detaining Power or paid in the currency at their disposal. They shall likewise benefit by this measure in cases of urgency.

As a general rule, the correspondence of prisoners of war shall be written in their native language. The Parties to the conflict may allow correspondence in other languages.

Sacks containing prisoner of war mail must be securely sealed and labelled so as clearly to indicate their contents, and must be addressed to offices of destination.

Art 72. Prisoners of war shall be allowed to receive by post or by any other means individual parcels or collective shipments containing, in particular, foodstuffs, clothing, medical supplies and articles of a religious, educational or recreational character which may meet their needs, including books, devotional articles, scientific equipment, examination papers, musical instruments, sports outfits and materials allowing prisoners of war to pursue their studies or their cultural activities.

Such shipments shall in no way free the Detaining Power from the obligations imposed upon it by virtue of the present Convention.

The only limits which may be placed on these shipments shall be those proposed by the Protecting Power in the interest of the prisoners themselves, or by the International Committee of the Red Cross or any other organization giving assistance to the prisoners, in respect of their own shipments only, on account of exceptional strain on transport or communications.

The conditions for the sending of individual parcels and collective relief shall, if necessary, be the subject of special agreements between the Powers concerned, which may in no case delay the receipt by the prisoners of relief supplies. Books may not be included in parcels of clothing and foodstuffs. Medical supplies shall, as a rule, be sent in collective parcels.

Art 73. In the absence of special agreements between the Powers concerned on the conditions for the receipt and distribution of collective relief shipments, the rules and regulations

concerning collective shipments, which are annexed to the present Convention, shall be applied.

The special agreements referred to above shall in no case restrict the right of prisoners' representatives to take possession of collective relief shipments intended for prisoners of war, to proceed to their distribution or to dispose of them in the interest of the prisoners.

Nor shall such agreements restrict the right of representatives of the Protecting Power, the International Committee of the Red Cross or any other organization giving assistance to prisoners of war and responsible for the forwarding of collective shipments, to supervise their distribution to the recipients.

Art 74. All relief shipments for prisoners of war shall be exempt from import, customs and other dues.

Correspondence, relief shipments and authorized remittances of money addressed to prisoners of war or despatched by them through the post office, either direct or through the Information Bureaux provided for in Article 122 and the Central Prisoners of War Agency provided for in Article 123, shall be exempt from any postal dues, both in the countries of origin and destination, and in intermediate countries.

If relief shipments intended for prisoners of war cannot be sent through the post office by reason of weight or for any other cause, the cost of transportation shall be borne by the Detaining Power in all the territories under its control. The other Powers party to the Convention shall bear the cost of transport in their respective territories. In the absence of special agreements between the Parties concerned, the costs connected with transport of such shipments, other than costs covered by the above exemption, shall be charged to the senders.

The High Contracting Parties shall endeavour to reduce, so far as possible, the rates charged for telegrams sent by prisoners of war, or addressed to them.

Art 75. Should military operations prevent the Powers concerned from fulfilling their obligation to assure the transport of the shipments referred to in Articles 70, 71, 72 and 77, the Protecting Powers concerned, the International Committee of the Red Cross or any other organization duly approved by the Parties to the conflict may undertake to ensure the conveyance of such shipments by suitable means (railway wagons, motor vehicles, vessels or aircraft, etc.). For this purpose, the High Contracting Parties shall endeavour to supply them with such transport and to allow its circulation, especially by granting the necessary safe-conducts.

Such transport may also be used to convey:

- (a) correspondence, lists and reports exchanged between the Central Information Agency referred to in Article 123 and the National Bureaux referred to in Article 122;
- (b) correspondence and reports relating to prisoners of war which the Protecting Powers, the International Committee of the Red Cross or any other body assisting the prisoners, exchange either with their own delegates or with the Parties to the conflict.

These provisions in no way detract from the right of any Party to the conflict to arrange other means of transport, if it should so prefer, nor preclude the granting of safe-conducts, under mutually agreed conditions, to such means of transport.

In the absence of special agreements, the costs occasioned by the use of such means of transport shall be borne proportionally by the Parties to the conflict whose nationals are benefited thereby.

Art 76. The censoring of correspondence addressed to prisoners of war or despatched by them shall be done as quickly as possible. Mail shall be censored only by the despatching State and the receiving State, and once only by each.

The examination of consignments intended for prisoners of war shall not be carried out under conditions that will expose the goods contained in them to deterioration; except in the case of written or printed matter, it shall be done in the presence of the addressee, or of a fellow-prisoner duly delegated by him. The delivery to prisoners of individual or collective consignments shall not be delayed under the pretext of difficulties of censorship.

Any prohibition of correspondence ordered by Parties to the conflict, either for military or political reasons, shall be only temporary and its duration shall be as short as possible.

Art 77. The Detaining Powers shall provide all facilities for the transmission, through the Protecting Power or the Central Prisoners of War Agency provided for in Article 123 of instruments, papers or documents intended for prisoners of war or despatched by them, especially powers of attorney and wills.

In all cases they shall facilitate the preparation and execution of such documents on behalf of prisoners of war; in particular, they shall allow them to consult a lawyer and shall take what measures are necessary for the authentication of their signatures.

Section VI. Relations Between Prisoners of War and the Authorities

#### **Chapter I. Complaints of Prisoners of War Respecting the Conditions of Captivity**

Art 78 Prisoners of war shall have the right to make known to the military authorities in whose power they are, their requests regarding the conditions of captivity to which they are subjected.

They shall also have the unrestricted right to apply to the representatives of the Protecting Powers either through their prisoners' representative or, if they consider it necessary, direct, in order to draw their attention to any points on which they may have complaints to make regarding their conditions of captivity.

These requests and complaints shall not be limited nor considered to be a part of the correspondence quota referred to in Article 71. They must be transmitted immediately. Even if they are recognized to be unfounded, they may not give rise to any punishment.

Prisoners' representatives may send periodic reports on the situation in the camps and the needs of the prisoners of war to the representatives of the Protecting Powers.

#### **Chapter II. Prisoner of War Representatives**

Art 79. In all places where there are prisoners of war, except in those where there are officers, the prisoners shall freely elect by secret ballot, every six months, and also in case of vacancies, prisoners' representatives entrusted with representing them before the military authorities, the Protecting Powers, the International Committee of the Red Cross and any other organization which may assist them. These prisoners' representatives shall be eligible for re-election.

In camps for officers and persons of equivalent status or in mixed camps, the senior officer among the prisoners of war shall be recognized as the camp prisoners' representative. In camps for officers, he shall be assisted by one or more advisers chosen by the officers; in mixed camps, his assistants shall be chosen from among the prisoners of war who are not officers and shall be elected by them.

Officer prisoners of war of the same nationality shall be stationed in labour camps for prisoners of war, for the purpose of carrying out the camp administration duties for which the

prisoners of war are responsible. These officers may be elected as prisoners' representatives under the first paragraph of this Article. In such a case the assistants to the prisoners' representatives shall be chosen from among those prisoners of war who are not officers.

Every representative elected must be approved by the Detaining Power before he has the right to commence his duties. Where the Detaining Power refuses to approve a prisoner of war elected by his fellow prisoners of war, it must inform the Protecting Power of the reason for such refusal.

In all cases the prisoners' representative must have the same nationality, language and customs as the prisoners of war whom he represents. Thus, prisoners of war distributed in different sections of a camp, according to their nationality, language or customs, shall have for each section their own prisoners' representative, in accordance with the foregoing paragraphs.

Art 80. Prisoners' representatives shall further the physical, spiritual and intellectual well-being of prisoners of war.

In particular, where the prisoners decide to organize amongst themselves a system of mutual assistance, this organization will be within the province of the prisoners' representative, in addition to the special duties entrusted to him by other provisions of the present Convention.

Prisoners' representatives shall not be held responsible, simply by reason of their duties, for any offences committed by prisoners of war.

Art 81. Prisoners' representatives shall not be required to perform any other work, if the accomplishment of their duties is thereby made more difficult.

Prisoners' representatives may appoint from amongst the prisoners such assistants as they may require. All material facilities shall be granted them, particularly a certain freedom of movement necessary for the accomplishment of their duties (inspection of labour detachments, receipt of supplies, etc.).

Prisoners' representatives shall be permitted to visit premises where prisoners of war are detained, and every prisoner of war shall have the right to consult freely his prisoners' representative.

All facilities shall likewise be accorded to the prisoners' representatives for communication by post and telegraph with the detaining authorities, the Protecting Powers, the International Committee of the Red Cross and their delegates, the Mixed Medical Commissions and the bodies which give assistance to prisoners of war. Prisoners' representatives of labour detachments shall enjoy the same facilities for communication with the prisoners' representatives of the principal camp. Such communications shall not be restricted, nor considered as forming a part of the quota mentioned in Article 71.

Prisoners' representatives who are transferred shall be allowed a reasonable time to acquaint their successors with current affairs.

In case of dismissal, the reasons therefor shall be communicated to the Protecting Power.

### **Chapter III. Penal and Disciplinary Sanctions**

#### **I. General Provisions**

Art 82. A prisoner of war shall be subject to the laws, regulations and orders in force in the armed forces of the Detaining Power; the Detaining Power shall be justified in taking judicial or disciplinary measures in respect of any offence committed by a prisoner of war against such laws, regulations or orders. However, no proceedings or punishments contrary to the provisions of this Chapter shall be allowed.

If any law, regulation or order of the Detaining Power shall declare 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 forces of the Detaining Power, such acts shall entail disciplinary punishments only.

Art 83. In deciding whether proceedings in respect of an offence alleged to have been committed by a prisoner of war shall be judicial or disciplinary, the Detaining Power shall ensure that the competent authorities exercise the greatest leniency and adopt, wherever possible, disciplinary rather than judicial measures.

Art 84. A prisoner of war shall be tried only by a military court, unless the existing laws of the Detaining Power expressly permit the civil courts to try a member of the armed forces of the Detaining Power in respect of the particular offence alleged to have been committed by the prisoner of war.

In no circumstances whatever shall a prisoner of war be tried by a court of any kind which does not offer the essential guarantees of independence and impartiality as generally recognized, and, in particular, the procedure of which does not afford the accused the rights and means of defence provided for in Article 105.

Art 85. Prisoners of war prosecuted under the laws of the Detaining Power for acts committed prior to capture shall retain, even if convicted, the benefits of the present Convention.

Art 86. No prisoner of war may be punished more than once for the same act or on the same charge.

Art 87. Prisoners of war may not be sentenced by the military authorities and courts of the Detaining Power to any penalties except those provided for in respect of members of the armed forces of the said Power who have committed the same acts.

When fixing the penalty, the courts or authorities of the Detaining Power shall take into consideration, to the widest extent possible, the fact that the accused, not being a national of the Detaining Power, is not bound to it by any duty of allegiance, and that he is in its power as the result of circumstances independent of his own will. The said courts or authorities shall be at liberty to reduce the penalty provided for the violation of which the prisoner of war is accused, and shall therefore not be bound to apply the minimum penalty prescribed.

Collective punishment for individual acts, corporal punishment, imprisonment in premises without daylight and, in general, any form of torture or cruelty, are forbidden.

No prisoner of war may be deprived of his rank by the Detaining Power, or prevented from wearing his badges.

Art 88. Officers, non-commissioned officers and men who are prisoners of war undergoing a disciplinary or judicial punishment, shall not be subjected to more severe treatment than that applied in respect of the same punishment to members of the armed forces of the Detaining Power of equivalent rank.

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.

Prisoners of war who have served disciplinary or judicial sentences may not be treated differently from other prisoners of war.

## II. Disciplinary Sanctions

Art 89. The disciplinary punishments applicable to prisoners of war are the following:

(1) A fine which shall not exceed 50 per cent of the advances of pay and working pay which the prisoner of war would otherwise receive under the provisions of Articles 60 and 62 during a period of not more than thirty days.

(2) Discontinuance of privileges granted over and above the treatment provided for by the present Convention.

(3) Fatigue duties not exceeding two hours daily.

(4) Confinement.

The punishment referred to under (3) shall not be applied to officers.

In no case shall disciplinary punishments be inhuman, brutal or dangerous to the health of prisoners of war.

Art 90. The duration of any single punishment shall in no case exceed thirty days. Any period of confinement awaiting the hearing of a disciplinary offence or the award of disciplinary punishment shall be deducted from an award pronounced against a prisoner of war.

The maximum of thirty days provided above may not be exceeded, even if the prisoner of war is answerable for several acts at the same time when he is awarded punishment, whether such acts are related or not.

The period between the pronouncing of an award of disciplinary punishment and its execution shall not exceed one month.

When a prisoner of war is awarded a further disciplinary punishment, a period of at least three days shall elapse between the execution of any two of the punishments, if the duration of one of these is ten days or more.

Art 91. The escape of a prisoner of war shall be deemed to have succeeded when:

(1) he has joined the armed forces of the Power on which he depends, or those of an allied Power;

(2) he has left the territory under the control of the Detaining Power, or of an ally of the said Power;

(3) he has joined a ship flying the flag of the Power on which he depends, or of an allied Power, in the territorial waters of the Detaining Power, the said ship not being under the control of the last named Power.

Prisoners of war who have made good their escape in the sense of this Article and who are recaptured, shall not be liable to any punishment in respect of their previous escape.

Art 92. A prisoner of war who attempts to escape and is recaptured before having made good his escape in the sense of Article 91 shall be liable only to a disciplinary punishment in respect of this act, even if it is a repeated offence.

A prisoner of war who is recaptured shall be handed over without delay to the competent military authority.

Article 88, fourth paragraph, notwithstanding, prisoners of war punished as a result of an unsuccessful escape may be subjected to special surveillance. Such surveillance must not affect the state of their health, must be undergone in a prisoner of war camp, and must not entail the suppression of any of the safeguards granted them by the present Convention.

Art 93. Escape or attempt to escape, even if it is a repeated offence, shall not be deemed an aggravating circumstance if the prisoner of war is subjected to trial by judicial proceedings in respect of an offence committed during his escape or attempt to escape.

In conformity with the principle stated in Article 83, offences committed by prisoners of war with the sole intention of facilitating their escape and which do not entail any violence against life or limb, such as offences against public property, theft without intention of self-enrichment, the drawing up or use of false papers, or the wearing of civilian clothing, shall occasion disciplinary punishment only.

Prisoners of war who aid or abet an escape or an attempt to escape shall be liable on this count to disciplinary punishment only.

Art 94. If an escaped prisoner of war is recaptured, the Power on which he depends shall be notified thereof in the manner defined in Article 122, provided notification of his escape has been made.

Art 95. A prisoner of war accused of an offence against discipline shall not be kept in confinement pending the hearing unless a member of the armed forces of the Detaining Power would be so kept if he were accused of a similar offence, or if it is essential in the interests of camp order and discipline.

Any period spent by a prisoner of war in confinement awaiting the disposal of an offence against discipline shall be reduced to an absolute minimum and shall not exceed fourteen days.

The provisions of Articles 97 and 98 of this Chapter shall apply to prisoners of war who are in confinement awaiting the disposal of offences against discipline.

Art 96. Acts which constitute offences against discipline shall be investigated immediately. Without prejudice to the competence of courts and superior military authorities, disciplinary punishment may be ordered only by an officer having disciplinary powers in his capacity as camp commander, or by a responsible officer who replaces him or to whom he has delegated his disciplinary powers.

In no case may such powers be delegated to a prisoner of war or be exercised by a prisoner of war.

Before any disciplinary award is pronounced, the accused shall be given precise information regarding the offences of which he is accused, and given an opportunity of explaining his conduct and of defending himself. He shall be permitted, in particular, to call witnesses and to have recourse, if necessary, to the services of a qualified interpreter. The decision shall be announced to the accused prisoner of war and to the prisoners' representative.

A record of disciplinary punishments shall be maintained by the camp commander and shall be open to inspection by representatives of the Protecting Power.

Art 97. Prisoners of war shall not in any case be transferred to penitentiary establishments (prisons, penitentiaries, convict prisons, etc.) to undergo disciplinary punishment therein.

All premises in which disciplinary punishments are undergone shall conform to the sanitary requirements set forth in Article 25. A prisoner of war undergoing punishment shall be enabled to keep himself in a state of cleanliness, in conformity with Article 29.

Officers and persons of equivalent status shall not be lodged in the same quarters as non-commissioned officers or men.

Women prisoners of war undergoing disciplinary punishment shall be confined in separate quarters from male prisoners of war and shall be under the immediate supervision of women.

Art 98. A prisoner of war undergoing confinement as a disciplinary punishment, shall continue to enjoy the benefits of the provisions of this Convention except in so far as these are necessarily rendered inapplicable by the mere fact that he is confined. In no case may he be deprived of the benefits of the provisions of Articles 78 and 126.

A prisoner of war awarded disciplinary punishment may not be deprived of the prerogatives attached to his rank.

Prisoners of war awarded disciplinary punishment shall be allowed to exercise and to stay in the open air at least two hours daily.

They shall be allowed, on their request, to be present at the daily medical inspections. They shall receive the attention which their state of health requires and, if necessary, shall be removed to the camp infirmary or to a hospital.

They shall have permission to read and write, likewise to send and receive letters. Parcels and remittances of money however, may be withheld from them until the completion of the punishment; they shall meanwhile be entrusted to the prisoners' representative, who will hand over to the infirmary the perishable goods contained in such parcels.

### III. Juridicial Proceedings

Art 99. No prisoner of war may be tried or sentenced for an act which is not forbidden by the law of the Detaining Power or by international law, in force at the time the said act was committed.

No moral or physical coercion may be exerted on a prisoner of war in order to induce him to admit himself guilty of the act of which he is accused.

No prisoner of war may be convicted without having had an opportunity to present his defence and the assistance of a qualified advocate or counsel.

Art 100. Prisoners of war and the Protecting Powers shall be informed as soon as possible of the offences which are punishable by the death sentence under the laws of the Detaining Power.

Other offences shall not thereafter be made punishable by the death penalty without the concurrence of the Power on which the prisoners of war depend.

The death sentence cannot be pronounced on a prisoner of war unless the attention of the court has, in accordance with Article 87, second paragraph, been particularly called to the fact that since the accused is not a national of the Detaining Power, he is not bound to it by any duty of allegiance, and that he is in its power as the result of circumstances independent of his own will.

Art 101. If the death penalty is pronounced on a prisoner of war, the sentence shall not be executed before the expiration of a period of at least six months from the date when the Protecting Power receives, at an indicated address, the detailed communication provided for in Article 107.

Art 102. A prisoner of war can be validly sentenced only if the sentence has been pronounced by the same courts according to the same procedure as in the case of members of the armed forces of the Detaining Power, and if, furthermore, the provisions of the present Chapter have been observed.

Art 103. Judicial investigations relating to a prisoner of war shall be conducted as rapidly as circumstances permit and so that his trial shall take place as soon as possible. A prisoner of war shall not be confined while awaiting trial unless a member of the armed forces of the Detaining Power would be so confined if he were accused of a similar offence, or if it is

essential to do so in the interests of national security. In no circumstances shall this confinement exceed three months.

Any period spent by a prisoner of war in confinement awaiting trial shall be deducted from any sentence of imprisonment passed upon him and taken into account in fixing any penalty. The provisions of Articles 97 and 98 of this Chapter shall apply to a prisoner of war whilst in confinement awaiting trial.

Art 104. In any case in which the Detaining Power has decided to institute judicial proceedings against a prisoner of war, it shall notify the Protecting Power as soon as possible and at least three weeks before the opening of the trial. This period of three weeks shall run as from the day on which such notification reaches the Protecting Power at the address previously indicated by the latter to the Detaining Power.

The said notification shall contain the following information:

- (1) Surname and first names of the prisoner of war, his rank, his army, regimental, personal or serial number, his date of birth, and his profession or trade, if any;
- (2) Place of internment or confinement;
- (3) Specification of the charge or charges on which the prisoner of war is to be arraigned, giving the legal provisions applicable;
- (4) Designation of the court which will try the case, likewise the date and place fixed for the opening of the trial.

The same communication shall be made by the Detaining Power to the prisoners' representative.

If no evidence is submitted, at the opening of a trial, that the notification referred to above was received by the Protecting Power, by the prisoner of war and by the prisoners' representative concerned, at least three weeks before the opening of the trial, then the latter cannot take place and must be adjourned.

Art 105. The prisoner of war shall be entitled to assistance by one of his prisoner comrades, to defence by a qualified advocate or counsel of his own choice, to the calling of witnesses and, if he deems necessary, to the services of a competent interpreter. He shall be advised of these rights by the Detaining Power in due time before the trial.

Failing a choice by the prisoner of war, the Protecting Power shall find him an advocate or counsel, and shall have at least one week at its disposal for the purpose. The Detaining Power shall deliver to the said Power, on request, a list of persons qualified to present the defence. Failing a choice of an advocate or counsel by the prisoner of war or the Protecting Power, the Detaining Power shall appoint a competent advocate or counsel to conduct the defence.

The advocate or counsel conducting the defence on behalf of the prisoner of war shall have at his disposal a period of two weeks at least before the opening of the trial, as well as the necessary facilities to prepare the defence of the accused. He may, in particular, freely visit the accused and interview him in private. He may also confer with any witnesses for the defence, including prisoners of war. He shall have the benefit of these facilities until the term of appeal or petition has expired.

Particulars of the charge or charges on which the prisoner of war is to be arraigned, as well as the documents which are generally communicated to the accused by virtue of the laws in force in the armed forces of the Detaining Power, shall be communicated to the accused prisoner of war in a language which he understands, and in good time before the opening of

the trial. The same communication in the same circumstances shall be made to the advocate or counsel conducting the defence on behalf of the prisoner of war.

The representatives of the Protecting Power shall be entitled to attend the trial of the case, unless, exceptionally, this is held in camera in the interest of State security. In such a case the Detaining Power shall advise the Protecting Power accordingly.

Art 106. Every prisoner of war shall have, in the same manner as the members of the armed forces of the Detaining Power, the right of appeal or petition from any sentence pronounced upon him, with a view to the quashing or revising of the sentence or the reopening of the trial. He shall be fully informed of his right to appeal or petition and of the time limit within which he may do so.

Art 107. Any judgment and sentence pronounced upon a prisoner of war shall be immediately reported to the Protecting Power in the form of a summary communication, which shall also indicate whether he has the right of appeal with a view to the quashing of the sentence or the reopening of the trial. This communication shall likewise be sent to the prisoners' representative concerned. It shall also be sent to the accused prisoner of war in a language he understands, if the sentence was not pronounced in his presence. The Detaining Power shall also immediately communicate to the Protecting Power the decision of the prisoner of war to use or to waive his right of appeal.

Furthermore, if a prisoner of war is finally convicted or if a sentence pronounced on a prisoner of war in the first instance is a death sentence, the Detaining Power shall as soon as possible address to the Protecting Power a detailed communication containing:

- (1) the precise wording of the finding and sentence;
- (2) a summarized report of any preliminary investigation and of the trial, emphasizing in particular the elements of the prosecution and the defence;
- (3) notification, where applicable, of the establishment where the sentence will be served.

The communications provided for in the foregoing sub-paragraphs shall be sent to the Protecting Power at the address previously made known to the Detaining Power.

Art 108. Sentences pronounced on prisoners of war after a conviction has become duly enforceable, shall be served in the same establishments and under the same conditions as in the case of members of the armed forces of the Detaining Power. These conditions shall in all cases conform to the requirements of health and humanity.

A woman prisoner of war on whom such a sentence has been pronounced shall be confined in separate quarters and shall be under the supervision of women.

In any case, prisoners of war sentenced to a penalty depriving them of their liberty shall retain the benefit of the provisions of Articles 78 and 126 of the present Convention. Furthermore, they shall be entitled to receive and despatch correspondence, to receive at least one relief parcel monthly, to take regular exercise in the open air, to have the medical care required by their state of health, and the spiritual assistance they may desire. Penalties to which they may be subjected shall be in accordance with the provisions of Article 87, third paragraph.

#### Part IV. Termination of Captivity

##### Section I. Direct Repatriation and Accommodation in Neutral Countries

Art 109. Subject to the provisions of the third paragraph of this Article, Parties to the conflict are bound to send back to their own country, regardless of number or rank, seriously

wounded and seriously sick prisoners of war, after having cared for them until they are fit to travel, in accordance with the first paragraph of the following Article.

Throughout the duration of hostilities, Parties to the conflict shall endeavour, with the cooperation of the neutral Powers concerned, to make arrangements for the accommodation in neutral countries of the sick and wounded prisoners of war referred to in the second paragraph of the following Article. They may, in addition, conclude agreements with a view to the direct repatriation or internment in a neutral country of able-bodied prisoners of war who have undergone a long period of captivity.

No sick or injured prisoner of war who is eligible for repatriation under the first paragraph of this Article, may be repatriated against his will during hostilities.

Art 110. The following shall be repatriated direct:

- (1) Incurably wounded and sick whose mental or physical fitness seems to have been gravely diminished.
- (2) Wounded and sick who, according to medical opinion, are not likely to recover within one year, whose condition requires treatment and whose mental or physical fitness seems to have been gravely diminished.
- (3) Wounded and sick who have recovered, but whose mental or physical fitness seems to have been gravely and permanently diminished.

The following may be accommodated in a neutral country:

- (1) Wounded and sick whose recovery may be expected within one year of the date of the wound or the beginning of the illness, if treatment in a neutral country might increase the prospects of a more certain and speedy recovery.
- (2) Prisoners of war whose mental or physical health, according to medical opinion, is seriously threatened by continued captivity, but whose accommodation in a neutral country might remove such a threat.

The conditions which prisoners of war accommodated in a neutral country must fulfil in order to permit their repatriation shall be fixed, as shall likewise their status, by agreement between the Powers concerned. In general, prisoners of war who have been accommodated in a neutral country, and who belong to the following categories, should be repatriated:

- (1) Those whose state of health has deteriorated so as to fulfil the condition laid down for direct repatriation;
- (2) Those whose mental or physical powers remain, even after treatment, considerably impaired.

If no special agreements are concluded between the Parties to the conflict concerned, to determine the cases of disablement or sickness entailing direct repatriation or accommodation in a neutral country, such cases shall be settled in accordance with the principles laid down in the Model Agreement concerning direct repatriation and accommodation in neutral countries of wounded and sick prisoners of war and in the Regulations concerning Mixed Medical Commissions annexed to the present Convention.

Art 111. The Detaining Power, the Power on which the prisoners of war depend, and a neutral Power agreed upon by these two Powers, shall endeavour to conclude agreements which will enable prisoners of war to be interned in the territory of the said neutral Power until the close of hostilities.

Art 112. Upon the outbreak of hostilities, Mixed Medical Commissions shall be appointed to examine sick and wounded prisoners of war, and to make all appropriate decisions regarding

them. The appointment, duties and functioning of these Commissions shall be in conformity with the provisions of the Regulations annexed to the present Convention.

However, prisoners of war who, in the opinion of the medical authorities of the Detaining Power, are manifestly seriously injured or seriously sick, may be repatriated without having to be examined by a Mixed Medical Commission.

Art 113. Besides those who are designated by the medical authorities of the Detaining Power, wounded or sick prisoners of war belonging to the categories listed below shall be entitled to present themselves for examination by the Mixed Medical Commissions provided for in the foregoing Article:

(1) Wounded and sick proposed by a physician or surgeon who is of the same nationality, or a national of a Party to the conflict allied with the Power on which the said prisoners depend, and who exercises his functions in the camp.

(2) Wounded and sick proposed by their prisoners' representative.

(3) Wounded and sick proposed by the Power on which they depend, or by an organization duly recognized by the said Power and giving assistance to the prisoners.

Prisoners of war who do not belong to one of the three foregoing categories may nevertheless present themselves for examination by Mixed Medical Commissions, but shall be examined only after those belonging to the said categories.

The physician or surgeon of the same nationality as the prisoners who present themselves for examination by the Mixed Medical Commission, likewise the prisoners' representative of the said prisoners, shall have permission to be present at the examination.

Art 114. Prisoners of war who meet with accidents shall, unless the injury is self-inflicted, have the benefit of the provisions of this Convention as regards repatriation or accommodation in a neutral country.

Art 115. No prisoner of war on whom a disciplinary punishment has been imposed and who is eligible for repatriation or for accommodation in a neutral country, may be kept back on the plea that he has not undergone his punishment.

Prisoners of war detained in connection with a judicial prosecution or conviction, and who are designated for repatriation or accommodation in a neutral country, may benefit by such measures before the end of the proceedings or the completion of the punishment, if the Detaining Power consents.

Parties to the conflict shall communicate to each other the names of those who will be detained until the end of the proceedings or the completion of the punishment.

Art 116. The cost of repatriating prisoners of war or of transporting them to a neutral country shall be borne, from the frontiers of the Detaining Power, by the Power on which the said prisoners depend.

Art 117. No repatriated person may be employed on active military service.

## Section II. Release and Repatriation of Prisoners of War at the Close of Hostilities

Art 118. Prisoners of war shall be released and repatriated without delay after the cessation of active hostilities.

In the absence of stipulations to the above effect in any agreement concluded between the Parties to the conflict with a view to the cessation of hostilities, or failing any such agreement, each of the Detaining Powers shall itself establish and execute without delay a plan of repatriation in conformity with the principle laid down in the foregoing paragraph.

In either case, the measures adopted shall be brought to the knowledge of the prisoners of war.

The costs of repatriation of prisoners of war shall in all cases be equitably apportioned between the Detaining Power and the Power on which the prisoners depend. This apportionment shall be carried out on the following basis:

(a) If the two Powers are contiguous, the Power on which the prisoners of war depend shall bear the costs of repatriation from the frontiers of the Detaining Power.

(b) If the two Powers are not contiguous, the Detaining Power shall bear the costs of transport of prisoners of war over its own territory as far as its frontier or its port of embarkation nearest to the territory of the Power on which the prisoners of war depend. The Parties concerned shall agree between themselves as to the equitable apportionment of the remaining costs of the repatriation. The conclusion of this agreement shall in no circumstances justify any delay in the repatriation of the prisoners of war.

Art 119. Repatriation shall be effected in conditions similar to those laid down in Articles 46 to 48 inclusive of the present Convention for the transfer of prisoners of war, having regard to the provisions of Article 118 and to those of the following paragraphs.

On repatriation, any articles of value impounded from prisoners of war under Article 18, and any foreign currency which has not been converted into the currency of the Detaining Power, shall be restored to them. Articles of value and foreign currency which, for any reason whatever, are not restored to prisoners of war on repatriation, shall be despatched to the Information Bureau set up under Article 122.

Prisoners of war shall be allowed to take with them their personal effects, and any correspondence and parcels which have arrived for them. The weight of such baggage may be limited, if the conditions of repatriation so require, to what each prisoner can reasonably carry. Each prisoner shall in all cases be authorized to carry at least twenty-five kilograms.

The other personal effects of the repatriated prisoner shall be left in the charge of the Detaining Power which shall have them forwarded to him as soon as it has concluded an agreement to this effect, regulating the conditions of transport and the payment of the costs involved, with the Power on which the prisoner depends.

Prisoners of war against whom criminal proceedings for an indictable offence are pending may be detained until the end of such proceedings, and, if necessary, until the completion of the punishment. The same shall apply to prisoners of war already convicted for an indictable offence.

Parties to the conflict shall communicate to each other the names of any prisoners of war who are detained until the end of the proceedings or until punishment has been completed.

By agreement between the Parties to the conflict, commissions shall be established for the purpose of searching for dispersed prisoners of war and of assuring their repatriation with the least possible delay.

### Section III. Death of Prisoners of War

Art 120. Wills of prisoners of war shall be drawn up so as to satisfy the conditions of validity required by the legislation of their country of origin, which will take steps to inform the Detaining Power of its requirements in this respect. At the request of the prisoner of war and, in all cases, after death, the will shall be transmitted without delay to the Protecting Power; a certified copy shall be sent to the Central Agency.

Death certificates, in the form annexed to the present Convention, or lists certified by a responsible officer, of all persons who die as prisoners of war shall be forwarded as rapidly as possible to the Prisoner of War Information Bureau established in accordance with Article 122. The death certificates or certified lists shall show particulars of identity as set out in the third paragraph of Article 17, and also the date and place of death, the cause of death, the date and place of burial and all particulars necessary to identify the graves.

The burial or cremation of a prisoner of war shall be preceded by a medical examination of the body with a view to confirming death and enabling a report to be made and, where necessary, establishing identity.

The detaining authorities shall ensure that prisoners of war who have died in captivity are honourably buried, if possible according to the rites of the religion to which they belonged, and that their graves are respected, suitably maintained and marked so as to be found at any time. Wherever possible, deceased prisoners of war who depended on the same Power shall be interred in the same place.

Deceased prisoners of war shall be buried in individual graves unless unavoidable circumstances require the use of collective graves. Bodies may be cremated only for imperative reasons of hygiene, on account of the religion of the deceased or in accordance with his express wish to this effect. In case of cremation, the fact shall be stated and the reasons given in the death certificate of the deceased.

In order that graves may always be found, all particulars of burials and graves shall be recorded with a Graves Registration Service established by the Detaining Power. Lists of graves and particulars of the prisoners of war interred in cemeteries and elsewhere shall be transmitted to the Power on which such prisoners of war depended. Responsibility for the care of these graves and for records of any subsequent moves of the bodies shall rest on the Power controlling the territory, if a Party to the present Convention. These provisions shall also apply to the ashes, which shall be kept by the Graves Registration Service until proper disposal thereof in accordance with the wishes of the home country.

Art 121. Every death or serious injury of a prisoner of war caused or suspected to have been caused by a sentry, another prisoner of war, or any other person, as well as any death the cause of which is unknown, shall be immediately followed by an official enquiry by the Detaining Power.

A communication on this subject shall be sent immediately to the Protecting Power. Statements shall be taken from witnesses, especially from those who are prisoners of war, and a report including such statements shall be forwarded to the Protecting Power.

If the enquiry indicates the guilt of one or more persons, the Detaining Power shall take all measures for the prosecution of the person or persons responsible.

#### PART V. Information Bureaux and Relief Societies for Prisoners of War

Art 122. Upon the outbreak of a conflict and in all cases of occupation, each of the Parties to the conflict shall institute an official Information Bureau for prisoners of war who are in its power. Neutral or non-belligerent Powers who may have received within their territory persons belonging to one of the categories referred to in Article 4, shall take the same action with respect to such persons. The Power concerned shall ensure that the Prisoners of War Information Bureau is provided with the necessary accommodation, equipment and staff to ensure its efficient working. It shall be at liberty to employ prisoners of war in such a Bureau

under the conditions laid down in the Section of the present Convention dealing with work by prisoners of war.

Within the shortest possible period, each of the Parties to the conflict shall give its Bureau the information referred to in the fourth, fifth and sixth paragraphs of this Article regarding any enemy person belonging to one of the categories referred to in Article 4, who has fallen into its power. Neutral or non-belligerent Powers shall take the same action with regard to persons belonging to such categories whom they have received within their territory.

The Bureau shall immediately forward such information by the most rapid means to the Powers concerned, through the intermediary of the Protecting Powers and likewise of the Central Agency provided for in Article 123.

This information shall make it possible quickly to advise the next of kin concerned. Subject to the provisions of Article 17, the information shall include, in so far as available to the Information Bureau, in respect of each prisoner of war, his surname, first names, rank, army, regimental, personal or serial number, place and full date of birth, indication of the Power on which he depends, first name of the father and maiden name of the mother, name and address of the person to be informed and the address to which correspondence for the prisoner may be sent.

The Information Bureau shall receive from the various departments concerned information regarding transfers, releases, repatriations, escapes, admissions to hospital, and deaths, and shall transmit such information in the manner described in the third paragraph above.

Likewise, information regarding the state of health of prisoners of war who are seriously ill or seriously wounded shall be supplied regularly, every week if possible.

The Information Bureau shall also be responsible for replying to all enquiries sent to it concerning prisoners of war, including those who have died in captivity; it will make any enquiries necessary to obtain the information which is asked for if this is not in its possession. All written communications made by the Bureau shall be authenticated by a signature or a seal.

The Information Bureau shall furthermore be charged with collecting all personal valuables, including sums in currencies other than that of the Detaining Power and documents of importance to the next of kin, left by prisoners of war who have been repatriated or released, or who have escaped or died, and shall forward the said valuables to the Powers concerned. Such articles shall be sent by the Bureau in sealed packets which shall be accompanied by statements giving clear and full particulars of the identity of the person to whom the articles belonged, and by a complete list of the contents of the parcel. Other personal effects of such prisoners of war shall be transmitted under arrangements agreed upon between the Parties to the conflict concerned.

Art 123. A Central Prisoners of War Information Agency shall be created in a neutral country. The International Committee of the Red Cross shall, if it deems necessary, propose to the Powers concerned the organization of such an Agency.

The function of the Agency shall be to collect all the information it may obtain through official or private channels respecting prisoners of war, and to transmit it as rapidly as possible to the country of origin of the prisoners of war or to the Power on which they depend. It shall receive from the Parties to the conflict all facilities for effecting such transmissions.

The High Contracting Parties, and in particular those whose nationals benefit by the services of the Central Agency, are requested to give the said Agency the financial aid it may require. The foregoing provisions shall in no way be interpreted as restricting the humanitarian activities of the International Committee of the Red Cross, or of the relief societies provided for in Article 125.

Art 124. The national Information Bureaux and the Central Information Agency shall enjoy free postage for mail, likewise all the exemptions provided for in Article 74, and further, so far as possible, exemption from telegraphic charges or, at least, greatly reduced rates.

Art 125. Subject to the measures which the Detaining Powers may consider essential to ensure their security or to meet any other reasonable need, the representatives of religious organizations, relief societies, or any other organization assisting prisoners of war, shall receive from the said Powers, for themselves and their duly accredited agents, all necessary facilities for visiting the prisoners, for distributing relief supplies and material, from any source, intended for religious, educational or recreative purposes, and for assisting them in organizing their leisure time within the camps. Such societies or organizations may be constituted in the territory of the Detaining Power or in any other country, or they may have an international character.

The Detaining Power may limit the number of societies and organizations whose delegates are allowed to carry out their activities in its territory and under its supervision, on condition, however, that such limitation shall not hinder the effective operation of adequate relief to all prisoners of war.

The special position of the International Committee of the Red Cross in this field shall be recognized and respected at all times.

As soon as relief supplies or material intended for the above-mentioned purposes are handed over to prisoners of war, or very shortly afterwards, receipts for each consignment, signed by the prisoners' representative, shall be forwarded to the relief society or organization making the shipment. At the same time, receipts for these consignments shall be supplied by the administrative authorities responsible for guarding the prisoners.

## Part VI. Execution of the Convention

### Section I. General Provisions

Art 126. Representatives or delegates of the Protecting Powers shall have permission to go to all places where prisoners of war may be, particularly to places of internment, imprisonment and labour, and shall have access to all premises occupied by prisoners of war; they shall also be allowed to go to the places of departure, passage and arrival of prisoners who are being transferred. They shall be able to interview the prisoners, and in particular the prisoners' representatives, without witnesses, either personally or through an interpreter.

Representatives and delegates of the Protecting Powers shall have full liberty to select the places they wish to visit. The duration and frequency of these visits shall not be restricted. Visits may not be prohibited except for reasons of imperative military necessity, and then only as an exceptional and temporary measure.

The Detaining Power and the Power on which the said prisoners of war depend may agree, if necessary, that compatriots of these prisoners of war be permitted to participate in the visits.

The delegates of the International Committee of the Red Cross shall enjoy the same prerogatives. The appointment of such delegates shall be submitted to the approval of the Power detaining the prisoners of war to be visited.

Art 127. The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to all their armed forces and to the entire population.

Any military or other authorities, who in time of war assume responsibilities in respect of prisoners of war, must possess the text of the Convention and be specially instructed as to its provisions.

Art 128. The High Contracting Parties shall communicate to one another through the Swiss Federal Council and, during hostilities, through the Protecting Powers, the official translations of the present Convention, as well as the laws and regulations which they may adopt to ensure the application thereof.

Art 129. The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case.

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.

In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following of the present Convention.

Art 130. Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, compelling a prisoner of war to serve in the forces of the hostile Power, or wilfully depriving a prisoner of war of the rights of fair and regular trial prescribed in this Convention.

Art 131. No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article.

Art 132. At the request of a Party to the conflict, an enquiry shall be instituted, in a manner to be decided between the interested Parties, concerning any alleged violation of the Convention.

If agreement has not been reached concerning the procedure for the enquiry, the Parties should agree on the choice of an umpire who will decide upon the procedure to be followed.

Once the violation has been established, the Parties to the conflict shall put an end to it and shall repress it with the least possible delay.

Section II. Final Provisions

Art 133. The present Convention is established in English and in French. Both texts are equally authentic.

The Swiss Federal Council shall arrange for official translations of the Convention to be made in the Russian and Spanish languages.

Art 134. The present Convention replaces the Convention of July 27, 1929, in relations between the High Contracting Parties.

Art 135. In the relations between the Powers which are bound by the Hague Convention respecting the Laws and Customs of War on Land, whether that of July 29, 1899, or that of October 18, 1907, and which are parties to the present Convention, this last Convention shall be complementary to Chapter II of the Regulations annexed to the above-mentioned Conventions of the Hague.

Art 136. The present Convention, which bears the date of this day, is open to signature until February 12, 1950, in the name of the Powers represented at the Conference which opened at Geneva on April 21, 1949; furthermore, by Powers not represented at that Conference, but which are parties to the Convention of July 27, 1929.

Art 137. The present Convention shall be ratified as soon as possible and the ratifications shall be deposited at Berne.

A record shall be drawn up of the deposit of each instrument of ratification and certified copies of this record shall be transmitted by the Swiss Federal Council to all the Powers in whose name the Convention has been signed, or whose accession has been notified.

Art 138. The present Convention shall come into force six months after not less than two instruments of ratification have been deposited.

Thereafter, it shall come into force for each High Contracting Party six months after the deposit of the instrument of ratification.

Art 139. From the date of its coming into force, it shall be open to any Power in whose name the present Convention has not been signed, to accede to this Convention.

Art 140. Accessions shall be notified in writing to the Swiss Federal Council, and shall take effect six months after the date on which they are received.

The Swiss Federal Council shall communicate the accessions to all the Powers in whose name the Convention has been signed, or whose accession has been notified.

Art 141. The situations provided for in Articles 2 and 3 shall give immediate effect to ratifications deposited and accessions notified by the Parties to the conflict before or after the beginning of hostilities or occupation. The Swiss Federal Council shall communicate by the quickest method any ratifications or accessions received from Parties to the conflict.

Art 142. Each of the High Contracting Parties shall be at liberty to denounce the present Convention.

The denunciation shall be notified in writing to the Swiss Federal Council, which shall transmit it to the Governments of all the High Contracting Parties.

The denunciation shall take effect one year after the notification thereof has been made to the Swiss Federal Council. However, a denunciation of which notification has been made at a time when the denouncing Power is involved in a conflict shall not take effect until peace has been concluded, and until after operations connected with release and repatriation of the persons protected by the present Convention have been terminated.

The denunciation shall have effect only in respect of the denouncing Power. It shall in no way impair the obligations which the Parties to the conflict shall remain bound to fulfil by

virtue of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity and the dictates of the public conscience. Art 143. The Swiss Federal Council shall register the present Convention with the Secretariat of the United Nations. The Swiss Federal Council shall also inform the Secretariat of the United Nations of all ratifications, accessions and denunciations received by it with respect to the present Convention.

IN WITNESS WHEREOF the undersigned, having deposited their respective full powers, have signed the present Convention.

DONE at Geneva this twelfth day of August 1949, in the English and French languages. The original shall be deposited in the Archives of the Swiss Confederation. The Swiss Federal Council shall transmit certified copies thereof to each of the signatory and acceding States.

Annex I. Model Agreement Concerning Direct Repatriation and Accommodation in Neutral Countries of Wounded and Sick Prisoners of War.(see Art 110.)

I. Principles for Direct Repatriation and Accommodation in Neutral Countries

#### A. DIRECT REPATRIATION

The following shall be repatriated direct:

(1) All prisoners of war suffering from the following disabilities as the result of trauma: loss of a limb, paralysis, articular or other disabilities, when this disability is at least the loss of a hand or a foot, or the equivalent of the loss of a hand or a foot.

Without prejudice to a more generous interpretation, the following shall be considered as equivalent to the loss of a hand or a foot:

(a) Loss of a hand or of all the fingers, or of the thumb and forefinger of one hand; loss of a foot, or of all the toes and metatarsals of one foot.

(b) Ankylosis, loss of osseous tissue, cicatricial contracture preventing the functioning of one of the large articulations or of all the digital joints of one hand.

(c) Pseudarthrosis of the long bones.

(d) Deformities due to fracture or other injury which seriously interfere with function and weight-bearing power.

(2) All wounded prisoners of war whose condition has become chronic, to the extent that prognosis appears to exclude recovery--in spite of treatment--within one year from the date of the injury, as, for example, in case of:

(a) Projectile in the heart, even if the Mixed Medical Commission should fail, at the time of their examination, to detect any serious disorders.

(b) Metallic splinter in the brain or the lungs, even if the Mixed Medical Commission cannot, at the time of examination, detect any local or general reaction.

(c) Osteomyelitis, when recovery cannot be foreseen in the course of the year following the injury, and which seems likely to result in ankylosis of a joint, or other impairments equivalent to the loss of a hand or a foot.

(d) Perforating and suppurating injury to the large joints.

(e) Injury to the skull, with loss or shifting of bony tissue.

(f) Injury or burning of the face with loss of tissue and functional lesions.

(g) Injury to the spinal cord.

(h) Lesion of the peripheral nerves, the sequelae of which are equivalent to the loss of a hand or foot, and the cure of which requires more than a year from the date of injury, for example: injury to the brachial or lumbosacral plexus median or sciatic nerves, likewise combined

injury to the radial and cubital nerves or to the lateral popliteal nerve (N. peroneus communis) and medial popliteal nerve (N. tibialis); etc. The separate injury of the radial (musculo-spiral), cubital, lateral or medial popliteal nerves shall not, however, warrant repatriation except in case of contractures or of serious neurotrophic disturbance.

(i) Injury to the urinary system, with incapacitating results.

(3) All sick prisoners of war whose condition has become chronic to the extent that prognosis seems to exclude recovery--in, spite of treatment-- within one year from the inception of the disease, as, for example, in case of:

(a) Progressive tuberculosis of any organ which, according to medical prognosis, cannot be cured or at least considerably improved by treatment in a neutral country.

(b) Exudate pleurisy.

(c) Serious diseases of the respiratory organs of non-tubercular etiology, presumed incurable, for example: serious pulmonary emphysema, with or without bronchitis; chronic asthma \*; chronic bronchitis \* lasting more than one year in captivity; bronchiectasis \*; etc.

(d) Serious chronic affections of the circulatory system, for example: valvular lesions and myocarditis \*, which have shown signs of circulatory failure during captivity, even though the Mixed Medical Commission cannot detect any such signs at the time of examination; affections of the pericardium and the vessels (Buerger's disease, aneurisms of the large vessels); etc.

(e) Serious chronic affections of the digestive organs, for example: gastric or duodenal ulcer; sequelae of gastric operations performed in captivity; chronic gastritis, enteritis or colitis, having lasted more than one year and seriously affecting the general condition; cirrhosis of the liver; chronic cholecystopathy \*; etc.

(f) Serious chronic affections of the genito-urinary organs, for example: chronic diseases of the kidney with consequent disorders; nephrectomy because of a tubercular kidney; chronic pyelitis or chronic cystitis; hydronephrosis or pyonephrosis; chronic grave gynaecological conditions; normal pregnancy and obstetrical disorder, where it is impossible to accommodate in a neutral country; etc.

(g) Serious chronic diseases of the central and peripheral nervous system, for example: all obvious psychoses and psychoneuroses, such as serious hysteria, serious captivity psychoneurosis, etc., duly verified by a specialist \*; any epilepsy duly verified by the camp physician \*; cerebral arteriosclerosis; chronic neuritis lasting more than one year; etc.

(h) Serious chronic diseases of the neuro-vegetative system, with considerable diminution of mental or physical fitness, noticeable loss of weight and general asthenia.

(i) Blindness of both eyes, or of one eye when the vision of the other is less than 1 in spite of the use of corrective glasses; diminution of visual acuity in cases where it is impossible to restore it by correction to an acuity of 1/2 in at least one eye \*; other grave ocular affections, for example: glaucoma, iritis, choroiditis; trachoma; etc.

(k) Auditive disorders, such as total unilateral deafness, if the other ear does not discern the ordinary spoken word at a distance of one metre \*; etc.

(l) Serious affections of metabolism, for example: diabetes mellitus requiring insulin treatment; etc.

(m) Serious disorders of the endocrine glands, for example: thyrotoxicosis; hypothyrosis; Addison's disease; Simmonds' cachexia; tetany; etc.

- (n) Grave and chronic disorders of the blood-forming organs.
- (o) Serious cases of chronic intoxication, for example: lead poisoning, mercury poisoning, morphinism, cocainism, alcoholism; gas or radiation poisoning; etc.
- (p) Chronic affections of locomotion, with obvious functional disorders, for example: arthritis deformans; primary and secondary progressive chronic polyarthritis; rheumatism with serious clinical symptoms; etc.
- (q) Serious chronic skin diseases, not amenable to treatment.
- (r) Any malignant growth.
- (s) Serious chronic infectious diseases, persisting for one year after their inception, for example: malaria with decided organic impairment, amoebic or bacillary dysentery with grave disorders; tertiary visceral syphilis resistant to treatment; leprosy; etc.
- (t) Serious avitaminosis or serious inanition.

[NOTE] \* The decision of the Mixed Medical Commission shall be based to a great extent on the records kept by camp physicians and surgeons of the same nationality as the prisoners of war, or on an examination by medical specialists of the Detaining Power.

#### B. ACCOMMODATION IN NEUTRAL COUNTRIES

The following shall be eligible for accommodation in a neutral country:

- (1) All wounded prisoners of war who are not likely to recover in captivity, but who might be cured or whose condition might be considerably improved by accommodation in a neutral country.
- (2) Prisoners of war suffering from any form of tuberculosis, of whatever organ, and whose treatment in a neutral country would be likely to lead to recovery or at least to considerable improvement, with the exception of primary tuberculosis cured before captivity.
- (3) Prisoners of war suffering from affections requiring treatment of the respiratory, circulatory, digestive, nervous, sensory, genito-urinary, cutaneous, locomotive organs, etc., if such treatment would clearly have better results in a neutral country than in captivity.
- (4) Prisoners of war who have undergone a nephrectomy in captivity for a non-tubercular renal affection; cases of osteomyelitis, on the way to recovery or latent; diabetes mellitus not requiring insulin treatment; etc.
- (5) Prisoners of war suffering from war or captivity neuroses. Cases of captivity neurosis which are not cured after three months of accommodation in a neutral country, or which after that length of time are not clearly on the way to complete cure, shall be repatriated.
- (6) All prisoners of war suffering from chronic intoxication (gases, metals, alkaloids, etc.), for whom the prospects of cure in a neutral country are especially favourable.
- (7) All women prisoners of war who are pregnant or mothers with infants and small children.

The following cases shall not be eligible for accommodation in a neutral country:

- (1) All duly verified chronic psychoses.
- (2) All organic or functional nervous affections considered to be incurable.
- (3) All contagious diseases during the period in which they are transmissible, with the exception of tuberculosis.

#### II. General Observations

- (1) The conditions given shall, in a general way, be interpreted and applied in as broad a spirit as possible. Neuropathic and psychopathic conditions caused by war or captivity, as well as cases of tuberculosis in all stages, shall above all benefit by such liberal interpretation. Prisoners of war who have sustained several wounds, none of which, considered by itself,

justifies repatriation, shall be examined in the same spirit, with due regard for the psychic traumatism due to the number of their wounds.

(2) All unquestionable cases giving the right to direct repatriation (amputation, total blindness or deafness, open pulmonary tuberculosis, mental disorder, malignant growth, etc.) shall be examined and repatriated as soon as possible by the camp physicians or by military medical commissions appointed by the Detaining Power.

(3) Injuries and diseases which existed before the war and which have not become worse, as well as war injuries which have not prevented subsequent military service, shall not entitle to direct repatriation.

(4) The provisions of this Annex shall be interpreted and applied in a similar manner in all countries party to the conflict. The Powers and authorities concerned shall grant to Mixed Medical Commissions all the facilities necessary for the accomplishment of their task.

(5) The examples quoted under (1) above represent only typical cases. Cases which do not correspond exactly to these provisions shall be judged in the spirit of the provisions of Article 110 of the present Convention, and of the principles embodied in the present Agreement.

Annex II. Regulations Concerning Mixed Medical Commissions (see Art 112.)

Art 1. The Mixed Medical Commissions provided for in Article 112 of the Convention shall be composed of three members, two of whom shall belong to a neutral country, the third being appointed by the Detaining Power. One of the neutral members shall take the chair.

Art 2. The two neutral members shall be appointed by the International Committee of the Red Cross, acting in agreement with the Protecting Power, at the request of the Detaining Power. They may be domiciled either in their country of origin, in any other neutral country, or in the territory of the Detaining Power.

Art 3. The neutral members shall be approved by the Parties to the conflict concerned, who shall notify their approval to the International Committee of the Red Cross and to the Protecting Power. Upon such notification, the neutral members shall be considered as effectively appointed.

Art 4. Deputy members shall also be appointed in sufficient number to replace the regular members in case of need. They shall be appointed at the same time as the regular members or, at least, as soon as possible.

Art 5. If for any reason the International Committee of the Red Cross cannot arrange for the appointment of the neutral members, this shall be done by the Power protecting the interests of the prisoners of war to be examined.

Art 6. So far as possible, one of the two neutral members shall be a surgeon and the other a physician.

Art 7. The neutral members shall be entirely independent of the Parties to the conflict, which shall grant them all facilities in the accomplishment of their duties.

Art 8. By agreement with the Detaining Power, the International Committee of the Red Cross, when making the appointments provided for in Articles 2 and 4 of the present Regulations, shall settle the terms of service of the nominees.

Art 9. The Mixed Medical Commissions shall begin their work as soon as possible after the neutral members have been approved, and in any case within a period of three months from the date of such approval.

Art 10. The Mixed Medical Commissions shall examine all the prisoners designated in Article 113 of the Convention. They shall propose repatriation, rejection, or reference to a later examination. Their decisions shall be made by a majority vote.

Art 11. The decisions made by the Mixed Medical Commissions in each specific case shall be communicated, during the month following their visit, to the Detaining Power, the Protecting Power and the International Committee of the Red Cross. The Mixed Medical Commissions shall also inform each prisoner of war examined of the decision made, and shall issue to those whose repatriation has been proposed, certificates similar to the model appended to the present Convention.

Art 12. The Detaining Power shall be required to carry out the decisions of the Mixed Medical Commissions within three months of the time when it receives due notification of such decisions.

Art 13. If there is no neutral physician in a country where the services of a Mixed Medical Commission seem to be required, and if it is for any reason impossible to appoint neutral doctors who are resident in another country, the Detaining Power, acting in agreement with the Protecting Power, shall set up a Medical Commission which shall undertake the same duties as a Mixed Medical Commission, subject to the provisions of Articles 1, 2, 3, 4, 5 and 8 of the present Regulations.

Art 14. Mixed Medical Commissions shall function permanently and shall visit each camp at intervals of not more than six months.

Annex III. Regulations Concerning Collective Relief (See Art 73.)

Art 1. Prisoners' representatives shall be allowed to distribute collective relief shipments for which they are responsible, to all prisoners of war administered by their camp, including those who are in hospitals, or in prisons or other penal establishments.

Art 2. The distribution of collective relief shipments shall be effected in accordance with the instructions of the donors and with a plan drawn up by the prisoners' representatives. The issue of medical stores shall, however, be made for preference in agreement with the senior medical officers, and the latter may, in hospitals and infirmaries, waive the said instructions, if the needs of their patients so demand. Within the limits thus defined, the distribution shall always be carried out equitably.

Art 3. The said prisoners' representatives or their assistants shall be allowed to go to the points of arrival of relief supplies near their camps, so as to enable the prisoners' representatives or their assistants to verify the quality as well as the quantity of the goods received, and to make out detailed reports thereon for the donors.

Art 4. Prisoners' representatives shall be given the facilities necessary for verifying whether the distribution of collective relief in all subdivisions and annexes of their camps has been carried out in accordance with their instructions.

Art 5. Prisoners' representatives shall be allowed to fill up, and cause to be filled up by the prisoners' representatives of labour detachments or by the senior medical officers of infirmaries and hospitals, forms or questionnaires intended for the donors, relating to collective relief supplies (distribution, requirements, quantities, etc.). Such forms and questionnaires, duly completed, shall be forwarded to the donors without delay.

Art 6. In order to secure the regular issue of collective relief to the prisoners of war in their camp, and to meet any needs that may arise from the arrival of new contingents of prisoners, prisoners' representatives shall be allowed to build up and maintain adequate reserve stocks

of collective relief. For this purpose, they shall have suitable warehouses at their disposal; each warehouse shall be provided with two locks, the prisoners' representative holding the keys of one lock and the camp commander the keys of the other.

Art 7. When collective consignments of clothing are available, each prisoner of war shall retain in his possession at least one complete set of clothes. If a prisoner has more than one set of clothes, the prisoners' representative shall be permitted to withdraw excess clothing from those with the largest number of sets, or particular articles in excess of one, if this is necessary in order to supply prisoners who are less well provided. He shall not, however, withdraw second sets of underclothing, socks or footwear, unless this is the only means of providing for prisoners of war with none.

Art 8. The High Contracting Parties, and the Detaining Powers in particular, shall authorize, as far as possible and subject to the regulations governing the supply of the population, all purchases of goods made in their territories for the distribution of collective relief to prisoners of war. They shall similarly facilitate the transfer of funds and other financial measures of a technical or administrative nature taken for the purpose of making such purchases.

Art 9. The foregoing provisions shall not constitute an obstacle to the right of prisoners of war to receive collective relief before their arrival in a camp or in the course of transfer, nor to the possibility of representatives of the Protecting Power, the International Committee of the Red Cross, or any other body giving assistance to prisoners which may be responsible for the forwarding of such supplies, ensuring the distribution thereof to the addressees by any other means that they may deem useful.

Annex IV. (A) Identity Card(See Art 4.)

ANNEX IV  
A. IDENTITY CARD  
(see Article 4)

<p><b>NOTICE</b></p> <p>This identity card is issued to persons who accompany the Armed Forces of but are not part of them. The card must be carried at all times by the person to whom it is issued. If the bearer is taken prisoner, he shall at once hand the card to the Detaining Authority, to assist in his identification.</p>		<p>Fingerprints (optional) (Right forefinger)</p>		<p>Any other mark of identification .....</p>
		<p>(Left forefinger)</p>		
<p>Official seal</p>	<p>Blood type</p>	<p>Religion</p>		
<p>Height</p>	<p>Weight</p>	<p>Eyes</p>	<p>Hair</p>	
<p>(Name of the country and military authority issuing this card)</p> <p><b>IDENTITY CARD</b></p> <p>FOR A PERSON WHO ACCOMPANIES THE ARMED FORCES</p>				
<p>Photograph of the bearer</p>				
<p>Name .....</p>				
<p>First names .....</p>				
<p>Date and place of birth .....</p>				
<p>Accompanies the Armed Forces as .....</p>				
<p>Date of issue</p>		<p>Signature of bearer</p>		

Remarks. — This card should be made out for preference in two or three languages, one of which is in international use. Actual size of the card: 13 by 10 centimetres. It should be folded along the dotted line.

Annex IV. (B) Captured Card(See Art 70.)

ANNEX IV  
B. CAPTURE CARD  
(see Article 70)

1. Front

PRISONER OF WAR MAIL		Postage free
CAPTURE CARD FOR PRISONER OF WAR		
<p style="text-align: center;"><b>IMPORTANT</b></p> <p>This card must be completed by each prisoner immediately after being taken prisoner and each time his address is changed (by reason of transfer to a hospital or to another camp).</p> <p>This card is distinct from the special card which each prisoner is allowed to send to his relatives.</p>	<p><b>CENTRAL PRISONERS OF WAR AGENCY</b></p> <p>INTERNATIONAL COMMITTEE OF THE RED CROSS</p> <p><u>GENEVA</u> SWITZERLAND</p>	

2. Reverse side

Write legibly and in block letters	1. Power on which the prisoner depends .....		
2. Name .....	3. First names (in full) .....	4. First name of father .....	
5. Date of birth .....	6. Place of birth .....		
7. Rank .....			
8. Service number .....			
9. Address of next of kin .....			
*10. Taken prisoner on: (or) Coming from (Camp No., hospital, etc.) .....			
*11. (a) Good health—(b) Not wounded—(c) Recovered—(d) Convalescent—(e) Sick—(f) Slightly wounded—(g) Seriously wounded.			
12. My present address is: Prisoner No. ....			
Name of camp .....			
13. Date .....		14. Signature .....	
* Strike out what is not applicable—Do not add any remarks—See explanations overleaf.			

Remarks.—This form should be made out in two or three languages, particularly in the prisoner's own language and in that of the Detaining Power.  
Actual size: 15 by 10.5 centimetres.

Annex IV. (C) Correspondence Card and Letter (See Art 71.)





ANNEX IV  
D. NOTIFICATION OF DEATH  
(see Article 120)

(Title of responsible authority)	NOTIFICATION OF DEATH
	Power on which the prisoner depended .....
Name and first names .....	
First name of father	.....
Place and date of birth	.....
Place and date of death	.....
Rank and service number (as given on identity disc)	.....
Address of next of kin	.....
Where and when taken prisoner	.....
Cause and circumstances of death	.....
Place of burial	.....
Is the grave marked and can it be found later by the relatives?	.....
Are the personal effects of the deceased in the keeping of the Detaining Power or are they being forwarded together with this notification?	.....
If forwarded, through what agency?	.....
Can the person who cared for the deceased during sickness or during his last moments (doctor, nurse, minister of religion, fellow prisoner) give here or on an attached sheet a short account of the circumstances of the death and burial?	.....
(Date, seal and signature of responsible authority.)	Signature and address of two witnesses
.....	.....

Remarks.—This form should be made out in two or three languages, particularly in the prisoner's own language and in that of the Detaining Power. Actual size of the form: 21 by 30 centimetres.

Annex IV. (E) Repatriation Certificate (See Annex II, Art 11.)

## ANNEX IV

## E. REPATRIATION CERTIFICATE

*(see Annex II, Article 11)*

## REPATRIATION CERTIFICATE

Date :  
 Camp :  
 Hospital :  
 Surname :  
 First names :  
 Date of birth :  
 Rank :  
 Army number :  
 P. W. number :  
 Injury-Disease :  
 Decision of the Commission :

Chairman of the  
 Mixed Medical Commission :

A = direct repatriation  
 B = accommodation in a neutral country  
 NC = re-examination by next Commission

Annex V. Model Regulations Concerning Payments Sent by Prisoners to their Own Country  
 (See Art 63.)

- (1) The notification referred to in the third paragraph of Article 63 will show:
- (a) number as specified in Article 17, rank, surname and first names of the prisoner of war who is the payer;
  - (b) the name and address of the payee in the country of origin;
  - (c) the amount to be so paid in the currency of the country in which he is detained.
- (2) The notification will be signed by the prisoner of war, or his witnessed mark made upon it if he cannot write, and shall be countersigned by the prisoners' representative.
- (3) The camp commander will add to this notification a certificate that the prisoner of war concerned has a credit balance of not less than the amount registered as payable.
- (4) The notification may be made up in lists, each sheet of such lists being witnessed by the prisoners' representative and certified by the camp commander.

## **ANEXO D – Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949**

### Preamble

The undersigned Plenipotentiaries of the Governments represented at the Diplomatic Conference held at Geneva from April 21 to August 12, 1949, for the purpose of establishing a Convention for the Protection of Civilian Persons in Time of War, have agreed as follows:

### Part I. General Provisions

Article 1. The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.

Art. 2. In addition to the provisions which shall be implemented in peace-time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.

Art. 3. In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

Art. 4. Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.

Nationals of a State which is not bound by the Convention are not protected by it. Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are.

The provisions of Part II are, however, wider in application, as defined in Article 13.

Persons protected by the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, or by the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, or by the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949, shall not be considered as protected persons within the meaning of the present Convention.

Art. 5 Where in the territory of a Party to the conflict, the latter is satisfied that an individual protected person is definitely suspected of or engaged in activities hostile to the security of the State, such individual person shall not be entitled to claim such rights and privileges under the present Convention as would, if exercised in the favour of such individual person, be prejudicial to the security of such State.

Where in occupied territory an individual protected person is detained as a spy or saboteur, or as a person under definite suspicion of activity hostile to the security of the Occupying Power, such person shall, in those cases where absolute military security so requires, be regarded as having forfeited rights of communication under the present Convention.

In each case, such persons shall nevertheless be treated with humanity and, in case of trial, shall not be deprived of the rights of fair and regular trial prescribed by the present Convention. They shall also be granted the full rights and privileges of a protected person under the present Convention at the earliest date consistent with the security of the State or Occupying Power, as the case may be.

Art. 6. The present Convention shall apply from the outset of any conflict or occupation mentioned in Article 2.

In the territory of Parties to the conflict, the application of the present Convention shall cease on the general close of military operations.

In the case of occupied territory, the application of the present Convention shall cease one year after the general close of military operations; however, the Occupying Power shall be bound, for the duration of the occupation, to the extent that such Power exercises the functions of government in such territory, by the provisions of the following Articles of the present Convention: 1 to 12, 27, 29 to 34, 47, 49, 51, 52, 53, 59, 61 to 77, 143.

Protected persons whose release, repatriation or re-establishment may take place after such dates shall meanwhile continue to benefit by the present Convention.

Art. 7. In addition to the agreements expressly provided for in Articles 11, 14, 15, 17, 36, 108, 109, 132, 133 and 149, the High Contracting Parties may conclude other special agreements for all matters concerning which they may deem it suitable to make separate provision. No special agreement shall adversely affect the situation of protected persons, as defined by the present Convention, not restrict the rights which it confers upon them.

Protected persons shall continue to have the benefit of such agreements as long as the Convention is applicable to them, except where express provisions to the contrary are contained in the aforesaid or in subsequent agreements, or where more favourable measures have been taken with regard to them by one or other of the Parties to the conflict.

Art. 8. Protected persons may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreements referred to in the foregoing Article, if such there be.

Art. 9. The present Convention shall be applied with the cooperation and under the scrutiny of the Protecting Powers whose duty it is to safeguard the interests of the Parties to the conflict. For this purpose, the Protecting Powers may appoint, apart from their diplomatic or consular staff, delegates from amongst their own nationals or the nationals of other neutral Powers. The said delegates shall be subject to the approval of the Power with which they are to carry out their duties.

The Parties to the conflict shall facilitate to the greatest extent possible the task of the representatives or delegates of the Protecting Powers.

The representatives or delegates of the Protecting Powers shall not in any case exceed their mission under the present Convention.

They shall, in particular, take account of the imperative necessities of security of the State wherein they carry out their duties.

Art. 10. The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of civilian persons and for their relief.

Art. 11. The High Contracting Parties may at any time agree to entrust to an international organization which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers by virtue of the present Convention.

When persons protected by the present Convention do not benefit or cease to benefit, no matter for what reason, by the activities of a Protecting Power or of an organization provided for in the first paragraph above, the Detaining Power shall request a neutral State, or such an organization, to undertake the functions performed under the present Convention by a Protecting Power designated by the Parties to a conflict.

If protection cannot be arranged accordingly, the Detaining Power shall request or shall accept, subject to the provisions of this Article, the offer of the services of a humanitarian organization, such as the International Committee of the Red Cross, to assume the humanitarian functions performed by Protecting Powers under the present Convention.

Any neutral Power or any organization invited by the Power concerned or offering itself for these purposes, shall be required to act with a sense of responsibility towards the Party to the conflict on which persons protected by the present Convention depend, and shall be required to furnish sufficient assurances that it is in a position to undertake the appropriate functions and to discharge them impartially.

No derogation from the preceding provisions shall be made by special agreements between Powers one of which is restricted, even temporarily, in its freedom to negotiate with the other Power or its allies by reason of military events, more particularly where the whole, or a substantial part, of the territory of the said Power is occupied.

Whenever in the present Convention mention is made of a Protecting Power, such mention applies to substitute organizations in the sense of the present Article.

The provisions of this Article shall extend and be adapted to cases of nationals of a neutral State who are in occupied territory or who find themselves in the territory of a belligerent State in which the State of which they are nationals has not normal diplomatic representation.

Art. 12. In cases where they deem it advisable in the interest of protected persons, particularly in cases of disagreement between the Parties to the conflict as to the application or interpretation of the provisions of the present Convention, the Protecting Powers shall lend their good offices with a view to settling the disagreement.

For this purpose, each of the Protecting Powers may, either at the invitation of one Party or on its own initiative, propose to the Parties to the conflict a meeting of their representatives, and in particular of the authorities responsible for protected persons, possibly on neutral territory suitably chosen. The Parties to the conflict shall be bound to give effect to the proposals made to them for this purpose. The Protecting Powers may, if necessary, propose for approval by the Parties to the conflict a person belonging to a neutral Power, or delegated by the International Committee of the Red Cross, who shall be invited to take part in such a meeting.

#### Part II. General Protection of Populations Against Certain Consequences of War

Art. 13. The provisions of Part II cover the whole of the populations of the countries in conflict, without any adverse distinction based, in particular, on race, nationality, religion or political opinion, and are intended to alleviate the sufferings caused by war.

Art. 14. In time of peace, the High Contracting Parties and, after the outbreak of hostilities, the Parties thereto, may establish in their own territory and, if the need arises, in occupied areas, hospital and safety zones and localities so organized as to protect from the effects of war, wounded, sick and aged persons, children under fifteen, expectant mothers and mothers of children under seven.

Upon the outbreak and during the course of hostilities, the Parties concerned may conclude agreements on mutual recognition of the zones and localities they have created. They may for this purpose implement the provisions of the Draft Agreement annexed to the present Convention, with such amendments as they may consider necessary.

The Protecting Powers and the International Committee of the Red Cross are invited to lend their good offices in order to facilitate the institution and recognition of these hospital and safety zones and localities.

Art. 15. Any Party to the conflict may, either direct or through a neutral State or some humanitarian organization, propose to the adverse Party to establish, in the regions where fighting is taking place, neutralized zones intended to shelter from the effects of war the following persons, without distinction:

- (a) wounded and sick combatants or non-combatants;
- (b) civilian persons who take no part in hostilities, and who, while they reside in the zones, perform no work of a military character.

When the Parties concerned have agreed upon the geographical position, administration, food supply and supervision of the proposed neutralized zone, a written agreement shall be concluded and signed by the representatives of the Parties to the conflict. The agreement shall fix the beginning and the duration of the neutralization of the zone.

Art. 16. The wounded and sick, as well as the infirm, and expectant mothers, shall be the object of particular protection and respect.

As far as military considerations allow, each Party to the conflict shall facilitate the steps taken to search for the killed and wounded, to assist the shipwrecked and other persons exposed to grave danger, and to protect them against pillage and ill-treatment.

Art. 17. The Parties to the conflict shall endeavour to conclude local agreements for the removal from besieged or encircled areas, of wounded, sick, infirm, and aged persons, children and maternity cases, and for the passage of ministers of all religions, medical personnel and medical equipment on their way to such areas.

Art. 18. Civilian hospitals organized to give care to the wounded and sick, the infirm and maternity cases, may in no circumstances be the object of attack but shall at all times be respected and protected by the Parties to the conflict.

States which are Parties to a conflict shall provide all civilian hospitals with certificates showing that they are civilian hospitals and that the buildings which they occupy are not used for any purpose which would deprive these hospitals of protection in accordance with Article 19.

Civilian hospitals shall be marked by means of the emblem provided for in Article 38 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, but only if so authorized by the State.

The Parties to the conflict shall, in so far as military considerations permit, take the necessary steps to make the distinctive emblems indicating civilian hospitals clearly visible to the enemy land, air and naval forces in order to obviate the possibility of any hostile action.

In view of the dangers to which hospitals may be exposed by being close to military objectives, it is recommended that such hospitals be situated as far as possible from such objectives.

Art. 19. The protection to which civilian hospitals are entitled shall not cease unless they are used to commit, outside their humanitarian duties, acts harmful to the enemy. Protection may, however, cease only after due warning has been given, naming, in all appropriate cases, a reasonable time limit and after such warning has remained unheeded.

The fact that sick or wounded members of the armed forces are nursed in these hospitals, or the presence of small arms and ammunition taken from such combatants and not yet been handed to the proper service, shall not be considered to be acts harmful to the enemy.

Art. 20. Persons regularly and solely engaged in the operation and administration of civilian hospitals, including the personnel engaged in the search for, removal and transporting of and caring for wounded and sick civilians, the infirm and maternity cases shall be respected and protected.

In occupied territory and in zones of military operations, the above personnel shall be recognizable by means of an identity card certifying their status, bearing the photograph of the holder and embossed with the stamp of the responsible authority, and also by means of a stamped, water-resistant armlet which they shall wear on the left arm while carrying out their duties. This armlet shall be issued by the State and shall bear the emblem provided for in Article 38 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949.

Other personnel who are engaged in the operation and administration of civilian hospitals shall be entitled to respect and protection and to wear the armlet, as provided in and under the

conditions prescribed in this Article, while they are employed on such duties. The identity card shall state the duties on which they are employed.

The management of each hospital shall at all times hold at the disposal of the competent national or occupying authorities an up-to-date list of such personnel.

Art. 21. Convoys of vehicles or hospital trains on land or specially provided vessels on sea, conveying wounded and sick civilians, the infirm and maternity cases, shall be respected and protected in the same manner as the hospitals provided for in Article 18, and shall be marked, with the consent of the State, by the display of the distinctive emblem provided for in Article 38 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949.

Art.22. Aircraft exclusively employed for the removal of wounded and sick civilians, the infirm and maternity cases or for the transport of medical personnel and equipment, shall not be attacked, but shall be respected while flying at heights, times and on routes specifically agreed upon between all the Parties to the conflict concerned.

They may be marked with the distinctive emblem provided for in Article 38 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949.

Unless agreed otherwise, flights over enemy or enemy occupied territory are prohibited.

Such aircraft shall obey every summons to land. In the event of a landing thus imposed, the aircraft with its occupants may continue its flight after examination, if any.

Art. 23. Each High Contracting Party shall allow the free passage of all consignments of medical and hospital stores and objects necessary for religious worship intended only for civilians of another High Contracting Party, even if the latter is its adversary. It shall likewise permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases.

The obligation of a High Contracting Party to allow the free passage of the consignments indicated in the preceding paragraph is subject to the condition that this Party is satisfied that there are no serious reasons for fearing:

(a) that the consignments may be diverted from their destination,

(b) that the control may not be effective, or

(c) that a definite advantage may accrue to the military efforts or economy of the enemy through the substitution of the above-mentioned consignments for goods which would otherwise be provided or produced by the enemy or through the release of such material, services or facilities as would otherwise be required for the production of such goods.

The Power which allows the passage of the consignments indicated in the first paragraph of this Article may make such permission conditional on the distribution to the persons benefited thereby being made under the local supervision of the Protecting Powers.

Such consignments shall be forwarded as rapidly as possible, and the Power which permits their free passage shall have the right to prescribe the technical arrangements under which such passage is allowed.

Art.24. The Parties to the conflict shall take the necessary measures to ensure that children under fifteen, 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.

The Parties to the conflict shall facilitate the reception of such children in a neutral country for the duration of the conflict with the consent of the Protecting Power, if any, and under due safeguards for the observance of the principles stated in the first paragraph.

They shall, furthermore, endeavour to arrange for all children under twelve to be identified by the wearing of identity discs, or by some other means.

Art. 25. All persons in the territory of a Party to the conflict, or in a territory occupied by it, 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. This correspondence shall be forwarded speedily and without undue delay.

If, as a result of circumstances, it becomes difficult or impossible to exchange family correspondence by the ordinary post, the Parties to the conflict concerned shall apply to a neutral intermediary, such as the Central Agency provided for in Article 140, and shall decide in consultation with it how to ensure the fulfilment of their obligations under the best possible conditions, in particular with the cooperation of the National Red Cross (Red Crescent, Red Lion and Sun) Societies.

If the Parties to the conflict deem it necessary to restrict family correspondence, such restrictions shall be confined to the compulsory use of standard forms containing twenty-five freely chosen words, and to the limitation of the number of these forms despatched to one each month.

Art. 26. Each Party to the conflict shall facilitate enquiries made by members of families dispersed owing to the war, with the object of renewing contact with one another and of meeting, if possible. It shall encourage, in particular, the work of organizations engaged on this task provided they are acceptable to it and conform to its security regulations.

### Part III. Status and Treatment of Protected Persons

#### Section I. Provisions common to the territories of the parties to the conflict and to occupied territories

Art. 27. Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity.

Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.

Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion.

However, the Parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war.

Art. 28. The presence of a protected person may not be used to render certain points or areas immune from military operations.

Art. 29. The Party to the conflict in whose hands protected persons may be, is responsible for the treatment accorded to them by its agents, irrespective of any individual responsibility which may be incurred.

Art. 30. Protected persons shall have every facility for making application to the Protecting Powers, the International Committee of the Red Cross, the National Red Cross (Red Crescent,

Red Lion and Sun) Society of the country where they may be, as well as to any organization that might assist them.

These several organizations shall be granted all facilities for that purpose by the authorities, within the bounds set by military or security considerations.

Apart from the visits of the delegates of the Protecting Powers and of the International Committee of the Red Cross, provided for by Article 143, the Detaining or Occupying Powers shall facilitate, as much as possible, visits to protected persons by the representatives of other organizations whose object is to give spiritual aid or material relief to such persons.

Art. 31. No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties.

Art. 32. The High Contracting Parties specifically agree that each of them is prohibited from taking any measure of such a character as to cause the physical suffering or extermination of protected persons in their hands. This prohibition applies not only to murder, torture, corporal punishments, mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person, but also to any other measures of brutality whether applied by civilian or military agents.

Art. 33. No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.

Pillage is prohibited.

Reprisals against protected persons and their property are prohibited.

Art. 34. The taking of hostages is prohibited.

Section II. Aliens in the territory of a party to the conflict

Art. 35. All protected persons who may desire to leave the territory at the outset of, or during a conflict, shall be entitled to do so, unless their departure is contrary to the national interests of the State. The applications of such persons to leave shall be decided in accordance with regularly established procedures and the decision shall be taken as rapidly as possible. Those persons permitted to leave may provide themselves with the necessary funds for their journey and take with them a reasonable amount of their effects and articles of personal use.

If any such person is refused permission to leave the territory, he shall be entitled to have refusal reconsidered, as soon as possible by an appropriate court or administrative board designated by the Detaining Power for that purpose.

Upon request, representatives of the Protecting Power shall, unless reasons of security prevent it, or the persons concerned object, be furnished with the reasons for refusal of any request for permission to leave the territory and be given, as expeditiously as possible, the names of all persons who have been denied permission to leave.

Art. 36. Departures permitted under the foregoing Article shall be carried out in satisfactory conditions as regards safety, hygiene, sanitation and food. All costs in connection therewith, from the point of exit in the territory of the Detaining Power, shall be borne by the country of destination, or, in the case of accommodation in a neutral country, by the Power whose nationals are benefited. The practical details of such movements may, if necessary, be settled by special agreements between the Powers concerned.

The foregoing shall not prejudice such special agreements as may be concluded between Parties to the conflict concerning the exchange and repatriation of their nationals in enemy hands.

Art. 37. Protected persons who are confined pending proceedings or serving a sentence involving loss of liberty, shall during their confinement be humanely treated.

As soon as they are released, they may ask to leave the territory in conformity with the foregoing Articles.

Art. 38. With the exception of special measures authorized by the present Convention, in particularly by Article 27 and 41 thereof, the situation of protected persons shall continue to be regulated, in principle, by the provisions concerning aliens in time of peace. In any case, the following rights shall be granted to them:

(1) they shall be enabled to receive the individual or collective relief that may be sent to them.

(2) they shall, if their state of health so requires, receive medical attention and hospital treatment to the same extent as the nationals of the State concerned.

(3) they shall be allowed to practise their religion and to receive spiritual assistance from ministers of their faith.

(4) if they reside in an area particularly exposed to the dangers of war, they shall be authorized to move from that area to the same extent as the nationals of the State concerned.

(5) children under fifteen years, 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. 39. Protected persons who, as a result of the war, have lost their gainful employment, shall be granted the opportunity to find paid employment. That opportunity shall, subject to security considerations and to the provisions of Article 40, be equal to that enjoyed by the nationals of the Power in whose territory they are.

Where a Party to the conflict applies to a protected person methods of control which result in his being unable to support himself, and especially if such a person is prevented for reasons of security from finding paid employment on reasonable conditions, the said Party shall ensure his support and that of his dependents.

Protected persons may in any case receive allowances from their home country, the Protecting Power, or the relief societies referred to in Article 30.

Art. 40. Protected persons may be compelled to work only to the same extent as nationals of the Party to the conflict in whose territory they are.

If protected persons are of enemy nationality, they may only be compelled to do work which is normally necessary to ensure the feeding, sheltering, clothing, transport and health of human beings and which is not directly related to the conduct of military operations.

In the cases mentioned in the two preceding paragraphs, protected persons compelled to work shall have the benefit of the same working conditions and of the same safeguards as national workers in particular as regards wages, hours of labour, clothing and equipment, previous training and compensation for occupational accidents and diseases.

If the above provisions are infringed, protected persons shall be allowed to exercise their right of complaint in accordance with Article 30.

Art. 41. Should the Power, in whose hands protected persons may be, consider the measures of control mentioned in the present Convention to be inadequate, it may not have recourse to any other measure of control more severe than that of assigned residence or internment, in accordance with the provisions of Articles 42 and 43.

In applying the provisions of Article 39, second paragraph, to the cases of persons required to leave their usual places of residence by virtue of a decision placing them in assigned

residence elsewhere, the Detaining Power shall be guided as closely as possible by the standards of welfare set forth in Part III, Section IV of this Convention.

Art. 42. The internment or placing in assigned residence of protected persons may be ordered only if the security of the Detaining Power makes it absolutely necessary.

If any person, acting through the representatives of the Protecting Power, voluntarily demands internment, and if his situation renders this step necessary, he shall be interned by the Power in whose hands he may be.

Art. 43. Any protected person who has been interned or placed in assigned residence shall be entitled to have such action reconsidered as soon as possible by an appropriate court or administrative board designated by the Detaining Power for that purpose. If the internment or placing in assigned residence is maintained, the court or administrative board shall periodically, and at least twice yearly, give consideration to his or her case, with a view to the favourable amendment of the initial decision, if circumstances permit.

Unless the protected persons concerned object, the Detaining Power shall, as rapidly as possible, give the Protecting Power the names of any protected persons who have been interned or subjected to assigned residence, or who have been released from internment or assigned residence. The decisions of the courts or boards mentioned in the first paragraph of the present Article shall also, subject to the same conditions, be notified as rapidly as possible to the Protecting Power.

Art. 44. In applying the measures of control mentioned in the present Convention, the Detaining Power shall 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.

Art. 45. Protected persons shall not be transferred to a Power which is not a party to the Convention.

This provision shall in no way constitute an obstacle to the repatriation of protected persons, or to their return to their country of residence after the cessation of hostilities.

Protected persons may be transferred by the Detaining Power only to a Power which is a party to the present Convention and after the Detaining Power has satisfied itself of the willingness and ability of such transferee Power to apply the present Convention. If protected persons are transferred under such circumstances, responsibility for the application of the present Convention rests on the Power accepting them, while they are in its custody. Nevertheless, if that Power fails to carry out the provisions of the present Convention in any important respect, the Power by which the protected persons were transferred shall, upon being so notified by the Protecting Power, take effective measures to correct the situation or shall request the return of the protected persons. Such request must be complied with.

In no circumstances shall a protected person be transferred to a country where he or she may have reason to fear persecution for his or her political opinions or religious beliefs.

The provisions of this Article do not constitute an obstacle to the extradition, in pursuance of extradition treaties concluded before the outbreak of hostilities, of protected persons accused of offences against ordinary criminal law.

Art. 46. In so far as they have not been previously withdrawn, restrictive measures taken regarding protected persons shall be cancelled as soon as possible after the close of hostilities. Restrictive measures affecting their property shall be cancelled, in accordance with the law of the Detaining Power, as soon as possible after the close of hostilities.

### Section III. Occupied territories

Art. 47. Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.

Art. 48. Protected persons who are not nationals of the Power whose territory is occupied, may avail themselves of the right to leave the territory subject to the provisions of Article 35, and decisions thereon shall be taken according to the procedure which the Occupying Power shall establish in accordance with the said Article.

Art. 49. Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.

Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.

The Occupying Power undertaking such transfers or evacuations shall ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated.

The Protecting Power shall be informed of any transfers and evacuations as soon as they have taken place.

The Occupying Power shall not detain protected persons in an area particularly exposed to the dangers of war unless the security of the population or imperative military reasons so demand.

The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.

Art. 50. The Occupying Power shall, with the cooperation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children.

The Occupying Power shall take all necessary steps to facilitate the identification of children and the registration of their parentage. It may not, in any case, change their personal status, nor enlist them in formations or organizations subordinate to it.

Should the local institutions be inadequate for the purpose, the Occupying Power 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.

A special section of the Bureau set up in accordance with Article 136 shall be responsible for taking all necessary steps to identify children whose identity is in doubt. Particulars of their parents or other near relatives should always be recorded if available.

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 years, expectant mothers, and mothers of children under seven years.

Art. 51. The Occupying Power may not compel protected persons to serve in its armed or auxiliary forces. No pressure or propaganda which aims at securing voluntary enlistment is permitted.

The Occupying Power may not compel protected persons to work unless they are over eighteen years of age, and then only on work which is necessary either for the needs of the army of occupation, or for the public utility services, or for the feeding, sheltering, clothing, transportation or health of the population of the occupied country. Protected persons may not be compelled to undertake any work which would involve them in the obligation of taking part in military operations. The Occupying Power may not compel protected persons to employ forcible means to ensure the security of the installations where they are performing compulsory labour.

The work shall be carried out only in the occupied territory where the persons whose services have been requisitioned are. Every such person shall, so far as possible, be kept in his usual place of employment. Workers shall be paid a fair wage and the work shall be proportionate to their physical and intellectual capacities. The legislation in force in the occupied country concerning working conditions, and safeguards as regards, in particular, such matters as wages, hours of work, equipment, preliminary training and compensation for occupational accidents and diseases, shall be applicable to the protected persons assigned to the work referred to in this Article.

In no case shall requisition of labour lead to a mobilization of workers in an organization of a military or semi-military character.

Art. 52. No contract, agreement or regulation shall impair the right of any worker, whether voluntary or not and wherever he may be, to apply to the representatives of the Protecting Power in order to request the said Power's intervention.

All measures aiming at creating unemployment or at restricting the opportunities offered to workers in an occupied territory, in order to induce them to work for the Occupying Power, are prohibited.

Art. 53. Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.

Art. 54. The Occupying Power may not alter the status of public officials or judges in the occupied territories, or in any way apply sanctions to or take any measures of coercion or discrimination against them, should they abstain from fulfilling their functions for reasons of conscience.

This prohibition does not prejudice the application of the second paragraph of Article 51. It does not affect the right of the Occupying Power to remove public officials from their posts.

Art. 55. To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate.

The Occupying Power may not requisition foodstuffs, articles or medical supplies available in the occupied territory, except for use by the occupation forces and administration personnel, and then only if the requirements of the civilian population have been taken into account. Subject to the provisions of other international Conventions, the Occupying Power shall make arrangements to ensure that fair value is paid for any requisitioned goods.

The Protecting Power shall, at any time, be at liberty to verify the state of the food and medical supplies in occupied territories, except where temporary restrictions are made necessary by imperative military requirements.

Art. 56. To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring and maintaining, with the cooperation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory, with particular reference to the adoption and application of the prophylactic and preventive measures necessary to combat the spread of contagious diseases and epidemics. Medical personnel of all categories shall be allowed to carry out their duties.

If new hospitals are set up in occupied territory and if the competent organs of the occupied State are not operating there, the occupying authorities shall, if necessary, grant them the recognition provided for in Article 18. In similar circumstances, the occupying authorities shall also grant recognition to hospital personnel and transport vehicles under the provisions of Articles 20 and 21.

In adopting measures of health and hygiene and in their implementation, the Occupying Power shall take into consideration the moral and ethical susceptibilities of the population of the occupied territory.

Art. 57. The Occupying Power may requisition civilian hospitals of hospitals only temporarily and only in cases of urgent necessity for the care of military wounded and sick, and then on condition that suitable arrangements are made in due time for the care and treatment of the patients and for the needs of the civilian population for hospital accommodation.

The material and stores of civilian hospitals cannot be requisitioned so long as they are necessary for the needs of the civilian population.

Art. 58. The Occupying Power shall permit ministers of religion to give spiritual assistance to the members of their religious communities.

The Occupying Power shall also accept consignments of books and articles required for religious needs and shall facilitate their distribution in occupied territory.

Art. 59. If the whole or part of the population of an occupied territory is inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its disposal.

Such schemes, which may be undertaken either by States or by impartial humanitarian organizations such as the International Committee of the Red Cross, shall consist, in particular, of the provision of consignments of foodstuffs, medical supplies and clothing.

All Contracting Parties shall permit the free passage of these consignments and shall guarantee their protection.

A Power granting free passage to consignments on their way to territory occupied by an adverse Party to the conflict shall, however, have the right to search the consignments, to regulate their passage according to prescribed times and routes, and to be reasonably satisfied

through the Protecting Power that these consignments are to be used for the relief of the needy population and are not to be used for the benefit of the Occupying Power.

Art. 60. Relief consignments shall in no way relieve the Occupying Power of any of its responsibilities under Articles 55, 56 and 59. The Occupying Power shall in no way whatsoever divert relief consignments from the purpose for which they are intended, except in cases of urgent necessity, in the interests of the population of the occupied territory and with the consent of the Protecting Power.

Art. 61. The distribution of the relief consignments referred to in the foregoing Articles shall be carried out with the cooperation and under the supervision of the Protecting Power. This duty may also be delegated, by agreement between the Occupying Power and the Protecting Power, to a neutral Power, to the International Committee of the Red Cross or to any other impartial humanitarian body.

Such consignments shall be exempt in occupied territory from all charges, taxes or customs duties unless these are necessary in the interests of the economy of the territory. The Occupying Power shall facilitate the rapid distribution of these consignments.

All Contracting Parties shall endeavour to permit the transit and transport, free of charge, of such relief consignments on their way to occupied territories.

Art. 62. Subject to imperative reasons of security, protected persons in occupied territories shall be permitted to receive the individual relief consignments sent to them.

Art. 63. Subject to temporary and exceptional measures imposed for urgent reasons of security by the Occupying Power:

(a) recognized National Red Cross (Red Crescent, Red Lion and Sun) Societies shall be able to pursue their activities in accordance with Red Cross principles, as defined by the International Red Cross Conferences. Other relief societies shall be permitted to continue their humanitarian activities under similar conditions;

(b) the Occupying Power may not require any changes in the personnel or structure of these societies, which would prejudice the aforesaid activities.

The same principles shall apply to the activities and personnel of special organizations of a non-military character, which already exist or which may be established, for the purpose of ensuring the living conditions of the civilian population by the maintenance of the essential public utility services, by the distribution of relief and by the organization of rescues.

Art. 64. The penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention.

Subject to the latter consideration and to the necessity for ensuring the effective administration of justice, the tribunals of the occupied territory shall continue to function in respect of all offences covered by the said laws.

The Occupying Power may, however, subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfil its obligations under the present Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them.

Art. 65. The penal provisions enacted by the Occupying Power shall not come into force before they have been published and brought to the knowledge of the inhabitants in their own language. The effect of these penal provisions shall not be retroactive.

Art. 66. In case of a breach of the penal provisions promulgated by it by virtue of the second paragraph of Article 64 the Occupying Power may hand over the accused to its properly constituted, non-political military courts, on condition that the said courts sit in the occupied country. Courts of appeal shall preferably sit in the occupied country.

Art. 67. The courts shall apply only those provisions of law which were applicable prior to the offence, and which are in accordance with general principles of law, in particular the principle that the penalty shall be proportionate to the offence. They shall take into consideration the fact the accused is not a national of the Occupying Power.

Art. 68. Protected persons who commit an offence which is solely intended to harm the Occupying Power, but which does not constitute an attempt on the life or limb of members of the occupying forces or administration, nor a grave collective danger, nor seriously damage the property of the occupying forces or administration or the installations used by them, shall be liable to internment or simple imprisonment, provided the duration of such internment or imprisonment is proportionate to the offence committed. Furthermore, internment or imprisonment shall, for such offences, be the only measure adopted for depriving protected persons of liberty. The courts provided for under Article 66 of the present Convention may at their discretion convert a sentence of imprisonment to one of internment for the same period.

The penal provisions promulgated by the Occupying Power in accordance with Articles 64 and 65 may impose the death penalty against a protected person only in cases where the person is guilty of espionage, of serious acts of sabotage against the military installations of the Occupying Power or of intentional offences which have caused the death of one or more persons, provided that such offences were punishable by death under the law of the occupied territory in force before the occupation began.

The death penalty may not be pronounced against a protected person unless the attention of the court has been particularly called to the fact that since the accused is not a national of the Occupying Power, he is not bound to it by any duty of allegiance.

In any case, the death penalty may not be pronounced on a protected person who was under eighteen years of age at the time of the offence.

Art. 69. In all cases the duration of the period during which a protected person accused of an offence is under arrest awaiting trial or punishment shall be deducted from any period of imprisonment of awarded.

Art. 70. Protected persons shall not be arrested, prosecuted or convicted by the Occupying Power for acts committed or for opinions expressed before the occupation, or during a temporary interruption thereof, with the exception of breaches of the laws and customs of war.

Nationals of the occupying Power who, before the outbreak of hostilities, have sought refuge in the territory of the occupied State, shall not be arrested, prosecuted, convicted or deported from the occupied territory, except for offences committed after the outbreak of hostilities, or for offences under common law committed before the outbreak of hostilities which, according to the law of the occupied State, would have justified extradition in time of peace.

Art. 71. No sentence shall be pronounced by the competent courts of the Occupying Power except after a regular trial.

Accused persons who are prosecuted by the Occupying Power shall be promptly informed, in writing, in a language which they understand, of the particulars of the charges preferred

against them, and shall be brought to trial as rapidly as possible. The Protecting Power shall be informed of all proceedings instituted by the Occupying Power against protected persons in respect of charges involving the death penalty or imprisonment for two years or more; it shall be enabled, at any time, to obtain information regarding the state of such proceedings. Furthermore, the Protecting Power shall be entitled, on request, to be furnished with all particulars of these and of any other proceedings instituted by the Occupying Power against protected persons.

The notification to the Protecting Power, as provided for in the second paragraph above, shall be sent immediately, and shall in any case reach the Protecting Power three weeks before the date of the first hearing. Unless, at the opening of the trial, evidence is submitted that the provisions of this Article are fully complied with, the trial shall not proceed. The notification shall include the following particulars:

- (a) description of the accused;
- (b) place of residence or detention;
- (c) specification of the charge or charges (with mention of the penal provisions under which it is brought);
- (d) designation of the court which will hear the case;
- (e) place and date of the first hearing.

Art. 72. Accused persons shall have the right to present evidence necessary to their defence and may, in particular, call witnesses. They shall have the right to be assisted by a qualified advocate or counsel of their own choice, who shall be able to visit them freely and shall enjoy the necessary facilities for preparing the defence.

Failing a choice by the accused, the Protecting Power may provide him with an advocate or counsel. When an accused person has to meet a serious charge and the Protecting Power is not functioning, the Occupying Power, subject to the consent of the accused, shall provide an advocate or counsel.

Accused persons shall, unless they freely waive such assistance, be aided by an interpreter, both during preliminary investigation and during the hearing in court. They shall have the right at any time to object to the interpreter and to ask for his replacement.

Art.73. A convicted person shall have the right of appeal provided for by the laws applied by the court. He shall be fully informed of his right to appeal or petition and of the time limit within which he may do so.

The penal procedure provided in the present Section shall apply, as far as it is applicable, to appeals. Where the laws applied by the Court make no provision for appeals, the convicted person shall have the right to petition against the finding and sentence to the competent authority of the Occupying Power.

Art. 74. Representatives of the Protecting Power shall have the right to attend the trial of any protected person, unless the hearing has, as an exceptional measure, to be held in camera in the interests of the security of the Occupying Power, which shall then notify the Protecting Power. A notification in respect of the date and place of trial shall be sent to the Protecting Power.

Any judgement involving a sentence of death, or imprisonment for two years or more, shall be communicated, with the relevant grounds, as rapidly as possible to the Protecting Power. The notification shall contain a reference to the notification made under Article 71 and, in the case of sentences of imprisonment, the name of the place where the sentence is to be served.

A record of judgements other than those referred to above shall be kept by the court and shall be open to inspection by representatives of the Protecting Power. Any period allowed for appeal in the case of sentences involving the death penalty, or imprisonment of two years or more, shall not run until notification of judgement has been received by the Protecting Power.

Art. 75. In no case shall persons condemned to death be deprived of the right of petition for pardon or reprieve.

No death sentence shall be carried out before the expiration of a period of a least six months from the date of receipt by the Protecting Power of the notification of the final judgment confirming such death sentence, or of an order denying pardon or reprieve.

The six months period of suspension of the death sentence herein prescribed may be reduced in individual cases in circumstances of grave emergency involving an organized threat to the security of the Occupying Power or its forces, provided always that the Protecting Power is notified of such reduction and is given reasonable time and opportunity to make representations to the competent occupying authorities in respect of such death sentences.

Art. 76. Protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein. They shall, if possible, be separated from other detainees and shall enjoy conditions of food and hygiene which will be sufficient to keep them in good health, and which will be at least equal to those obtaining in prisons in the occupied country.

They shall receive the medical attention required by their state of health.

They shall also have the right to receive any spiritual assistance which they may require.

Women shall be confined in separate quarters and shall be under the direct supervision of women.

Proper regard shall be paid to the special treatment due to minors.

Protected persons who are detained shall have the right to be visited by delegates of the Protecting Power and of the International Committee of the Red Cross, in accordance with the provisions of Article 143.

Such persons shall have the right to receive at least one relief parcel monthly.

Art. 77. Protected persons who have been accused of offences or convicted by the courts in occupied territory, shall be handed over at the close of occupation, with the relevant records, to the authorities of the liberated territory.

Art. 78. If the Occupying Power considers it necessary, for imperative reasons of security, to take safety measures concerning protected persons, it may, at the most, subject them to assigned residence or to internment.

Decisions regarding such assigned residence or internment shall be made according to a regular procedure to be prescribed by the Occupying Power in accordance with the provisions of the present Convention. This procedure shall include the right of appeal for the parties concerned. Appeals shall be decided with the least possible delay. In the event of the decision being upheld, it shall be subject to periodical review, if possible every six months, by a competent body set up by the said Power.

Protected persons made subject to assigned residence and thus required to leave their homes shall enjoy the full benefit of Article 39 of the present Convention.

Section IV. Regulations for the treatment of internees

### **Chapter I. General provisions**

Art. 79. The Parties to the conflict shall not intern protected persons, except in accordance with the provisions of Articles 41, 42, 43, 68 and 78.

Art. 80. Internees shall retain their full civil capacity and shall exercise such attendant rights as may be compatible with their status.

Art. 81. Parties to the conflict who intern protected persons shall be bound to provide free of charge for their maintenance, and to grant them also the medical attention required by their state of health.

No deduction from the allowances, salaries or credits due to the internees shall be made for the repayment of these costs.

The Detaining Power shall provide for the support of those dependent on the internees, if such dependents are without adequate means of support or are unable to earn a living.

Art.82. The Detaining Power shall, as far as possible, accommodate the internees according to their nationality, language and customs. Internees who are nationals of the same country shall not be separated merely because they have different languages.

Throughout the duration of their internment, members of the same family, and in particular parents and children, shall be lodged together in the same place of internment, except when separation of a temporary nature is necessitated for reasons of employment or health or for the purposes of enforcement of the provisions of Chapter IX of the present Section. Internees may request that their children who are left at liberty without parental care shall be interned with them.

Wherever possible, interned members of the same family shall be housed in the same premises and given separate accommodation from other internees, together with facilities for leading a proper family life.

### **Chapter II. Places of Internment**

Art. 83. The Detaining Power shall not set up places of internment in areas particularly exposed to the dangers of war.

The Detaining Power shall give the enemy Powers, through the intermediary of the Protecting Powers, all useful information regarding the geographical location of places of internment.

Whenever military considerations permit, internment camps shall be indicated by the letters IC, placed so as to be clearly visible in the daytime from the air. The Powers concerned may, however, agree upon any other system of marking. No place other than an internment camp shall be marked as such.

Art.84. Internees shall be accommodated and administered separately from prisoners of war and from persons deprived of liberty for any other reason.

Art. 85. The Detaining Power is bound to take all necessary and possible measures to ensure that protected persons shall, from the outset of their internment, be accommodated in buildings or quarters which afford every possible safeguard as regards hygiene and health, and provide efficient protection against the rigours of the climate and the effects of the war. In no case shall permanent places of internment be situated in unhealthy areas or in districts, the climate of which is injurious to the internees. In all cases where the district, in which a protected person is temporarily interned, is in an unhealthy area or has a climate which is harmful to his health, he shall be removed to a more suitable place of internment as rapidly as circumstances permit.

The premises shall be fully protected from dampness, adequately heated and lighted, in particular between dusk and lights out. The sleeping quarters shall be sufficiently spacious and well ventilated, and the internees shall have suitable bedding and sufficient blankets, account being taken of the climate, and the age, sex, and state of health of the internees.

Internees shall have for their use, day and night, sanitary conveniences which conform to the rules of hygiene, and are constantly maintained in a state of cleanliness. They shall be provided with sufficient water and soap for their daily personal toilet and for washing their personal laundry; installations and facilities necessary for this purpose shall be granted to them. Showers or baths shall also be available. The necessary time shall be set aside for washing and for cleaning.

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. 86. The Detaining Power shall place at the disposal of interned persons, of whatever denomination, premises suitable for the holding of their religious services.

Art. 87. Canteens shall be installed in every place of internment, except where other suitable facilities are available. Their purpose shall be to enable internees to make purchases, at prices not higher than local market prices, of foodstuffs and articles of everyday use, including soap and tobacco, such as would increase their personal well-being and comfort.

Profits made by canteens shall be credited to a welfare fund to be set up for each place of internment, and administered for the benefit of the internees attached to such place of internment. The Internee Committee provided for in Article 102 shall have the right to check the management of the canteen and of the said fund.

When a place of internment is closed down, the balance of the welfare fund shall be transferred to the welfare fund of a place of internment for internees of the same nationality, or, if such a place does not exist, to a central welfare fund which shall be administered for the benefit of all internees remaining in the custody of the Detaining Power. In case of a general release, the said profits shall be kept by the Detaining Power, subject to any agreement to the contrary between the Powers concerned.

Art. 88. In all places of internment exposed to air raids and other hazards of war, shelters adequate in number and structure to ensure the necessary protection shall be installed. In case of alarms, the measures internees shall be free to enter such shelters as quickly as possible, excepting those who remain for the protection of their quarters against the aforesaid hazards.

Any protective measures taken in favour of the population shall also apply to them.

All due precautions must be taken in places of internment against the danger of fire.

### **Chapter III. Food and Clothing**

Art. 89. Daily food rations for internees shall be sufficient in quantity, quality and variety to keep internees in a good state of health and prevent the development of nutritional deficiencies. Account shall also be taken of the customary diet of the internees.

Internees shall also be given the means by which they can prepare for themselves any additional food in their possession.

Sufficient drinking water shall be supplied to internees. The use of tobacco shall be permitted. Internees who work shall receive additional rations in proportion to the kind of labour which they perform.

Expectant and nursing mothers and children under fifteen years of age, shall be given additional food, in proportion to their physiological needs.

Art. 90. When taken into custody, internees shall be given all facilities to provide themselves with the necessary clothing, footwear and change of underwear, and later on, to procure further supplies if required. Should any internees not have sufficient clothing, account being taken of the climate, and be unable to procure any, it shall be provided free of charge to them by the Detaining Power.

The clothing supplied by the Detaining Power to internees and the outward markings placed on their own clothes shall not be ignominious nor expose them to ridicule.

Workers shall receive suitable working outfits, including protective clothing, whenever the nature of their work so requires.

#### **Chapter IV. Hygiene and Medical Attention**

Art. 91. Every place of internment shall have an adequate infirmary, under the direction of a qualified doctor, where internees may have the attention they require, as well as an appropriate diet. Isolation wards shall be set aside for cases of contagious or mental diseases. Maternity cases and internees suffering from serious diseases, or whose condition requires special treatment, a surgical operation or hospital care, 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.

Internees shall, for preference, have the attention of medical personnel of their own nationality.

Internees may not be prevented from presenting themselves to the medical authorities for examination. The medical authorities of the Detaining Power shall, upon request, issue to every internee who has undergone treatment an official certificate showing the nature of his illness or injury, and the duration and nature of the treatment given. A duplicate of this certificate shall be forwarded to the Central Agency provided for in Article 140.

Treatment, including the provision of any apparatus necessary for the maintenance of internees in good health, particularly dentures and other artificial appliances and spectacles, shall be free of charge to the internee.

Art. 92. Medical inspections of internees shall be made at least once a month. Their purpose shall be, in particular, to supervise the general state of health, nutrition and cleanliness of internees, and to detect contagious diseases, especially tuberculosis, malaria, and venereal diseases. Such inspections shall include, in particular, the checking of weight of each internee and, at least once a year, radioscopic examination.

#### **Chapter V. Religious, Intellectual and Physical Activities**

Art. 93. Internees shall enjoy complete latitude in the exercise of their religious duties, including attendance at the services of their faith, on condition that they comply with the disciplinary routine prescribed by the detaining authorities.

Ministers of religion who are interned shall be allowed to minister freely to the members of their community. For this purpose the Detaining Power shall ensure their equitable allocation amongst the various places of internment in which there are internees speaking the same language and belonging to the same religion. Should such ministers be too few in number, the Detaining Power shall provide them with the necessary facilities, including means of transport, for moving from one place to another, and they shall be authorized to visit any internees who are in hospital. Ministers of religion shall be at liberty to correspond on

matters concerning their ministry with the religious authorities in the country of detention and, as far as possible, with the international religious organizations of their faith. Such correspondence shall not be considered as forming a part of the quota mentioned in Article 107. It shall, however, be subject to the provisions of Article 112.

When internees do not have at their disposal the assistance of ministers of their faith, or should these latter be too few in number, the local religious authorities of the same faith may appoint, in agreement with the Detaining Power, a minister of the internees' faith or, if such a course is feasible from a denominational point of view, a minister of similar religion or a qualified layman. The latter shall enjoy the facilities granted to the ministry he has assumed. Persons so appointed shall comply with all regulations laid down by the Detaining Power in the interests of discipline and security.

Art. 94. The Detaining Power shall encourage intellectual, educational and recreational pursuits, sports and games amongst internees, whilst leaving them free to take part in them or not. It shall take all practicable measures to ensure the exercise thereof, in particular by providing suitable premises.

All possible facilities shall be granted to internees to continue their studies or to take up new subjects. The education of children and young people shall be ensured; they shall be allowed to attend schools either within the place of internment or outside.

Internees shall be given opportunities for physical exercise, sports and outdoor games. For this purpose, sufficient open spaces shall be set aside in all places of internment. Special playgrounds shall be reserved for children and young people.

Art. 95. The Detaining Power shall not employ internees as workers, unless they so desire. Employment which, if undertaken under compulsion by a protected person not in internment, would involve a breach of Articles 40 or 51 of the present Convention, and employment on work which is of a degrading or humiliating character are in any case prohibited.

After a working period of six weeks, internees shall be free to give up work at any moment, subject to eight days' notice.

These provisions constitute no obstacle to the right of the Detaining Power to employ interned doctors, dentists and other medical personnel in their professional capacity on behalf of their fellow internees, or to employ internees for administrative and maintenance work in places of internment and to detail such persons for work in the kitchens or for other domestic tasks, or to require such persons to undertake duties connected with the protection of internees against aerial bombardment or other war risks. No internee may, however, be required to perform tasks for which he is, in the opinion of a medical officer, physically unsuited.

The Detaining Power shall take entire responsibility for all working conditions, for medical attention, for the payment of wages, and for ensuring that all employed internees receive compensation for occupational accidents and diseases. The standards prescribed for the said working conditions and for compensation shall be in accordance with the national laws and regulations, and with the existing practice; they shall in no case be inferior to those obtaining for work of the same nature in the same district. Wages for work done shall be determined on an equitable basis by special agreements between the internees, the Detaining Power, and, if the case arises, employers other than the Detaining Power to provide for free maintenance of internees and for the medical attention which their state of health may require. Internees permanently detailed for categories of work mentioned in the third paragraph of this Article,

shall be paid fair wages by the Detaining Power. The working conditions and the scale of compensation for occupational accidents and diseases to internees, thus detailed, shall not be inferior to those applicable to work of the same nature in the same district.

Art.96. All labour detachments shall remain part of and dependent upon a place of internment. The competent authorities of the Detaining Power and the commandant of a place of internment shall be responsible for the observance in a labour detachment of the provisions of the present Convention. The commandant shall keep an up-to-date list of the labour detachments subordinate to him and shall communicate it to the delegates of the Protecting Power, of the International Committee of the Red Cross and of other humanitarian organizations who may visit the places of internment.

#### **Chapter VI. Personal Property and Financial Resources**

Art. 97. Internees shall be permitted to retain articles of personal use. Monies, cheques, bonds, etc., and valuables in their possession may not be taken from them except in accordance with established procedure. Detailed receipts shall be given therefor.

The amounts shall be paid into the account of every internee as provided for in Article 98. Such amounts may not be converted into any other currency unless legislation in force in the territory in which the owner is interned so requires or the internee gives his consent.

Articles which have above all a personal or sentimental value may not be taken away.

A woman internee shall not be searched except by a woman.

On release or repatriation, internees shall be given all articles, monies or other valuables taken from them during internment and shall receive in currency the balance of any credit to their accounts kept in accordance with Article 98, with the exception of any articles or amounts withheld by the Detaining Power by virtue of its legislation in force. If the property of an internee is so withheld, the owner shall receive a detailed receipt.

Family or identity documents in the possession of internees may not be taken away without a receipt being given. At no time shall internees be left without identity documents. If they have none, they shall be issued with special documents drawn up by the detaining authorities, which will serve as their identity papers until the end of their internment.

Internees may keep on their persons a certain amount of money, in cash or in the shape of purchase coupons, to enable them to make purchases.

Art. 98. All internees shall receive regular allowances, sufficient to enable them to purchase goods and articles, such as tobacco, toilet requisites, etc. Such allowances may take the form of credits or purchase coupons.

Furthermore, internees may receive allowances from the Power to which they owe allegiance, the Protecting Powers, the organizations which may assist them, or their families, as well as the income on their property in accordance with the law of the Detaining Power. The amount of allowances granted by the Power to which they owe allegiance shall be the same for each category of internees (infirm, sick, pregnant women, etc.) but may not be allocated by that Power or distributed by the Detaining Power on the basis of discriminations between internees which are prohibited by Article 27 of the present Convention.

The Detaining Power shall open a regular account for every internee, to which shall be credited the allowances named in the present Article, the wages earned and the remittances received, together with such sums taken from him as may be available under the legislation in force in the territory in which he is interned. Internees shall be granted all facilities consistent with the legislation in force in such territory to make remittances to their families

and to other dependants. They may draw from their accounts the amounts necessary for their personal expenses, within the limits fixed by the Detaining Power. They shall at all times be afforded reasonable facilities for consulting and obtaining copies of their accounts. A statement of accounts shall be furnished to the Protecting Power, on request, and shall accompany the internee in case of transfer.

#### **Chapter VII. Administration and Discipline**

Art. 99. Every place of internment shall be put under the authority of a responsible officer, chosen from the regular military forces or the regular civil administration of the Detaining Power. The officer in charge of the place of internment must have in his possession a copy of the present Convention in the official language, or one of the official languages, of his country and shall be responsible for its application. The staff in control of internees shall be instructed in the provisions of the present Convention and of the administrative measures adopted to ensure its application.

The text of the present Convention and the texts of special agreements concluded under the said Convention shall be posted inside the place of internment, in a language which the internees understand, or shall be in the possession of the Internee Committee.

Regulations, orders, notices and publications of every kind shall be communicated to the internees and posted inside the places of internment, in a language which they understand.

Every order and command addressed to internees individually must, likewise, be given in a language which they understand.

Art. 100. The disciplinary regime in places of internment shall be consistent with humanitarian principles, and shall in no circumstances include regulations imposing on internees any physical exertion dangerous to their health or involving physical or moral victimization. Identification by tattooing or imprinting signs or markings on the body, is prohibited.

In particular, prolonged standing and roll-calls, punishment drill, military drill and manoeuvres, or the reduction of food rations, are prohibited.

Art. 101. Internees shall have the right to present to the authorities in whose power they are, any petition with regard to the conditions of internment to which they are subjected.

They shall also have the right to apply without restriction through the Internee Committee or, if they consider it necessary, direct to the representatives of the Protecting Power, in order to indicate to them any points on which they may have complaints to make with regard to the conditions of internment.

Such petitions and complaints shall be transmitted forthwith and without alteration, and even if the latter are recognized to be unfounded, they may not occasion any punishment.

Periodic reports on the situation in places of internment and as to the needs of the internees may be sent by the Internee Committees to the representatives of the Protecting Powers.

Art. 102. In every place of internment, the internees shall freely elect by secret ballot every six months, the members of a Committee empowered to represent them before the Detaining and the Protecting Powers, the International Committee of the Red Cross and any other organization which may assist them. The members of the Committee shall be eligible for re-election.

Internees so elected shall enter upon their duties after their election has been approved by the detaining authorities. The reasons for any refusals or dismissals shall be communicated to the Protecting Powers concerned.

Art. 103. The Internee Committees shall further the physical, spiritual and intellectual well-being of the internees.

In case the internees decide, in particular, to organize a system of mutual assistance amongst themselves, this organization would be within the competence of the Committees in addition to the special duties entrusted to them under other provisions of the present Convention.

Art. 104. Members of Internee Committees shall not be required to perform any other work, if the accomplishment of their duties is rendered more difficult thereby.

Members of Internee Committees may appoint from amongst the internees such assistants as they may require. All material facilities shall be granted to them, particularly a certain freedom of movement necessary for the accomplishment of their duties (visits to labour detachments, receipt of supplies, etc.).

All facilities shall likewise be accorded to members of Internee Committees for communication by post and telegraph with the detaining authorities, the Protecting Powers, the International Committee of the Red Cross and their delegates, and with the organizations which give assistance to internees. Committee members in labour detachments shall enjoy similar facilities for communication with their Internee Committee in the principal place of internment. Such communications shall not be limited, nor considered as forming a part of the quota mentioned in Article 107.

Members of Internee Committees who are transferred shall be allowed a reasonable time to acquaint their successors with current affairs.

#### Chapter VIII. Relations with the Exterior

Art. 105. Immediately upon interning protected persons, the Detaining Powers shall inform them, the Power to which they owe allegiance and their Protecting Power of the measures taken for executing the provisions of the present Chapter. The Detaining Powers shall likewise inform the Parties concerned of any subsequent modifications of such measures.

Art. 106. As soon as he is interned, or at the latest not more than one week after his arrival in a place of internment, and likewise in cases of sickness or transfer to another place of internment or to a hospital, every internee shall be enabled to send direct to his family, on the one hand, and to the Central Agency provided for by Article 140, on the other, an internment card similar, if possible, to the model annexed to the present Convention, informing his relatives of his detention, address and state of health. The said cards shall be forwarded as rapidly as possible and may not be delayed in any way.

Art. 107. Internees shall be allowed to send and receive letters and cards. If the Detaining Power deems it necessary to limit the number of letters and cards sent by each internee, the said number shall not be less than two letters and four cards monthly; these shall be drawn up so as to conform as closely as possible to the models annexed to the present Convention. If limitations must be placed on the correspondence addressed to internees, they may be ordered only by the Power to which such internees owe allegiance, possibly at the request of the Detaining Power. Such letters and cards must be conveyed with reasonable despatch; they may not be delayed or retained for disciplinary reasons.

Internees who have been a long time without news, or who find it impossible to receive news from their relatives, or to give them news by the ordinary postal route, as well as those who are at a considerable distance from their homes, shall be allowed to send telegrams, the charges being paid by them in the currency at their disposal. They shall likewise benefit by this provision in cases which are recognized to be urgent.

As a rule, internees' mail shall be written in their own language. The Parties to the conflict may authorize correspondence in other languages.

Art. 108. Internees shall be allowed to receive, by post or by any other means, individual parcels or collective shipments containing in particular foodstuffs, clothing, medical supplies, as well as books and objects of a devotional, educational or recreational character which may meet their needs. Such shipments shall in no way free the Detaining Power from the obligations imposed upon it by virtue of the present Convention.

Should military necessity require the quantity of such shipments to be limited, due notice thereof shall be given to the Protecting Power and to the International Committee of the Red Cross, or to any other organization giving assistance to the internees and responsible for the forwarding of such shipments.

The conditions for the sending of individual parcels and collective shipments shall, if necessary, be the subject of special agreements between the Powers concerned, which may in no case delay the receipt by the internees of relief supplies. Parcels of clothing and foodstuffs may not include books. Medical relief supplies shall, as a rule, be sent in collective parcels.

Art. 109. In the absence of special agreements between Parties to the conflict regarding the conditions for the receipt and distribution of collective relief shipments, the regulations concerning collective relief which are annexed to the present Convention shall be applied.

The special agreements provided for above shall in no case restrict the right of Internee Committees to take possession of collective relief shipments intended for internees, to undertake their distribution and to dispose of them in the interests of the recipients. Nor shall such agreements restrict the right of representatives of the Protecting Powers, the International Committee of the Red Cross, or any other organization giving assistance to internees and responsible for the forwarding of collective shipments, to supervise their distribution to the recipients.

Art. 110. An relief shipments for internees shall be exempt from import, customs and other dues.

All matter sent by mail, including relief parcels sent by parcel post and remittances of money, addressed from other countries to internees or despatched by them through the post office, either direct or through the Information Bureaux provided for in Article 136 and the Central Information Agency provided for in Article 140, shall be exempt from all postal dues both in the countries of origin and destination and in intermediate countries. To this end, in particular, the exemption provided by the Universal Postal Convention of 1947 and by the agreements of the Universal Postal Union in favour of civilians of enemy nationality detained in camps or civilian prisons, shall be extended to the other interned persons protected by the present Convention. The countries not signatory to the above-mentioned agreements shall be bound to grant freedom from charges in the same circumstances.

The cost of transporting relief shipments which are intended for internees and which, by reason of their weight or any other cause, cannot be sent through the post office, shall be borne by the Detaining Power in all the territories under its control. Other Powers which are Parties to the present Convention shall bear the cost of transport in their respective territories. Costs connected with the transport of such shipments, which are not covered by the above paragraphs, shall be charged to the senders.

The High Contracting Parties shall endeavour to reduce, so far as possible, the charges for telegrams sent by internees, or addressed to them.

Art. 111. Should military operations prevent the Powers concerned from fulfilling their obligation to ensure the conveyance of the mail and relief shipments provided for in Articles 106, 107, 108 and 113, the Protecting Powers concerned, the International Committee of the Red Cross or any other organization duly approved by the Parties to the conflict may undertake the conveyance of such shipments by suitable means (rail, motor vehicles, vessels or aircraft, etc.). For this purpose, the High Contracting Parties shall endeavour to supply them with such transport, and to allow its circulation, especially by granting the necessary safe-conducts.

Such transport may also be used to convey:

(a) correspondence, lists and reports exchanged between the Central Information Agency referred to in Article 140 and the National Bureaux referred to in Article 136;

(b) correspondence and reports relating to internees which the Protecting Powers, the International Committee of the Red Cross or any other organization assisting the internees exchange either with their own delegates or with the Parties to the conflict.

These provisions in no way detract from the right of any Party to the conflict to arrange other means of transport if it should so prefer, nor preclude the granting of safe-conducts, under mutually agreed conditions, to such means of transport.

The costs occasioned by the use of such means of transport shall be borne, in proportion to the importance of the shipments, by the Parties to the conflict whose nationals are benefited thereby.

Art. 112. The censoring of correspondence addressed to internees or despatched by them shall be done as quickly as possible.

The examination of consignments intended for internees shall not be carried out under conditions that will expose the goods contained in them to deterioration. It shall be done in the presence of the addressee, or of a fellow-internee duly delegated by him. The delivery to internees of individual or collective consignments shall not be delayed under the pretext of difficulties of censorship.

Any prohibition of correspondence ordered by the Parties to the conflict either for military or political reasons, shall be only temporary and its duration shall be as short as possible.

Art. 113. The Detaining Powers shall provide all reasonable execution facilities for the transmission, through the Protecting Power or the Central Agency provided for in Article 140, or as otherwise required, of wills, powers of attorney, letters of authority, or any other documents intended for internees or despatched by them.

In all cases the Detaining Powers shall facilitate the execution and authentication in due legal form of such documents on behalf of internees, in particular by allowing them to consult a lawyer.

Art. 114. The Detaining Power shall afford internees all facilities to enable them to manage their property, provided this is not incompatible with the conditions of internment and the law which is applicable. For this purpose, the said Power may give them permission to leave the place of internment in urgent cases and if circumstances allow.

Art. 115. In all cases where an internee is a party to proceedings in any court, the Detaining Power shall, if he so requests, cause the court to be informed of his detention and shall, within legal limits, ensure that all necessary steps are taken to prevent him from being in any way prejudiced, by reason of his internment, as regards the preparation and conduct of his case or as regards the execution of any judgment of the court.

Art.116. Every internee shall be allowed to receive visitors, especially near relatives, at regular intervals and as frequently as possible.

As far as is possible, internees shall be permitted to visit their homes in urgent cases, particularly in cases of death or serious illness of relatives.

### **Chapter IX. Penal and Disciplinary Sanctions**

Art. 117. Subject to the provisions of the present Chapter, the laws in force in the territory in which they are detained will continue to apply to internees who commit offences during internment.

If general laws, regulations or orders declare acts committed by internees to be punishable, whereas the same acts are not punishable when committed by persons who are not internees, such acts shall entail disciplinary punishments only.

No internee may be punished more than once for the same act, or on the same count.

Art. 118. The courts or authorities shall in passing sentence take as far as possible into account the fact that the defendant is not a national of the Detaining Power. They shall be free to reduce the penalty prescribed for the offence with which the internee is charged and shall not be obliged, to this end, to apply the minimum sentence prescribed.

Imprisonment in premises without daylight, and, in general, all forms of cruelty without exception are forbidden.

Internees who have served disciplinary or judicial sentences shall not be treated differently from other internees.

The duration of preventive detention undergone by an internee shall be deducted from any disciplinary or judicial penalty involving confinement to which he may be sentenced.

Internee Committees shall be informed of all judicial proceedings instituted against internees whom they represent, and of their result.

Art. 119. The disciplinary punishments applicable to internees shall be the following:

(1) a fine which shall not exceed 50 per cent of the wages which the internee would otherwise receive under the provisions of Article 95 during a period of not more than thirty days.

(2) discontinuance of privileges granted over and above the treatment provided for by the present Convention

(3) fatigue duties, not exceeding two hours daily, in connection with the maintenance of the place of internment.

(4) confinement.

In no case shall disciplinary penalties be inhuman, brutal or dangerous for the health of internees. Account shall be taken of the internee's age, sex and state of health.

The duration of any single punishment shall in no case exceed a maximum of thirty consecutive days, even if the internee is answerable for several breaches of discipline when his case is dealt with, whether such breaches are connected or not.

Art. 120. Internees who are recaptured after having escaped or when attempting to escape, shall be liable only to disciplinary punishment in respect of this act, even if it is a repeated offence.

Article 118, paragraph 3, notwithstanding, internees punished as a result of escape or attempt to escape, may be subjected to special surveillance, on condition that such surveillance does not affect the state of their health, that it is exercised in a place of internment and that it does not entail the abolition of any of the safeguards granted by the present Convention.

Internees who aid and abet an escape or attempt to escape, shall be liable on this count to disciplinary punishment only.

Art. 121. Escape, or attempt to escape, even if it is a repeated offence, shall not be deemed an aggravating circumstance in cases where an internee is prosecuted for offences committed during his escape.

The Parties to the conflict shall ensure that the competent authorities exercise leniency in deciding whether punishment inflicted for an offence shall be of a disciplinary or judicial nature, especially in respect of acts committed in connection with an escape, whether successful or not.

Art. 122. Acts which constitute offences against discipline shall be investigated immediately. This rule shall be applied, in particular, in cases of escape or attempt to escape. Recaptured internees shall be handed over to the competent authorities as soon as possible.

In cases of offences against discipline, confinement awaiting trial shall be reduced to an absolute minimum for all internees, and shall not exceed fourteen days. Its duration shall in any case be deducted from any sentence of confinement.

The provisions of Articles 124 and 125 shall apply to internees who are in confinement awaiting trial for offences against discipline.

Art. 123. Without prejudice to the competence of courts and higher authorities, disciplinary punishment may be ordered only by the commandant of the place of internment, or by a responsible officer or official who replaces him, or to whom he has delegated his disciplinary powers.

Before any disciplinary punishment is awarded, the accused internee shall be given precise information regarding the offences of which he is accused, and given an opportunity of explaining his conduct and of defending himself. He shall be permitted, in particular, to call witnesses and to have recourse, if necessary, to the services of a qualified interpreter. The decision shall be announced in the presence of the accused and of a member of the Internee Committee.

The period elapsing between the time of award of a disciplinary punishment and its execution shall not exceed one month.

When an internee is awarded a further disciplinary punishment, a period of at least three days shall elapse between the execution of any two of the punishments, if the duration of one of these is ten days or more.

A record of disciplinary punishments shall be maintained by the commandant of the place of internment and shall be open to inspection by representatives of the Protecting Power.

Art. 124. Internees shall not in any case be transferred to penitentiary establishments (prisons, penitentiaries, convict prisons, etc.) to undergo disciplinary punishment therein.

The premises in which disciplinary punishments are undergone shall conform to sanitary requirements: they shall in particular be provided with adequate bedding. Internees undergoing punishment shall be enabled to keep themselves in a state of cleanliness.

Women internees undergoing disciplinary punishment shall be confined in separate quarters from male internees and shall be under the immediate supervision of women.

Art. 125. Internees awarded disciplinary punishment shall be allowed to exercise and to stay in the open air at least two hours daily.

They shall be allowed, if they so request, to be present at the daily medical inspections. They shall receive the attention which their state of health requires and, if necessary, shall be removed to the infirmary of the place of internment or to a hospital.

They shall have permission to read and write, likewise to send and receive letters. Parcels and remittances of money, however, may be withheld from them until the completion of their punishment; such consignments shall meanwhile be entrusted to the Internee Committee, who will hand over to the infirmary the perishable goods contained in the parcels.

No internee given a disciplinary punishment may be deprived of the benefit of the provisions of Articles 107 and 143 of the present Convention.

Art. 126. The provisions of Articles 71 to 76 inclusive shall apply, by analogy, to proceedings against internees who are in the national territory of the Detaining Power.

#### **Chapter X. Transfers of Internees**

Art. 127. The transfer of internees shall always be effected humanely. As a general rule, it shall be carried out by rail or other means of transport, and under conditions at least equal to those obtaining for the forces of the Detaining Power in their changes of station. If, as an exceptional measure, such removals have to be effected on foot, they may not take place unless the internees are in a fit state of health, and may not in any case expose them to excessive fatigue.

The Detaining Power shall supply internees during transfer with drinking water and food sufficient in quantity, quality and variety to maintain them in good health, and also with the necessary clothing, adequate shelter and the necessary medical attention. The Detaining Power shall take all suitable precautions to ensure their safety during transfer, and shall establish before their departure a complete list of all internees transferred.

Sick, wounded or infirm internees and maternity cases shall not be transferred if the journey would be seriously detrimental to them, unless their safety imperatively so demands.

If the combat zone draws close to a place of internment, the internees in the said place shall not be transferred unless their removal can be carried out in adequate conditions of safety, or unless they are exposed to greater risks by remaining on the spot than by being transferred.

When making decisions regarding the transfer of internees, the Detaining Power shall take their interests into account and, in particular, shall not do anything to increase the difficulties of repatriating them or returning them to their own homes.

Art. 128. In the event of transfer, internees shall be officially advised of their departure and of their new postal address. Such notification shall be given in time for them to pack their luggage and inform their next of kin.

They shall be allowed to take with them their personal effects, and the correspondence and parcels which have arrived for them. The weight of such baggage may be limited if the conditions of transfer so require, but in no case to less than twenty-five kilograms per internee.

Mail and parcels addressed to their former place of internment shall be forwarded to them without delay.

The commandant of the place of internment shall take, in agreement with the Internee Committee, any measures needed to ensure the transport of the internees' community property and of the luggage the internees are unable to take with them in consequence of restrictions imposed by virtue of the second paragraph.

#### **Chapter XI. Deaths**

Art. 129. The wills of internees shall be received for safe-keeping by the responsible authorities; and if the event of the death of an internee his will shall be transmitted without delay to a person whom he has previously designated.

Deaths of internees shall be certified in every case by a doctor, and a death certificate shall be made out, showing the causes of death and the conditions under which it occurred.

An official record of the death, duly registered, shall be drawn up in accordance with the procedure relating thereto in force in the territory where the place of internment is situated, and a duly certified copy of such record shall be transmitted without delay to the Protecting Power as well as to the Central Agency referred to in Article 140.

Art. 130. The detaining authorities shall ensure that internees who die while interned are honourably buried, if possible according to the rites of the religion to which they belonged and that their graves are respected, properly maintained, and marked in such a way that they can always be recognized.

Deceased internees shall be buried in individual graves unless unavoidable circumstances require the use of collective graves. Bodies may be cremated only for imperative reasons of hygiene, on account of the religion of the deceased or in accordance with his expressed wish to this effect. In case of cremation, the fact shall be stated and the reasons given in the death certificate of the deceased. The ashes shall be retained for safe-keeping by the detaining authorities and shall be transferred as soon as possible to the next of kin on their request.

As soon as circumstances permit, and not later than the close of hostilities, the Detaining Power shall forward lists of graves of deceased internees to the Powers on whom deceased internees depended, through the Information Bureaux provided for in Article 136. Such lists shall include all particulars necessary for the identification of the deceased internees, as well as the exact location of their graves.

Art. 131. Every death or serious injury of an internee, caused or suspected to have been caused by a sentry, another internee or any other person, as well as any death the cause of which is unknown, shall be immediately followed by an official enquiry by the Detaining Power.

A communication on this subject shall be sent immediately to the Protecting Power. The evidence of any witnesses shall be taken, and a report including such evidence shall be prepared and forwarded to the said Protecting Power.

If the enquiry indicates the guilt of one or more persons, the Detaining Power shall take all necessary steps to ensure the prosecution of the person or persons responsible.

### **Chapter XIII. Release, Repatriation and Accommodation in Neutral Countries**

Art. 132. Each interned person shall be released by the Detaining Power as soon as the reasons which necessitated his internment no longer exist.

The Parties to the conflict shall, moreover, 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 certain classes of internees, in particular children, pregnant women and mothers with infants and young children, wounded and sick, and internees who have been detained for a long time.

Art. 133. Internment shall cease as soon as possible after the close of hostilities.

Internees in the territory of a Party to the conflict against whom penal proceedings are pending for offences not exclusively subject to disciplinary penalties, may be detained until the close of such proceedings and, if circumstances require, until the completion of the

penalty. The same shall apply to internees who have been previously sentenced to a punishment depriving them of liberty.

By agreement between the Detaining Power and the Powers concerned, committees may be set up after the close of hostilities, or of the occupation of territories, to search for dispersed internees.

Art. 134. The High Contracting Parties shall endeavour, upon the close of hostilities or occupation, to ensure the return of all internees to their last place of residence, or to facilitate their repatriation.

Art. 135. The Detaining Power shall bear the expense of returning released internees to the places where they were residing when interned, or, if it took them into custody while they were in transit or on the high seas, the cost of completing their journey or of their return to their point of departure.

Where a Detaining Power refuses permission to reside in its territory to a released internee who previously had his permanent domicile therein, such Detaining Power shall pay the cost of the said internee's repatriation. If, however, the internee elects to return to his country on his own responsibility or in obedience to the Government of the Power to which he owes allegiance, the Detaining Power need not pay the expenses of his journey beyond the point of his departure from its territory. The Detaining Power need not pay the cost of repatriation of an internee who was interned at his own request.

If internees are transferred in accordance with Article 45, the transferring and receiving Powers shall agree on the portion of the above costs to be borne by each.

The foregoing shall not prejudice such special agreements as may be concluded between Parties to the conflict concerning the exchange and repatriation of their nationals in enemy hands.

#### Section V. Information Bureaux and Central Agency

Art. 136. Upon the outbreak of a conflict and in all cases of occupation, each of the Parties to the conflict shall establish an official Information Bureau responsible for receiving and transmitting information in respect of the protected persons who are in its power.

Each of the Parties to the conflict shall, within the shortest possible period, give its Bureau information of any measure taken by it concerning any protected persons who are kept in custody for more than two weeks, who are subjected to assigned residence or who are interned. It shall, furthermore, require its various departments concerned with such matters to provide the aforesaid Bureau promptly with information concerning all changes pertaining to these protected persons, as, for example, transfers, releases, repatriations, escapes, admittances to hospitals, births and deaths.

Art. 137. Each national Bureau shall immediately forward information concerning protected persons by the most rapid means to the Powers in whose territory they resided, through the intermediary of the Protecting Powers and likewise through the Central Agency provided for in Article 140. The Bureaux shall also reply to all enquiries which may be received regarding protected persons.

Information Bureaux shall transmit information concerning a protected person unless its transmission might be detrimental to the person concerned or to his or her relatives. Even in such a case, the information may not be withheld from the Central Agency which, upon being notified of the circumstances, will take the necessary precautions indicated in Article 140.

All communications in writing made by any Bureau shall be authenticated by a signature or a seal.

Art. 138. The information received by the national Bureau and transmitted by it shall be of such a character as to make it possible to identify the protected person exactly and to advise his next of kin quickly. The information in respect of each person shall include at least his surname, first names, place and date of birth, nationality last residence and distinguishing characteristics, the first name of the father and the maiden name of the mother, the date, place and nature of the action taken with regard to the individual, the address at which correspondence may be sent to him and the name and address of the person to be informed.

Likewise, information regarding the state of health of internees who are seriously ill or seriously wounded shall be supplied regularly and if possible every week.

Art. 139. Each national Information Bureau shall, furthermore, be responsible for collecting all personal valuables left by protected persons mentioned in Article 136, in particular those who have been repatriated or released, or who have escaped or died; it shall forward the said valuables to those concerned, either direct, or, if necessary, through the Central Agency. Such articles shall be sent by the Bureau in sealed packets which shall be accompanied by statements giving clear and full identity particulars of the person to whom the articles belonged, and by a complete list of the contents of the parcel. Detailed records shall be maintained of the receipt and despatch of all such valuables.

Art. 140. A Central Information Agency for protected persons, in particular for internees, shall be created in a neutral country. The International Committee of the Red Cross shall, if it deems necessary, propose to the Powers concerned the organization of such an Agency, which may be the same as that provided for in Article 123 of the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949.

The function of the Agency shall be to collect all information of the type set forth in Article 136 which it may obtain through official or private channels and to transmit it as rapidly as possible to the countries of origin or of residence of the persons concerned, except in cases where such transmissions might be detrimental to the persons whom the said information concerns, or to their relatives. It shall receive from the Parties to the conflict all reasonable facilities for effecting such transmissions.

The High Contracting Parties, and in particular those whose nationals benefit by the services of the Central Agency, are requested to give the said Agency the financial aid it may require.

The foregoing provisions shall in no way be interpreted as restricting the humanitarian activities of the International Committee of the Red Cross and of the relief Societies described in Article 142.

Art. 141. The national Information Bureaux and the Central Information Agency shall enjoy free postage for all mail, likewise the exemptions provided for in Article 110, and further, so far as possible, exemption from telegraphic charges or, at least, greatly reduced rates.

#### Part IV. Execution of the Convention

##### Section I. General Provisions

Art. 142. Subject to the measures which the Detaining Powers may consider essential to ensure their security or to meet any other reasonable need, the representatives of religious organizations, relief societies, or any other organizations assisting the protected persons, shall receive from these Powers, for themselves or their duly accredited agents, all facilities for visiting the protected persons, for distributing relief supplies and material from any source,

intended for educational, recreational or religious purposes, or for assisting them in organizing their leisure time within the places of internment. Such societies or organizations may be constituted in the territory of the Detaining Power, or in any other country, or they may have an international character.

The Detaining Power may limit the number of societies and organizations whose delegates are allowed to carry out their activities in its territory and under its supervision, on condition, however, that such limitation shall not hinder the supply of effective and adequate relief to all protected persons.

The special position of the International Committee of the Red Cross in this field shall be recognized and respected at all times.

Art. 143. Representatives or delegates of the Protecting Powers shall have permission to go to all places where protected persons are, particularly to places of internment, detention and work.

They shall have access to all premises occupied by protected persons and shall be able to interview the latter without witnesses, personally or through an interpreter.

Such visits may not be prohibited except for reasons of imperative military necessity, and then only as an exceptional and temporary measure. Their duration and frequency shall not be restricted.

Such representatives and delegates shall have full liberty to select the places they wish to visit. The Detaining or Occupying Power, the Protecting Power and when occasion arises the Power of origin of the persons to be visited, may agree that compatriots of the internees shall be permitted to participate in the visits.

The delegates of the International Committee of the Red Cross shall also enjoy the above prerogatives. The appointment of such delegates shall be submitted to the approval of the Power governing the territories where they will carry out their duties.

Art. 144. The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population.

Any civilian, military, police or other authorities, who in time of war assume responsibilities in respect of protected persons, must possess the text of the Convention and be specially instructed as to its provisions.

Art. 145. The High Contracting Parties shall communicate to one another through the Swiss Federal Council and, during hostilities, through the Protecting Powers, the official translations of the present Convention, as well as the laws and regulations which they may adopt to ensure the application thereof.

Art. 146. The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial

to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case.

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.

In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following of the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949.

Art. 147. Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

Art. 148. No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article.

Art. 149. At the request of a Party to the conflict, an enquiry shall be instituted, in a manner to be decided between the interested Parties, concerning any alleged violation of the Convention.

If agreement has not been reached concerning the procedure for the enquiry, the Parties should agree on the choice of an umpire who will decide upon the procedure to be followed. Once the violation has been established, the Parties to the conflict shall put an end to it and shall repress it with the least possible delay.

## Section II. Final Provisions

Art. 150. The present Convention is established in English and in French. Both texts are equally authentic.

The Swiss Federal Council shall arrange for official translations of the Convention to be made in the Russian and Spanish languages.

Art. 151. The present Convention, which bears the date of this day, is open to signature until 12 February 1950, in the name of the Powers represented at the Conference which opened at Geneva on 21 April 1949.

Art. 152. The present Convention shall be ratified as soon as possible and the ratifications shall be deposited at Berne.

A record shall be drawn up of the deposit of each instrument of ratification and certified copies of this record shall be transmitted by the Swiss Federal Council to all the Powers in whose name the Convention has been signed, or whose accession has been notified.

Art. 153. The present Convention shall come into force six months after not less than two instruments of ratification have been deposited.

Thereafter, it shall come into force for each High Contracting Party six months after the deposit of the instrument of ratification.

Art. 154. In the relations between the Powers who are bound by the Hague Conventions respecting the Laws and Customs of War on Land, whether that of 29 July 1899, or that of 18 October 1907, and who are parties to the present Convention, this last Convention shall be supplementary to Sections II and III of the Regulations annexed to the above-mentioned Conventions of The Hague.

Art. 155. From the date of its coming into force, it shall be open to any Power in whose name the present Convention has not been signed, to accede to this Convention.

Art. 156. Accessions shall be notified in writing to the Swiss Federal Council, and shall take effect six months after the date on which they are received.

The Swiss Federal Council shall communicate the accessions to all the Powers in whose name the Convention has been signed, or whose accession has been notified.

Art. 157. The situations provided for in Articles 2 and 3 shall have immediate effect to ratifications deposited and accessions notified by the Parties to the conflict before or after the beginning of hostilities or occupation. The Swiss Federal Council shall communicate by the quickest method any ratifications or accessions received from Parties to the conflict.

Art. 158. Each of the High Contracting Parties shall be at liberty to denounce the present Convention.

The denunciation shall be notified in writing to the Swiss Federal Council, which shall transmit it to the Governments of all the High Contracting Parties.

The denunciation shall take effect one year after the notification thereof has been made to the Swiss Federal Council. However, a denunciation of which notification has been made at a time when the denouncing Power is involved in a conflict shall not take effect until peace has been concluded, and until after operations connected with the release, repatriation and re-establishment of the persons protected by the present Convention have been terminated.

The denunciation shall have effect only in respect of the denouncing Power. It shall in no way impair the obligations which the Parties to the conflict shall remain bound to fulfil by virtue of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity and the dictates of the public conscience.

Art. 159. The Swiss Federal Council shall register the present Convention with the Secretariat of the United Nations. The Swiss Federal Council shall also inform the Secretariat of the United Nations of all ratifications, accessions and denunciations received by it with respect to the present Convention.

In witness whereof the undersigned, having deposited their respective full powers, have signed the present Convention.

Done at Geneva this twelfth day of August 1949, in the English and French languages. The original shall be deposited in the Archives of the Swiss Confederation. The Swiss Federal Council shall transmit certified copies thereof to each of the signatory and acceding States.

#### Annex I. Draft Agreement Relating to Hospital and Safety Zones and Localities

Art. 1. Hospital and safety zones shall be strictly reserved for the persons mentioned in Article 23 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, and in Article 14 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, and for the personnel entrusted with the organization and administration of these zones and localities, and with the care of the persons therein assembled.

Nevertheless, persons whose permanent residence is within such zones shall have the right to stay there.

Art. 2. No persons residing, in whatever capacity, in a hospital and safety zone shall perform any work, either within or without the zone, directly connected with military operations or the production of war material.

Art. 3. The Power establishing a hospital and safety zone shall take all necessary measures to prohibit access to all persons who have no right of residence or entry therein.

Art. 4. Hospital and safety zones shall fulfil the following conditions:

(a) they shall comprise only a small part of the territory governed by the Power which has established them

(b) they shall be thinly populated in relation to the possibilities of accommodation

(c) they shall be far removed and free from all military objectives, or large industrial or administrative establishments

(d) they shall not be situated in areas which, according to every probability, may become important for the conduct of the war.

Art. 5. Hospital and safety zones shall be subject to the following obligations:

(a) the lines of communication and means of transport which they possess shall not be used for the transport of military personnel or material, even in transit

(b) they shall in no case be defended by military means.

Art. 6. Hospital and safety zones shall be marked by means of oblique red bands on a white ground, placed on the buildings and outer precincts.

Zones reserved exclusively for the wounded and sick may be marked by means of the Red Cross (Red Crescent, Red Lion and Sun) emblem on a white ground.

They may be similarly marked at night by means of appropriate illumination.

Art. 7. The Powers shall communicate to all the High Contracting Parties in peacetime or on the outbreak of hostilities, a list of the hospital and safety zones in the territories governed by them. They shall also give notice of any new zones set up during hostilities.

As soon as the adverse party has received the above-mentioned notification, the zone shall be regularly established.

If, however, the adverse party considers that the conditions of the present agreement have not been fulfilled, it may refuse to recognize the zone by giving immediate notice thereof to the Party responsible for the said zone, or may make its recognition of such zone dependent upon the institution of the control provided for in Article 8.

Art. 8. Any Power having recognized one or several hospital and safety zones instituted by the adverse Party shall be entitled to demand control by one or more Special Commissions, for the purpose of ascertaining if the zones fulfil the conditions and obligations stipulated in the present agreement.

For this purpose, members of the Special Commissions shall at all times have free access to the various zones and may even reside there permanently. They shall be given all facilities for their duties of inspection.

Art. 9. Should the Special Commissions note any facts which they consider contrary to the stipulations of the present agreement, they shall at once draw the attention of the Power governing the said zone to these facts, and shall fix a time limit of five days within which the matter should be rectified. They shall duly notify the Power which has recognized the zone.

If, when the time limit has expired, the Power governing the zone has not complied with the warning, the adverse Party may declare that it is no longer bound by the present agreement in respect of the said zone.

Art. 10. Any Power setting up one or more hospital and safety zones, and the adverse Parties to whom their existence has been notified, shall nominate or have nominated by the Protecting Powers or by other neutral Powers, persons eligible to be members of the Special Commissions mentioned in Articles 8 and 9.

Art. 11. In no circumstances may hospital and safety zones be the object of attack. They shall be protected and respected at all times by the Parties to the conflict.

Art. 12. In the case of occupation of a territory, the hospital and safety zones therein shall continue to be respected and utilized as such.

Their purpose may, however, be modified by the Occupying Power, on condition that all measures are taken to ensure the safety of the persons accommodated.

Art. 13. The present agreement shall also apply to localities which the Powers may utilize for the same purposes as hospital and safety zones.

#### Annex II. Draft Regulations concerning Collective Relief

Article 1. The Internee Committees shall be allowed to distribute collective relief shipments for which they are responsible to all internees who are dependent for administration on the said Committee's place of internment, including those internees who are in hospitals, or in prison or other penitentiary establishments.

Art. 2. The distribution of collective relief shipments shall be effected in accordance with the instructions of the donors and with a plan drawn up by the Internee Committees. The issue of medical stores shall, however, be made for preference in agreement with the senior medical officers, and the latter may, in hospitals and infirmaries, waive the said instructions, if the needs of their patients so demand. Within the limits thus defined, the distribution shall always be carried out equitably.

Art. 3. Members of Internee Committees shall be allowed to go to the railway stations or other points of arrival of relief supplies near their places of internment so as to enable them to verify the quantity as well as the quality of the goods received and to make out detailed reports thereon for the donors.

Art. 4. Internee Committees shall be given the facilities necessary for verifying whether the distribution of collective relief in all subdivisions and annexes of their places of internment has been carried out in accordance with their instructions.

Art. 5. Internee Committees shall be allowed to complete, and to cause to be completed by members of the Internee Committees in labour detachments or by the senior medical officers of infirmaries and hospitals, forms or questionnaires intended for the donors, relating to collective relief supplies (distribution, requirements, quantities, etc.). Such forms and questionnaires, duly completed, shall be forwarded to the donors without delay.

Art. 6. In order to secure the regular distribution of collective relief supplies to the internees in their place of internment, and to meet any needs that may arise through the arrival of fresh parties of internees, the Internee Committees shall be allowed to create and maintain sufficient reserve stocks of collective relief. For this purpose, they shall have suitable warehouses at their disposal; each warehouse shall be provided with two locks, the Internee Committee holding the keys of one lock, and the commandant of the place of internment the keys of the other.

Art. 7. The High Contracting Parties, and the Detaining Powers in particular, shall, so far as is in any way possible and subject to the regulations governing the food supply of the population, authorize purchases of goods to be made in their territories for the distribution of collective relief to the internees. They shall likewise facilitate the transfer of funds and other financial measures of a technical or administrative nature taken for the purpose of making such purchases.

Art. 8. The foregoing provisions shall not constitute an obstacle to the right of internees to receive collective relief before their arrival in a place of internment or in the course of their transfer, nor to the possibility of representatives of the Protecting Power, or of the International Committee of the Red Cross or any other humanitarian organization giving assistance to internees and responsible for forwarding such supplies, ensuring the distribution thereof to the recipients by any other means they may deem suitable.

#### ANNEX III

##### I. Internment Card

## I. INTERNMENT CARD

## ANNEX III

1. Front	<u>CIVILIAN INTERNEE MAIL</u>	Postage free
	POST CARD	
	<p style="text-align: center;"><b>IMPORTANT</b></p> <p>This card must be completed by each internee immediately on being interned and each time his address is altered by reason of transfer to another place of internment or to a hospital.</p> <p>This card is not the same as the special card which each internee is allowed to send to his relatives.</p>	<p><b>CENTRAL INFORMATION AGENCY FOR PROTECTED PERSONS</b></p> <p>INTERNATIONAL COMMITTEE OF THE RED CROSS</p>
Reverse side	Write legibly and in block letters—I. Nationality	
	2. Surname	3. First names ( <i>in full</i> )
	4. First name of father	
	5. Date of birth	6. Place of birth
	7. Occupation	
	8. Address before detention	
9. Address of next of kin		
*10. Interned on: (or) Coming from (hospital, etc.) on:		
*11. State of health		
12. Present address		
13. Date	14. Signature	
*Strike out what is not applicable—Do not add any remarks—See explanations on other side of card		

(Size of internment card—10×15 cm.)

## II. Letter

## II. ANNEX III

## LETTER

CIVILIAN INTERNEE SERVICE

Postage free

To

Street and number

Place of destination (in block capitals)

Province or Department

Country (in block capitals)

Internment address

Date and place of birth

Surname and first names

Sender :

{Size of letter — 29 × 15 cm.}

## III. Correspondence Card

## III. CORRESPONDENCE CARD

## ANNEX III

1. Front

<u>CIVILIAN INTERNEE MAIL</u>		Postage free
POST CARD		
Sender: Surname and first names Place and date of birth Internment address	To	
	Street and number	
	<u>Place of destination (in block capitals)</u>	
	Province or Department	
	Country (in block capitals)	

2. Reverse side

Date :
.....
.....
.....
.....
.....
.....
Write on the dotted lines only and as legibly as possible.

(Size of correspondence card—10 × 15 cm.)

**ANEXO E – Resolutions of the Diplomatic Conference. Geneva, 12 August 1949****RESOLUTION 1**

The Conference recommends that, in the case of a dispute relating to the interpretation or application of the present Conventions which cannot be settled by other means, the High Contracting Parties concerned endeavour to agree between themselves to refer such dispute to the International Court of Justice.

**RESOLUTION 2**

Whereas circumstances may arise in the event of the outbreak of a future international conflict in which there will be no Protecting Power with whose cooperation and under whose scrutiny the Conventions for the Protection of Victims of War can be applied; and whereas Article 10 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, Article 10 of the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949, Article 10 of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949, and Article 11 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of August 12, 1949, provide that the High Contracting Parties may at any time agree to entrust to a body which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers by virtue of the aforesaid Conventions, the Conference recommends that consideration be given as soon as possible to the advisability of setting up an international body, the functions of which shall be, in the absence of a Protecting Power, to fulfil the duties performed by Protecting Powers in regard to the application of the Conventions for the Protection of War Victims.

**RESOLUTION 3**

Whereas agreements may only with difficulty be concluded during hostilities; whereas Article 28 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, provides that the Parties to the conflict shall, during hostilities, make arrangements for relieving where possible retained personnel, and shall settle the procedure of such relief; whereas Article 31 of the same Convention provides that, as from the outbreak of hostilities, Parties to the conflict may determine by special arrangement the percentage of personnel to be retained, in proportion to the number of prisoners and the distribution of the said personnel in the camps, the Conference requests the International Committee of the Red Cross to prepare a model agreement on the two questions referred to in the two Articles mentioned above and to submit it to the High Contracting Parties for their approval.

**RESOLUTION 4**

Whereas Article 33 of the Geneva Convention of July 27, 1929, for the Relief of the Wounded and Sick in Armies in the Field, concerning the identity documents to be carried by medical personnel, was only partially observed during the course of the recent war, thus creating serious difficulties for many members of such personnel, the Conference recommends that States and National Red Cross Societies take all necessary steps in time of peace to have medical personnel duly provided with the badges and identity cards prescribed in Article 40 of the new Convention.

**RESOLUTION 5**

Whereas misuse has frequently been made of the Red Cross emblem, the Conference recommends that States take strict measures to ensure that the said emblem, as well as other emblems referred to in Article 38 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, is used only within the limits prescribed by the Geneva Conventions, in order to safeguard their authority and protect their high significance.

#### RESOLUTION 6

Whereas the present Conference has not been able to raise the question of the technical study of means of communication between hospital ships, on the one hand, and warships and military aircraft on the other, since that study went beyond its terms of reference; whereas this question is of the greatest importance for the safety and efficient operation of hospital ships, the Conference recommends that the High Contracting Parties will, in the near future, instruct a Committee of Experts to examine technical improvements of modern means of communication between hospital ships, on the one hand, and warships and military aircraft, on the other, and also to study the possibility of drawing up an International Code laying down precise regulations for the use of those means, in order that hospital ships may be assured of the maximum protection and be enabled to operate with the maximum efficiency.

#### RESOLUTION 7

The Conference, being desirous of securing the maximum protection for hospital ships, expresses the hope that all High Contracting Parties to the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed forces at Sea of August 12, 1949, will arrange that, when ever conveniently practicable, such ships shall frequently and regularly broadcast particulars of their position, route and speed.

#### RESOLUTION 8

The Conference wishes to affirm before all nations: that, its work having been inspired solely by humanitarian aims, its earnest hope is that, in the future, Governments may never have to apply the Geneva Conventions for the Protection of War Victims; that its strongest desire is that the Powers, great and small, may always reach a friendly settlement of their differences through cooperation and understanding between nations, so that peace shall reign on earth for ever.

#### RESOLUTION 9

Whereas Article 71 of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949, provides that prisoners of war who have been without news for a long period, or who are unable to receive news from their next of kin or to give them news by the ordinary postal route, as well as those who are at a great distance from their home, shall be permitted to send telegrams, the fees being charged against the prisoners of war's account with the Detaining Power or paid in the currency at their disposal, and that prisoners of war shall likewise benefit by these facilities in cases of urgency; and whereas to reduce the cost, often prohibitive, of such telegrams or cables, it appears necessary that some method of grouping messages should be introduced whereby a series of short specimen messages concerning personal health, health of relatives at home, schooling, finance, etc., could be drawn up and numbered, for use by prisoners of war in the aforesaid circumstances, the Conference, therefore, requests the International Committee of the Red Cross to prepare a series of specimen messages covering these requirements and to submit them to the High Contracting Parties for their approval.

## RESOLUTION 10

The Conference considers that the conditions under which a Party to a conflict can be recognized as a belligerent by Powers not taking part in this conflict, are governed by the general rules of international law on the subject and are in no way modified by the Geneva Conventions.

## RESOLUTION 11

**Whereas the Geneva Conventions require the International Committee of the Red Cross to be ready at all times and in all circumstances to fulfil the humanitarian tasks entrusted to it by these Conventions, the Conference recognizes the necessity of providing regular financial support for the International Committee of the Red Cross.**

**ANEXO F – Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977**

Preamble.

The High Contracting Parties,

Proclaiming their earnest wish to see peace prevail among peoples,

Recalling that every State has the duty, in conformity with the Charter of the United Nations, to refrain in its international relations from the threat or use of force against the sovereignty, territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,

Believing it necessary nevertheless to reaffirm and develop the provisions protecting the victims of armed conflicts and to supplement measures intended to reinforce their application,

Expressing their conviction that nothing in this Protocol or in the Geneva Conventions of 12 August 1949 can be construed as legitimizing or authorizing any act of aggression or any other use of force inconsistent with the Charter of the United Nations,

Reaffirming further that the provisions of the Geneva Conventions of 12 August 1949 and of this Protocol must be fully applied in all circumstances to all persons who are protected by those instruments, without any adverse distinction based on the nature or origin of the armed conflict or on the causes espoused by or attributed to the Parties to the conflict,

Have agreed on the following:

**PART I. GENERAL PROVISIONS**

**Art 1. General principles and scope of application**

1. The High Contracting Parties undertake to respect and to ensure respect for this Protocol in all circumstances.

2. In cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from dictates of public conscience.

3. This Protocol, which supplements the Geneva Conventions of 12 August 1949 for the protection of war victims, shall apply in the situations referred to in Article 2 common to those Conventions.

4. The situations referred to in the preceding paragraph include armed conflicts which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

**Art 2. Definitions**

For the purposes of this Protocol

(a) “First Convention”, “Second Convention”, “Third Convention” and “Fourth Convention” mean, respectively, the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949; the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Ship-wrecked Members of Armed Forces at Sea of 12 August 1949; the Geneva Convention relative to the Treatment of

Prisoners of War of 12 August 1949; the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949; “the Conventions” means the four Geneva Conventions of 12 August 1949 for the protection of war victims;

(b) “Rules of international law applicable in armed conflict” means the rules applicable in armed conflict set forth in international agreements to which the Parties to the conflict are Parties and the generally recognized principles and rules of international law which are applicable to armed conflict;

(c) “Protecting Power” means a neutral or other State not a Party to the conflict which has been designated by a Party to the conflict and accepted by the adverse Party and has agreed to carry out the functions assigned to a Protecting Power under the Conventions and this Protocol;

(d) “Substitute” means an organization acting in place of a Protecting Power in accordance with Article 5.

### Art 3. Beginning and end of application

Without prejudice to the provisions which are applicable at all times:

(a) the Conventions and this Protocol shall apply from the beginning of any situation referred to in Article 1 of this Protocol.

(b) the application of the Conventions and of this Protocol shall cease, in the territory of Parties to the conflict, on the general close of military operations and, in the case of occupied territories, on the termination of the occupation, except, in either circumstance, for those persons whose final release, repatriation or re-establishment takes place thereafter. These persons shall continue to benefit from the relevant provisions of the Conventions and of this Protocol until their final release repatriation or re-establishment.

### Art 4. Legal status of the Parties to the conflict

The application of the Conventions and of this Protocol, as well as the conclusion of the agreements provided for therein, shall not affect the legal status of the Parties to the conflict. Neither the occupation of a territory nor the application of the Conventions and this Protocol shall affect the legal status of the territory in question.

### Art 5. Appointment of Protecting Powers and of their substitute

1. It is the duty of the Parties to a conflict from the beginning of that conflict to secure the supervision and implementation of the Conventions and of this Protocol by the application of the system of Protecting Powers, including inter alia the designation and acceptance of those Powers, in accordance with the following paragraphs. Protecting Powers shall have the duty of safeguarding the interests of the Parties to the conflict.

2. From the beginning of a situation referred to in Article 1, each Party to the conflict shall without delay designate a Protecting Power for the purpose of applying the Conventions and this Protocol and shall, likewise without delay and for the same purpose, permit the activities or a Protecting Power which has been accepted by it as such after designation by the adverse Party.

3. If a Protecting Power has not been designated or accepted from the beginning of a situation referred to in Article 1, the International Committee of the Red Cross, without prejudice to the right of any other impartial humanitarian organization to do likewise, shall offer its good offices to the Parties to the conflict with a view to the designation without delay of a Protecting Power to which the Parties to the conflict consent. For that purpose it may inter alia ask each Party to provide it with a list of at least five States which that Party

considers acceptable to act as Protecting Power on its behalf in relation to an adverse Party and ask each adverse Party to provide a list or at least five States which it would accept as the Protecting Power of the first Party; these lists shall be communicated to the Committee within two weeks after the receipt or the request; it shall compare them and seek the agreement of any proposed State named on both lists.

4. If, despite the foregoing, there is no Protecting Power, the Parties to the conflict shall accept without delay an offer which may be made by the International Committee of the Red Cross or by any other organization which offers all guarantees of impartiality and efficacy, after due consultations with the said Parties and taking into account the result of these consultations, to act as a substitute. The functioning of such a substitute is subject to the consent of the Parties to the conflict; every effort shall be made by the Parties to the conflict to facilitate the operations of the substitute in the performance of its tasks under the Conventions and this Protocol.

5. In accordance with Article 4, the designation and acceptance of Protecting Powers for the purpose of applying the Conventions and this Protocol shall not affect the legal status of the Parties to the conflict or of any territory, including occupied territory.

6. The maintenance of diplomatic relations between Parties to the conflict or the entrusting of the protection of a Party's interests and those of its nationals to a third State in accordance with the rules of international law relating to diplomatic relations is no obstacle to the designation of Protecting Powers for the purpose of applying the Conventions and this Protocol.

7. Any subsequent mention in this Protocol of a Protecting Power includes also a substitute.

#### Art 6. Qualified persons

1. The High Contracting Parties shall, also in peacetime, endeavour, with the assistance of the national Red Cross (Red Crescent, Red Lion and Sun) Societies, to train qualified personnel to facilitate the application of the Conventions and of this Protocol, and in particular the activities of the Protecting Powers.

2. The recruitment and training of such personnel are within domestic jurisdiction.

3. The International Committee of the Red Cross shall hold at the disposal of the High Contracting Parties the lists of persons so trained which the High Contracting Parties may have established and may have transmitted to it for that purpose.

4. The conditions governing the employment of such personnel outside the national territory shall, in each case, be the subject of special agreements between the Parties concerned.

#### Article 7 - Meetings

The depositary of this Protocol shall convene a meeting of the High Contracting Parties, at the request of one or more of the said Parties and upon, the approval of the majority of the said Parties, to consider general problems concerning the application of the Conventions and of the Protocol.

### Part. II WOUNDED, SICK AND SHIPWRECKED

#### Section I : General Protection

#### Art 8. Terminology

For the purposes of this Protocol:

a) "Wounded" and "sick" mean persons, whether military or civilian, who, because of trauma, disease or other physical or mental disorder or disability, are in need of medical assistance or care and who refrain from any act of hostility. These terms also cover maternity cases, new-

born babies and other persons who may be in need of immediate medical assistance or care, such as the infirm or expectant mothers, and who refrain from any act of hostility;

b) “Shipwrecked” means persons, whether military or civilian, who are in peril at sea or in other waters as a result of misfortune affecting them or the vessel or aircraft carrying them and who refrain from any act of hostility. These persons, provided that they continue to refrain from any act of hostility, shall continue to be considered shipwrecked during their rescue until they acquire another status under the Conventions or this Protocol;

c) “Medical personnel” means those persons assigned, by a Party to the conflict, exclusively to the medical purposes enumerated under e) or to the administration of medical units or to the operation or administration of medical transports. Such assignments may be either permanent or temporary. The term includes:

i) medical personnel of a Party to the conflict, whether military or civilian, including those described in the First and Second Conventions, and those assigned to civil defence organizations;

ii) medical personnel of national Red Cross (Red Crescent, Red Lion and Sun) Societies and other national voluntary aid societies duly recognized and authorized by a Party to the conflict;

iii) medical personnel or medical units or medical transports described in Article 9, paragraph 2.

d) “Religious personnel” means military or civilian persons, such as chaplains, who are exclusively engaged in the work of their ministry and attached:

i) to the armed forces of a Party to the conflict;

ii) to medical units or medical transports of a Party to the conflict;

iii) to medical units or medical transports described in Article 9, Paragraph 2; or

iv) to civil defence organizations of a Party to the conflict.

The attachment of religious personnel may be either permanent or temporary, and the relevant provisions mentioned under k) apply to them;

e) “Medical units” means establishments and other units, whether military or civilian, organized for medical purposes, namely the search for, collection, transportation, diagnosis or treatment - including first-aid treatment - of the wounded, sick and shipwrecked, or for the prevention of disease. The term includes for example, hospitals and other similar units, blood transfusion centres, preventive medicine centres and institutes, medical depots and the medical and pharmaceutical stores of such units. Medical units may be fixed or mobile, permanent or temporary;

f) “Medical transportation” means the conveyance by land, water or air of the wounded, sick, shipwrecked, medical personnel, religious personnel, medical equipment or medical supplies protected by the Conventions and by this Protocol;

g) “Medical transports” means any means of transportation, whether military or civilian, permanent or temporary, assigned exclusively to medical transportation and under the control of a competent authority of a Party to the conflict;

h) “Medical vehicles” means any medical transports by land;

i) “Medical ships and craft” means any medical transports by water;

j) “Medical aircraft” means any medical transports by air;

k) “Permanent medical personnel”, “permanent medical units” and “permanent medical transports” mean those assigned exclusively to medical purposes for an indeterminate period.

“Temporary medical personnel” “temporary medical-units” and “temporary medical transports” mean those devoted exclusively to medical purposes for limited periods during the whole of such periods. Unless otherwise specified, the terms “medical personnel”, “medical units” and “medical transports” cover both permanent and temporary categories;

l) “Distinctive emblem” means the distinctive emblem of the red cross, red crescent or red lion and sun on a white ground when used for the protection of medical units and transports, or medical and religious personnel, equipment or supplies;

m) “Distinctive signal” means any signal or message specified for the identification exclusively of medical units or transports in Chapter III of Annex I to this Protocol.

#### Art 9. Field of application

1. This Part, the provisions of which are intended to ameliorate the condition of the wounded, sick and shipwrecked, shall apply to all those affected by a situation referred to in Article 1, without any adverse distinction founded on race, colour, sex, language, religion or belief political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria.

2. The relevant provisions of Articles 27 and 32 of the First Convention shall apply to permanent medical units and transports (other than hospital ships, to which Article 25 of the Second Convention applies) and their personnel made available to a Party to the conflict for humanitarian purposes:

(a) by a neutral or other State which is not a Party to that conflict;

(b) by a recognized and authorized aid society of such a State;

(c) by an impartial international humanitarian organization.

#### Art 10 Protection and care

1. All the wounded, sick and shipwrecked, to whichever Party they belong, shall be respected and protected.

2. In all circumstances they shall be treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them founded on any grounds other than medical ones.

#### Article 11 - Protection of persons

1. The physical or mental health and integrity of persons who are in the power of the adverse Party or who are interned, detained or otherwise deprived of liberty as a result of a situation referred to in Article 1 shall not be endangered by any unjustified act or omission. Accordingly, it is prohibited to subject the persons described in this Article to any medical procedure which is not indicated by the state of health of the person concerned and which is not consistent with generally accepted medical standards which would be applied under similar medical circumstances to persons who are nationals of the Party conducting the procedure and who are in no way deprived of liberty.

2. It is, in particular, prohibited to carry out on such persons, even with their consent:

(a) physical mutilations;

(b) medical or scientific experiments;

(c) removal of tissue or organs for transplantation, except where these acts are justified in conformity with the conditions provided for in paragraph 1.

3. Exceptions to the prohibition in paragraph 2 (c) may be made only in the case of donations of blood for transfusion or of skin for grafting, provided that they are given voluntarily and

without any coercion or inducement, and then only for therapeutic purposes, under conditions consistent with generally accepted medical standards and controls designed for the benefit of both the donor and the recipient.

4. Any wilful act or omission which seriously endangers the physical or mental health or integrity of any person who is in the power of a Party other than the one on which he depends and which either violates any of the prohibitions in paragraphs 1 and 2 or fails to comply with the requirements of paragraph 3 shall be a grave breach of this Protocol.

5. The persons described in paragraph 1 have the right to refuse any surgical operation. In case of refusal, medical personnel shall endeavour to obtain a written statement to that effect, signed or acknowledged by the patient.

6. Each Party to the conflict shall keep a medical record for every donation of blood for transfusion or skin for grafting by persons referred to in paragraph 1, if that donation is made under the responsibility of that Party. In addition, each Party to the conflict shall endeavour to keep a record of all medical procedures undertaken with respect to any person who is interned, detained or otherwise deprived of liberty as a result of a situation referred to in Article 1. These records shall be available at all times for inspection by the Protecting Power.

#### Art 12 Protection of medical units

1. Medical units shall be respected and protected at all times and shall not be the object of attack.

2. Paragraph 1 shall apply to civilian medical units, provided that they:

(a) belong to one of the Parties to the conflict;

(b) are recognized and authorized by the competent authority of one of the Parties to the conflict; or

(c) are authorized in conformity with Article 9, paragraph 2, of this Protocol or Article 27 of the First Convention.

3. The Parties to the conflict are invited to notify each other of the location of their fixed medical units. The absence of such notification shall not exempt any of the Parties from the obligation to comply with the provisions of paragraph 1.

4. Under no circumstances shall medical units be used in an attempt to shield military objectives from attack. Whenever possible, the Parties to the conflict shall ensure that medical units are so sited that attacks against military objectives do not imperil their safety.

#### Art 13. Discontinuance of protection of civilian medical units

1. The protection to which civilian medical units are entitled shall not cease unless they are used to commit, outside their humanitarian function, acts harmful to the enemy. Protection may, however, cease only after a warning has been given setting, whenever appropriate, a reasonable time-limit, and after such warning has remained unheeded.

2. The following shall not be considered as acts harmful to the enemy:

(a) that the personnel of the unit are equipped with light individual weapons for their own defence or for that of the wounded and sick in their charge;

(b) that the unit is guarded by a picket or by sentries or by an escort;

(c) that small arms and ammunition taken from the wounded and sick, and not yet handed to the proper service, are found in the units;

(d) that members of the armed forces or other combatants are in the unit for medical reasons.

#### Art 14 - Limitations on requisition of civilian medical units

1. The Occupying Power has the duty to ensure that the medical needs of the civilian population in occupied territory continue to be satisfied.
2. The Occupying Power shall not, therefore, requisition civilian medical units, their equipment, their materiel or the services of their personnel, so long as these resources are necessary for the provision of adequate medical services for the civilian population and for the continuing medical care of any wounded and sick already under treatment.
3. Provided that the general rule in paragraph 2 continues to be observed, the Occupying Power may requisition the said resources, subject to the following particular conditions:
  - (a) that the resources are necessary for the adequate and immediate medical treatment of the wounded and sick members of the armed forces of the Occupying Power or of prisoners of war;
  - (b) that the requisition continues only while such necessity exists; and
  - (c) that immediate arrangements are made to ensure that the medical needs of the civilian population, as well as those of any wounded and sick under treatment who are affected by the requisition, continue to be satisfied.

#### Art 15. Protection of civilian medical and religious personnel

1. Civilian medical personnel shall be respected and protected.
2. If needed, all available help shall be afforded to civilian medical personnel in an area where civilian medical services are disrupted by reason of combat activity.
3. The Occupying Power shall afford civilian medical personnel in occupied territories every assistance to enable them to perform, to the best of their ability, their humanitarian functions. The Occupying Power may not require that, in the performance of those functions, such personnel shall give priority to the treatment of any person except on medical grounds. They shall not be compelled to carry out tasks which are not compatible with their humanitarian mission.
4. Civilian medical personnel shall have access to any place where their services are essential, subject to such supervisory and safety measures as the relevant Party to the conflict may deem necessary.
5. Civilian religious personnel shall be respected and protected. The provisions of the Conventions and of this Protocol concerning the protection and identification of medical personnel shall apply equally to such persons.

#### Art 16. General protection of medical duties

1. Under no circumstances shall any person be punished for carrying out medical activities compatible with medical ethics, regardless of the person benefiting therefrom.
2. Persons engaged in medical activities shall not be compelled to perform acts or to carry out work contrary to the rules of medical ethics or to other medical rules designed for the benefit of the wounded and sick or to the provisions of the Conventions or of this Protocol, or to refrain from performing acts or from carrying out work required by those rules and provisions.
3. No person engaged in medical activities shall be compelled to give to anyone belonging either to an adverse Party, or to his own Party except as required by the law of the latter Party, any information concerning the wounded and sick who are, or who have been, under his care, if such information would, in his opinion, prove harmful to the patients concerned or to their families. Regulations for the compulsory notification of communicable diseases shall, however, be respected.

#### Art 17. Role of the civilian population and of aid societies

1. The civilian population shall respect the wounded, sick and shipwrecked, even if they belong to the adverse Party, and shall commit no act of violence against them. The civilian population and aid societies, such as national Red Cross (Red Crescent, Red Lion and Sun) Societies, shall be permitted, even on their own initiative, to collect and care for the wounded, sick and shipwrecked, even in invaded or occupied areas. No one shall be harmed, prosecuted, convicted or punished for such humanitarian acts.

2. The Parties to the conflict may appeal to the civilian population and the aid societies referred to in paragraph 1 to collect and care for the wounded, sick and shipwrecked, and to search for the dead and report their location; they shall grant both protection and the necessary facilities to those who respond to this appeal. If the adverse Party gains or regains control of the area, that Party also shall afford the same protection and facilities for as long as they are needed.

#### Art 18. Identification

1. Each Party to the conflict shall endeavour to ensure that medical and religious personnel and medical units and transports are identifiable.

2. Each Party to the conflict shall also endeavour to adopt and to implement methods and procedures which will make it possible to recognize medical units and transports which use the distinctive emblem and distinctive signals.

3. In occupied territory and in areas where fighting is taking place or is likely to take place, civilian medical personnel and civilian religious personnel should be recognizable by the distinctive emblem and an identity card certifying their status.

4. With the consent of the competent authority, medical units and transports shall be marked by the distinctive emblem. The ships and craft referred to in Article 22 of this Protocol shall be marked in accordance with the provisions of the Second Convention.

5. In addition to the distinctive emblem, a Party to the conflict may, as provided in Chapter III of Annex I to this Protocol, authorize the use of distinctive signals to identify medical units and transports. Exceptionally, in the special cases covered in that Chapter, medical transports may use distinctive signals without displaying the distinctive emblem.

6. The application of the provisions of paragraphs 1 to 5 of this article is governed by Chapters I to III of Annex I to this Protocol. Signals designated in Chapter III of the Annex for the exclusive use of medical units and transports shall not, except as provided therein, be used for any purpose other than to identify the medical units and transports specified in that Chapter.

7. This article does not authorize any wider use of the distinctive emblem in peacetime than is prescribed in Article 44 of the First Convention.

8. The provisions of the Conventions and of this Protocol relating to supervision of the use of the distinctive emblem and to the prevention and repression of any misuse thereof shall be applicable to distinctive signals.

#### Art 19. Neutral and other States not Parties to the conflict

Neutral and other States not Parties to the conflict shall apply the relevant provisions of this Protocol to persons protected by this Part who may be received or interned within their territory, and to any dead of the Parties to that conflict whom they may find.

#### Art 20. - Prohibition of reprisals

Reprisals against the persons and objects protected by this Part are prohibited.

## SECTION II. MEDICAL TRANSPORTATION

### Art 21. Medical vehicles

Medical vehicles shall be respected and protected in the same way as mobile medical units under the Conventions and this Protocol.

### Art 22. Hospital ships and coastal rescue craft

1. The provisions of the Conventions relating to:

- (a) vessels described in Articles 22, 24, 25 and 27 of the Second Convention,
- (b) their lifeboats and small craft,
- (c) their personnel and crews, and
- (d) the wounded; sick and shipwrecked on board.

shall also apply where these vessels carry civilian wounded, sick and shipwrecked who do not belong to any of the categories mentioned in Article 13 of the Second Convention. Such civilians shall not, however, be subject to surrender to any Party which is not their own, or to capture at sea. If they find themselves in the power of a Party to the conflict other than their own they shall be covered by the Fourth Convention and by this Protocol.

2. The protection provided by the Conventions to vessels described in Article 25 of the Second Convention shall extend to hospital ships made available for humanitarian purposes to a Party to the conflict:

- (a) by a neutral or other State which is not a Party to that conflict; or
- (b) by an impartial international humanitarian organization,

provided that, in either case, the requirements set out in that Article are complied with.

3. Small craft described in Article 27 of the Second Convention shall be protected, even if the notification envisaged by that Article has not been made. The Parties to the conflict are, nevertheless, invited to inform each other of any details of such craft which will facilitate their identification and recognition.

### Art 23. Other medical ships and craft

1. Medical ships and craft other than those referred to in Article 22 of this Protocol and Article 38 of the Second Convention shall, whether at sea or in other waters, be respected and protected in the same way as mobile medical units under the Conventions and this Protocol. Since this protection can only be effective if they can be identified and recognized as medical ships or craft, such vessels should be marked with the distinctive emblem and as far as possible comply with the second paragraph of Article 43 of the Second Convention.

2. The ships and craft referred to in paragraph 1 shall remain subject to the laws of war. Any warship on the surface able immediately to enforce its command may order them to stop, order them off, or make them take a certain course, and they shall obey every such command. Such ships and craft may not in any other way be diverted from their medical mission so long as they are needed for the wounded, sick and shipwrecked on board.

3. The protection provided in paragraph 1 shall cease only under the conditions set out in Articles 34 and 35 of the Second Convention. A clear refusal to obey a command given in accordance with paragraph 2 shall be an act harmful to the enemy under Article 34 of the Second Convention.

4. A Party to the conflict may notify any adverse Party as far in advance of sailing as possible of the name, description, expected time of sailing, course and estimated speed of the medical ship or craft, particularly in the case of ships of over 2,000 gross tons, and may provide any

other information which would facilitate identification and recognition. The adverse Party shall acknowledge receipt of such information.

5. The provisions of Article 37 of the Second Convention shall apply to medical and religious personnel in such ships and craft.

6. The provisions of the Second Convention shall apply to the wounded, sick and shipwrecked belonging to the categories referred to in Article 13 of the Second Convention and in Article 44 of this Protocol who may be on board such medical ships and craft. Wounded, sick and shipwrecked civilians who do not belong to any or the categories mentioned in Article 13 of the Second Convention shall not be subject, at sea, either to surrender to any Party which is not their own, or to removal from such ships or craft; if they find themselves in the power of a Party to the conflict other than their own, they shall be covered by the Fourth Convention and by this Protocol.

#### Art 24. Protection of medical Aircraft

Medical aircraft shall be respected and protected, subject to the provisions of this Part.

#### Art 25. Medical aircraft in areas not controlled by an adverse Party

In and over land areas physically controlled by friendly forces, or in and over sea areas not physically controlled by an adverse Party, the respect and protection of medical aircraft of a Party to the conflict is not dependent on any agreement with an adverse Party. For greater safety, however, a Party to the conflict operating its medical aircraft in these areas may notify the adverse Party, as provided in Article 29, in particular when such aircraft are making flights bringing them within range of surface-to-air weapons systems of the adverse Party.

#### Art 26. Medical aircraft in contact or similar zones

1. In and over those parts of the contact zone which are physically controlled by friendly forces and in and over those areas the physical control of which is not clearly established, protection for medical aircraft can be fully effective only by prior agreement between the competent military authorities of the Parties to the conflict, as provided for in Article 29. Although, in the absence of such an agreement, medical aircraft operate at their own risk, they shall nevertheless be respected after they have been recognized as such.

2. "Contact zone" means any area on land where the forward elements of opposing forces are in contact with each other, especially where they are exposed to direct fire from the ground.

#### Art 27. Medical aircraft in areas controlled by an adverse Party

1. The medical aircraft of a Party to the conflict shall continue to be protected while flying over land or sea areas physically controlled by an adverse Party, provided that prior agreement to such flights has been obtained from the competent authority of that adverse Party.

2. A medical aircraft which flies over an area physically controlled by an adverse Party without, or in deviation from the terms of, an agreement provided for in paragraph 1, either through navigational error or because of an emergency affecting the safety of the flight, shall make every effort to identify itself and to inform the adverse Party of the circumstances. As soon as such medical aircraft has been recognized by the adverse Party, that Party shall make all reasonable efforts to give the order to land or to alight on water, referred to in Article 30, paragraph 1, or to take other measures to safeguard its own interests, and, in either case, to allow the aircraft time for compliance, before resorting to an attack against the aircraft.

#### Art 28. Restrictions on operations of medical aircraft

1. The Parties to the conflict are prohibited from using their medical aircraft to attempt to acquire any military advantage over an adverse Party. The presence of medical aircraft shall not be used in an attempt to render military objectives immune from attack.
2. Medical aircraft shall not be used to collect or transmit intelligence data and shall not carry any equipment intended for such purposes. They are prohibited from carrying any persons or cargo not included within the definition in Article 8 (6). The carrying on board of the personal effects of the occupants or of equipment intended solely to facilitate navigation, communication or identification shall not be considered as prohibited,
3. Medical aircraft shall not carry any armament except small arms and ammunition taken from the wounded, sick and shipwrecked on board and not yet handed to the proper service, and such light individual weapons as may be necessary to enable the medical personnel on board to defend themselves and the wounded, sick and shipwrecked in their charge.
4. While carrying out the flights referred to in Articles 26 and 27, medical aircraft shall not, except by prior agreement with the adverse Party, be used to search for the wounded, sick and shipwrecked.

Art 29. Notifications and agreements concerning medical aircraft

1. Notifications under Article 25, or requests for prior agreement under Articles 26, 27, 28, paragraph 4, or 31 shall state the proposed number of medical aircraft, their flight plans and means of identification, and shall be understood to mean that every flight will be carried out in compliance with Article 28.
2. A Party which receives a notification given under Article 25 shall at once acknowledge receipt of such notification. 3. A Party which receives a request for prior agreement under Articles 25, 27, 28, paragraph 4, or 31 shall, as rapidly as possible, notify the requesting Party:
  - (a) that the request is agreed to;
  - (b) that the request is denied; or
  - (c) of reasonable alternative proposals to the request. It may also propose prohibition or restriction of other flights in the area during the time involved. If the Party which submitted the request accepts the alternative proposals, it shall notify the other Party of such acceptance.
4. The Parties shall take the necessary measures to ensure that notifications and agreements can be made rapidly.
5. The Parties shall also take the necessary measures to disseminate rapidly the substance of any such notifications and agreements to the military units concerned and shall instruct those units regarding the means of identification that will be used by the medical aircraft in question.

Art 30. Landing and inspection of medical aircraft

1. Medical aircraft flying over areas which are physically controlled by an adverse Party, or over areas the physical control of which is not clearly established, may be ordered to land or to alight on water, as appropriate, to permit inspection in accordance with the following paragraphs. Medical aircraft shall obey any such order.
2. If such an aircraft lands or alights on water, whether ordered to do so or for other reasons, it may be subjected to inspection solely to determine the matters referred to in paragraphs 3 and 4. Any such inspection shall be commenced without delay and shall be conducted expeditiously. The inspecting Party shall not require the wounded and sick to be removed

from the aircraft unless their removal is essential for the inspection. That Party shall in any event ensure that the condition of the wounded and sick is not adversely affected by the inspection or by the removal.

3. If the inspection discloses that the aircraft:

(a) is a medical aircraft within the meaning of Article 8, sub-paragraph j),

(b) is not in violation of the conditions prescribed in Article 28, and

(c) has not flown without or in breach of a prior agreement where such agreement is required, the aircraft and those of its occupants who belong to the adverse Party or to a neutral or other State not a Party to the conflict shall be authorized to continue the flight without delay.

4. If the inspection discloses that the aircraft:

(a) is not a medical aircraft within the meaning of Article 8, sub-paragraph j),

(b) is in violation of the conditions prescribed in Article 28, or

(c) has flown without or in breach of a prior agreement where such agreement is required, the aircraft may be seized. Its occupants shall be treated in conformity with the relevant provisions of the Conventions and of this Protocol. Any aircraft seized which had been assigned as a permanent medical aircraft may be used thereafter only as a medical aircraft.

Art 31. Neutral or other States not Parties to the conflict

1. Except by prior agreement, medical aircraft shall not fly over or land in the territory of a neutral or other State not a Party to the conflict. However, with such an agreement, they shall be respected throughout their flight and also for the duration of any calls in the territory. Nevertheless they shall obey any summons to land or to alight on water, as appropriate.

2. Should a medical aircraft, in the absence of an agreement or in deviation from the terms of an agreement, fly over the territory of a neutral or other State not a Party to the conflict, either through navigational error or because of an emergency affecting the safety of the flight, it shall make every effort to give notice of the flight and to identify itself. As soon as such medical aircraft is recognized, that State shall make all reasonable efforts to give the order to land or to alight on water referred to in Article 30, paragraph 1, or to take other measures to safeguard its own interests, and, in either case, to allow the aircraft time for compliance, before resorting to an attack against the aircraft.

3. If a medical aircraft, either by agreement or in the circumstances mentioned in paragraph 2, lands or alights on water in the territory of a neutral or other State not Party to the conflict, whether ordered to do so or for other reasons, the aircraft shall be subject to inspection for the purposes of determining whether it is in fact a medical aircraft. The inspection shall be commenced without delay and shall be conducted expeditiously. The inspecting Party shall not require the wounded and sick of the Party operating the aircraft to be removed from it unless their removal is essential for the inspection. The inspecting Party shall in any event ensure that the condition of the wounded and sick is not adversely affected by the inspection or the removal. If the inspection discloses that the aircraft is in fact a medical aircraft, the aircraft with its occupants, other than those who must be detained in accordance with the rules of international law applicable in armed conflict, shall be allowed to resume its flight, and reasonable facilities shall be given for the continuation of the flight. If the inspection discloses that the aircraft is not a medical aircraft, it shall be seized and the occupants treated in accordance with paragraph 4.

4. The wounded, sick and shipwrecked disembarked, otherwise than temporarily, from a medical aircraft with the consent of the local authorities in the territory of a neutral or other

State not a Party to the conflict shall, unless agreed otherwise between that State and the Parties to the conflict, be detained by that State where so required by the rules of international law applicable in armed conflict, in such a manner that they cannot again take part in the hostilities. The cost of hospital treatment and internment shall be borne by the State to which those persons belong.

5. Neutral or other States not Parties to the conflict shall apply any conditions and restrictions on the passage of medical aircraft over, or on the landing of medical aircraft in, their territory equally to all Parties to the conflict.

### Section III Missing and Dead Persons

#### Art 32. General principle

In the implementation of this Section, the activities of the High Contracting Parties, of the Parties to the conflict and of the international humanitarian organizations mentioned in the Conventions and in this Protocol shall be prompted mainly by the right of families to know the fate of their relatives.

#### Art 33. Missing persons

1. As soon as circumstances permit, and at the latest from the end of active hostilities, each Party to the conflict shall search for the persons who have been reported missing by an adverse Party. Such adverse Party shall transmit all relevant information concerning such persons in order to facilitate such searches.

2. In order to facilitate the gathering of information pursuant to the preceding paragraph, each Party to the conflict shall, with respect to persons who would not receive more favourable consideration under the Conventions and this Protocol:

(a) record the information specified in Article 138 of the Fourth Convention in respect of such persons who have been detained, imprisoned or otherwise held in captivity for more than two weeks as a result of hostilities or occupation, or who have died during any period of detention;

(b) to the fullest extent possible, facilitate and, if need be, carry out the search for and the recording of information concerning such persons if they have died in other circumstances as a result of hostilities or occupation.

3. Information concerning persons reported missing pursuant to paragraph 1 and requests for such information shall be transmitted either directly or through the Protecting Power or the Central Tracing Agency of the International Committee of the Red Cross or national Red Cross (Red Crescent, Red Lion and Sun) Societies. Where the information is not transmitted through the International Committee of the Red Cross and its Central Tracing Agency, each Party to the conflict shall ensure that such information is also supplied to the Central Tracing Agency.

4. The Parties to the conflict shall endeavour to agree on arrangements for teams to search for, identify and recover the dead from battlefield areas, including arrangements, if appropriate, for such teams to be accompanied by personnel of the adverse Party while carrying out these missions in areas controlled by the adverse Party. Personnel of such teams shall be respected and protected while exclusively carrying out these duties.

#### Art 34. Remains of deceased

1. The remains of persons who have died for reasons related to occupation or in detention resulting from occupation or hostilities and those of persons not nationals of the country in which they have died as a result of hostilities shall be respected, and the gravesites of all such

persons shall be respected, maintained and marked as provided for in Article 130 of the Fourth Convention, where their remains or gravesites would not receive more favourable consideration under the Conventions and this Protocol.

2. As soon as circumstances and the relations between the adverse Parties permit, the High Contracting Parties in whose territories graves and, as the case may be, other locations of the remains of persons who have died as a result of hostilities or during occupation or in detention are situated, shall conclude agreements in order:

(a) to facilitate access to the gravesites by relatives of the deceased and by representatives of official graves registration services and to regulate the practical arrangements for such access;

(b) to protect and maintain such gravesites permanently;

(c) to facilitate the return of the remains of the deceased and of personal effects to the home country upon its request or, unless that country objects, upon the request of the next of kin.

3. In the absence of the agreements provided for in paragraph 2 (b) or (c) and if the home country or such deceased is not willing to arrange at its expense for the maintenance of such gravesites, the High Contracting Party in whose territory the gravesites are situated may offer to facilitate the return of the remains of the deceased to the home country. Where such an offer has not been accepted the High Contracting Party may, after the expiry of five years from the date of the offer and upon due notice to the home country, adopt the arrangements laid down in its own laws relating to cemeteries and graves.

4. A High Contracting Party in whose territory the grave sites referred to in this Article are situated shall be permitted to exhume the remains only:

(a) in accordance with paragraphs 2 (c) and 3, or

(b) where exhumation is a matter of overriding public necessity, including cases of medical and investigative necessity, in which case the High Contracting Party shall at all times respect the remains, and shall give notice to the home country or its intention to exhume the remains together with details of the intended place of reinterment.

### Part III. Methods and Means of Warfare Combatant and Prisoners-Of-War

#### Section I. Methods and Means of Warfare

##### Art 35. Basic rules

1. In any armed conflict, the right of the Parties to the conflict to choose methods or means of warfare is not unlimited.

2. It is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering.

3. It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment.

##### Art 36. New weapons

In the study, development, acquisition or adoption of a new weapon, means or method of warfare, a High Contracting Party is under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by this Protocol or by any other rule of international law applicable to the High Contracting Party.

##### Art 37. Prohibition of Perfidy

1. It is prohibited to kill, injure or capture an adversary by resort to perfidy. 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, shall constitute perfidy. The following acts are examples of perfidy:

- (a) the feigning of an intent to negotiate under a flag of truce or of a surrender;
- (b) the feigning of an incapacitation by wounds or sickness;
- (c) the feigning of civilian, non-combatant status; and
- (d) the feigning of protected status by the use of signs, emblems or uniforms of the United Nations or of neutral or other States not Parties to the conflict.

2. Ruses of war are not prohibited. Such ruses are acts which are intended to mislead an adversary or to induce him to act recklessly but which infringe no rule of international law applicable in armed conflict and which are not perfidious because they do not invite the confidence of an adversary with respect to protection under that law. The following are examples of such ruses: the use of camouflage, decoys, mock operations and misinformation.

#### Art 38. Recognized emblems

1. It is prohibited to make improper use of the distinctive emblem of the red cross, red crescent or red lion and sun or of other emblems, signs or signals provided for by the Conventions or by this Protocol. It is also prohibited to misuse deliberately in an armed conflict other internationally recognized protective emblems, signs or signals, including the flag of truce, and the protective emblem of cultural property.

2. It is prohibited to make use of the distinctive emblem of the United Nations, except as authorized by that Organization.

#### Art 39. Emblems of nationality

1. It is prohibited to make use in an armed conflict of the flags or military emblems, insignia or uniforms of neutral or other States not Parties to the conflict.

2. It is prohibited to make use 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.

3. Nothing in this Article or in Article 37, paragraph 1 (d), shall affect the existing generally recognized rules of international law applicable to espionage or to the use of flags in the conduct of armed conflict at sea.

#### Art 40. Quarter

It is prohibited to order that there shall be no survivors, to threaten an adversary therewith or to conduct hostilities on this basis.

#### Art 41. Safeguard of an enemy hors de combat

1. A person who is recognized or who, in the circumstances, should be recognized to be hors de combat shall not be made the object of attack.

2. A person is hors de combat if:

- (a) he is in the power of an adverse Party;
- (b) he clearly expresses an intention to surrender; or
- (c) he has been rendered unconscious or is otherwise incapacitated by wounds or sickness, and therefore is incapable of defending himself;

provided that in any of these cases he abstains from any hostile act and does not attempt to escape.

3. When persons entitled to protection as prisoners of war have fallen into the power of an adverse Party under unusual conditions of combat which prevent their evacuation as provided

for in Part III, Section I, of the Third Convention, they shall be released and all feasible precautions shall be taken to ensure their safety.

#### Article 42 - Occupants of aircraft

1. No person parachuting from an aircraft in distress shall be made the object of attack during his descent.

2. Upon reaching the ground in territory controlled by an adverse Party, a person who has parachuted from an aircraft in distress shall be given an opportunity to surrender before being made the object of attack, unless it is apparent that he is engaging in a hostile act.

3. Airborne troops are not protected by this Article.

#### Section II. Combatants and Prisoners of War

##### Art 43. Armed forces

1. The armed forces of a Party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct or its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party. Such armed forces shall be subject to an internal disciplinary system which, inter alia, shall enforce compliance with the rules of international law applicable in armed conflict.

2. Members of the armed forces of a Party to a conflict (other than medical personnel and chaplains covered by Article 33 of the Third Convention) are combatants, that is to say, they have the right to participate directly in hostilities.

3. Whenever a Party to a conflict incorporates a paramilitary or armed law enforcement agency into its armed forces it shall so notify the other Parties to the conflict.

##### Art 44. Combatants and prisoners of war

1. Any combatant, as defined in Article 43, who falls into the power of an adverse Party shall be a prisoner of war.

2. While all combatants are obliged to comply with the rules of international law applicable in armed conflict, violations of these rules shall not deprive a combatant of his right to be a combatant or, if he falls into the power of an adverse Party, of his right to be a prisoner of war, except as provided in paragraphs 3 and 4.

3. In order to promote the protection of the civilian population from the effects of hostilities, combatants are obliged to distinguish themselves from the civilian population while they are engaged in an attack or in a military operation preparatory to an attack. Recognizing, however, that there are situations in armed conflicts where, owing to the nature of the hostilities an armed combatant cannot so distinguish himself, he shall retain his status as a combatant, provided that, in such situations, he carries his arms openly:

(a) during each military engagement, and

(b) during such time as he is visible to the adversary while he is engaged in a military deployment preceding the launching of an attack in which he is to participate.

Acts which comply with the requirements of this paragraph shall not be considered as perfidious within the meaning of Article 37, paragraph 1 (c).

4. A combatant who falls into the power of an adverse Party while failing to meet the requirements set forth in the second sentence of paragraph 3 shall forfeit his right to be a prisoner of war, but he shall, nevertheless, be given protections equivalent in all respects to those accorded to prisoners of war by the Third Convention and by this Protocol. This

protection includes protections equivalent to those accorded to prisoners of war by the Third Convention in the case where such a person is tried and punished for any offences he has committed.

5. Any combatant who falls into the power of an adverse Party while not engaged in an attack or in a military operation preparatory to an attack shall not forfeit his rights to be a combatant and a prisoner of war by virtue of his prior activities .

6. This Article is without prejudice to the right of any person to be a prisoner of war pursuant to Article 4 of the Third Convention.

7. This Article is not intended to change the generally accepted practice of States with respect to the wearing of the uniform by combatants assigned to the regular, uniformed armed units of a Party to the conflict.

8. In addition to the categories of persons mentioned in Article 13 of the First and Second Conventions, all members of the armed forces of a Party to the conflict, as defined in Article 43 of this Protocol, shall be entitled to protection under those Conventions if they are wounded or sick or, in the case of the Second Convention, shipwrecked at sea or in other waters.

#### Art 45. Protection of persons who have taken part in hostilities

1. A person who takes part in hostilities and falls into the power of an adverse Party shall be presumed to be a prisoner of war, and therefore shall be protected by the Third Convention, if he claims the status of prisoner of war, or if he appears to be entitled to such status, or if the Party on which he depends claims such status on his behalf by notification to the detaining Power or to the Protecting Power. Should any doubt arise as to whether any such person is entitled to the status of prisoner of war, he shall continue to have such status and, therefore, to be protected by the Third Convention and this Protocol until such time as his status has been determined by a competent tribunal.

2. If a person who has fallen into the power of an adverse Party is not held as a prisoner of war and is to be tried by that Party for an offence arising out of the hostilities, he shall have the right to assert his entitlement to prisoner-of-war status before a judicial tribunal and to have that question adjudicated. Whenever possible under the applicable procedure, this adjudication shall occur before the trial for the offence. The representatives of the Protecting Power shall be entitled to attend the proceedings in which that question is adjudicated, unless, exceptionally, the proceedings are held in camera in the interest of State security. In such a case the detaining Power shall advise the Protecting Power accordingly.

3. Any person who has taken part in hostilities, who is not entitled to prisoner-of-war status and who does not benefit from more favourable treatment in accordance with the Fourth Convention shall have the right at all times to the protection of Article 75 of this Protocol. In occupied territory, any such person, unless he is held as a spy, shall also be entitled, notwithstanding Article 5 of the Fourth Convention, to his rights of communication under that Convention.

#### Art 46. Spies

1. Notwithstanding any other provision of the Conventions or of this Protocol, any member of the armed forces of a Party to the conflict who falls into the power of an adverse Party while engaging in espionage shall not have the right to the status of prisoner of war and may be treated as a spy.

2. A member of the armed forces of a Party to the conflict who, on behalf of that Party and in territory controlled by an adverse Party, gathers or attempts to gather information shall not be considered as engaging in espionage if, while so acting, he is in the uniform of his armed forces.

3. A member of the armed forces of a Party to the conflict who is a resident of territory occupied by an adverse Party and who, on behalf of the Party on which he depends, gathers or attempts to gather information of military value within that territory shall not be considered as engaging in espionage unless he does so through an act of false pretences or deliberately in a clandestine manner. Moreover, such a resident shall not lose his right to the status of prisoner of war and may not be treated as a spy unless he is captured while engaging in espionage.

4. A member of the armed forces of a Party to the conflict who is not a resident of territory occupied by an adverse Party and who has engaged in espionage in that territory shall not lose his right to the status of prisoner of war and may not be treated as a spy unless he is captured before he has rejoined the armed forces to which he belongs.

#### Art 47. Mercenaries

1. A mercenary shall not have the right to be a combatant or a prisoner of war.

2. A mercenary is any person who:

(a) is specially recruited locally or abroad in order to fight in an armed conflict;

(b) does, in fact, take a direct part in the hostilities;

(c) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party;

(d) is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict;

(e) is not a member of the armed forces of a Party to the conflict; and

(f) has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.

#### Part IV. Civilian Population

##### Section I. General Protection Against Effects of Hostilities

##### **Chapter I. Basic rule and field of application**

#### Art 48. Basic rule

In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the 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 49. Definition of attacks and scope of application

1. "Attacks" means acts of violence against the adversary, whether in offence or in defence.

2. The provisions of this Protocol with respect to attacks apply to all attacks in whatever territory conducted, including the national territory belonging to a Party to the conflict but under the control of an adverse Party.

3. The provisions of this section apply to any land, air or sea warfare which may affect the civilian population, individual civilians or civilian objects on land. They further apply to all

attacks from the sea or from the air against objectives on land but do not otherwise affect the rules of international law applicable in armed conflict at sea or in the air.

4. The provisions of this section are additional to the rules concerning humanitarian protection contained in the Fourth Convention, particularly in part II thereof, and in other international agreements binding upon the High Contracting Parties, as well as to other rules of international law relating to the protection of civilians and civilian objects on land, at sea or in the air against the effects of hostilities.

## **Chapter II. Civilians and civilian population**

### **Art 50. Definition of civilians and civilian population**

1. A civilian is any person who does not belong to one of the categories of persons referred to in Article 4 (A) (1), (2), (3) and (6) of the Third Convention and in Article 43 of this Protocol. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian.

2. The civilian population comprises all persons who are civilians.

3. The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character.

### **Art 51. - Protection of the civilian population**

1. The civilian population and individual civilians shall enjoy general protection against dangers arising from military operations. To give effect to this protection, the following rules, which are additional to other applicable rules of international law, shall be observed in all circumstances.

2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.

3. Civilians shall enjoy the protection afforded by this section, unless and for such time as they take a direct part in hostilities.

4. Indiscriminate attacks are prohibited. Indiscriminate attacks are:

(a) those which are not directed at a specific military objective;

(b) those which employ a method or means of combat which cannot be directed at a specific military objective; or

(c) those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol;

and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.

5. Among others, the following types of attacks are to be considered as indiscriminate:

(a) an attack by bombardment by any methods or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects; and

(b) an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

6. Attacks against the civilian population or civilians by way of reprisals are prohibited.

7. The presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favour or impede military operations. The Parties to the conflict shall not direct the movement of the civilian population

or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations.

8. Any violation of these prohibitions shall not release the Parties to the conflict from their legal obligations with respect to the civilian population and civilians, including the obligation to take the precautionary measures provided for in Article 57.

### **Chapter III. Civilian objects**

#### **Art 52. General Protection of civilian objects**

1. Civilian objects shall not be the object of attack or of reprisals. Civilian objects are all objects which are not military objectives as defined in paragraph 2.

2. Attacks shall be limited strictly to military objectives. In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

3. In case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used.

#### **Art 53. Protection of cultural objects and of places of worship**

Without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, and of other relevant international instruments, it is prohibited:

- (a) to commit any acts of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples;
- (b) to use such objects in support of the military effort;
- (c) to make such objects the object of reprisals.

#### **Art 54. Protection of objects indispensable to the survival of the civilian population**

1. Starvation of civilians as a method of warfare is prohibited.

2. It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as food-stuffs, agricultural areas for the production of food-stuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive.

3. The prohibitions in paragraph 2 shall not apply to such of the objects covered by it as are used by an adverse Party:

- (a) as sustenance solely for the members of its armed forces; or
- (b) if not as sustenance, then in direct support of military action, provided, however, that in no event shall actions against these objects be taken which may be expected to leave the civilian population with such inadequate food or water as to cause its starvation or force its movement.

4. These objects shall not be made the object of reprisals.

5. In recognition of the vital requirements of any Party to the conflict in the defence of its national territory against invasion, derogation from the prohibitions contained in paragraph 2 may be made by a Party to the conflict within such territory under its own control where required by imperative military necessity.

Art 55. Protection of the natural environment

1. Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population.

2. Attacks against the natural environment by way of reprisals are prohibited.

Art 56. Protection of works and installations containing dangerous forces

1. Works or installations containing dangerous forces, namely dams, dykes and nuclear electrical generating stations, shall not be made the object of attack, even where these objects are military objectives, if such attack may cause the release of dangerous forces and consequent severe losses among the civilian population. Other military objectives located at or in the vicinity of these works or installations shall not be made the object of attack if such attack may cause the release of dangerous forces from the works or installations and consequent severe losses among the civilian population.

2. The special protection against attack provided by paragraph 1 shall cease:

(a) for a dam or a dyke only if it is used for other than its normal function and in regular, significant and direct support of military operations and if such attack is the only feasible way to terminate such support;

(b) for a nuclear electrical generating station only if it provides electric power in regular, significant and direct support of military operations and if such attack is the only feasible way to terminate such support;

(c) for other military objectives located at or in the vicinity of these works or installations only if they are used in regular, significant and direct support of military operations and if such attack is the only feasible way to terminate such support.

3. In all cases, the civilian population and individual civilians shall remain entitled to all the protection accorded them by international law, including the protection of the precautionary measures provided for in Article 57. If the protection ceases and any of the works, installations or military objectives mentioned in paragraph 1 is attacked, all practical precautions shall be taken to avoid the release of the dangerous forces.

4. It is prohibited to make any of the works, installations or military objectives mentioned in paragraph 1 the object of reprisals.

5. The Parties to the conflict shall endeavour to avoid locating any military objectives in the vicinity of the works or installations mentioned in paragraph 1. Nevertheless, installations erected for the sole purpose of defending the protected works or installations from attack are permissible and shall not themselves be made the object of attack, provided that they are not used in hostilities except for defensive actions necessary to respond to attacks against the protected works or installations and that their armament is limited to weapons capable only of repelling hostile action against the protected works or installations.

6. The High Contracting Parties and the Parties to the conflict are urged to conclude further agreements among themselves to provide additional protection for objects containing dangerous forces.

7. In order to facilitate the identification of the objects protected by this article, the Parties to the conflict may mark them with a special sign consisting of a group of three bright orange circles placed on the same axis, as specified in Article 16 of Annex I to this Protocol [Article

17 of Amended Annex]. The absence of such marking in no way relieves any Party to the conflict of its obligations under this Article.

#### **Chapter IV. Precautionary measures**

##### **Art 57. Precautions in attack**

1. In the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects.

2. With respect to attacks, the following precautions shall be taken:

(a) those who plan or decide upon an attack shall:

(i) do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects and are not subject to special protection but are military objectives within the meaning of paragraph 2 of Article 52 and that it is not prohibited by the provisions of this Protocol to attack them;

(ii) take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects;

(iii) refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;

(b) an attack shall be cancelled or suspended if it becomes apparent that the objective is not a military one or is subject to special protection or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;

(c) effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit.

3. When a choice is possible between several military objectives for obtaining a similar military advantage, the objective to be selected shall be that the attack on which may be expected to cause the least danger to civilian lives and to civilian objects.

4. In the conduct of military operations at sea or in the air, each Party to the conflict shall, in conformity with its rights and duties under the rules of international law applicable in armed conflict, take all reasonable precautions to avoid losses of civilian lives and damage to civilian objects.

5. No provision of this article may be construed as authorizing any attacks against the civilian population, civilians or civilian objects.

##### **Art 58. Precautions against the effects of attacks**

The Parties to the conflict shall, to the maximum extent feasible:

(a) without prejudice to Article 49 of the Fourth Convention, endeavour to remove the civilian population, individual civilians and civilian objects under their control from the vicinity of military objectives;

(b) avoid locating military objectives within or near densely populated areas;

(c) take the other necessary precautions to protect the civilian population, individual civilians and civilian objects under their control against the dangers resulting from military operations.

#### **Chapter V. Localities and zones under special protection**

##### **Art 59. Non-defended localities**

1. It is prohibited for the Parties to the conflict to attack, by any means whatsoever, non-defended localities.
2. The appropriate authorities of a Party to the conflict may declare as a non-defended locality any inhabited place near or in a zone where armed forces are in contact which is open for occupation by an adverse Party.  
Such a locality shall fulfil the following conditions:
  - (a) all combatants, as well as mobile weapons and mobile military equipment must have been evacuated;
  - (b) no hostile use shall be made of fixed military installations or establishments;
  - (c) no acts of hostility shall be committed by the authorities or by the population; and
  - (d) no activities in support of military operations shall be undertaken.
3. The presence, in this locality, of persons specially protected under the Conventions and this Protocol, and of police forces retained for the sole purpose of maintaining law and order, is not contrary to the conditions laid down in paragraph 2.
4. The declaration made under paragraph 2 shall be addressed to the adverse Party and shall define and describe, as precisely as possible, the limits of the non-defended locality. The Party to the conflict to which the declaration is addressed shall acknowledge its receipt and shall treat the locality as a non-defended locality unless the conditions laid down in paragraph 2 are not in fact fulfilled, in which event it shall immediately so inform the Party making the declaration. Even if the conditions laid down in paragraph 2 are not fulfilled, the locality shall continue to enjoy the protection provided by the other provisions of this Protocol and the other rules of international law applicable in armed conflict.
5. The Parties to the conflict may agree on the establishment of non-defended localities even if such localities do not fulfil the conditions laid down in paragraph 2. The agreement should define and describe, as precisely as possible, the limits of the non-defended locality; if necessary, it may lay down the methods of supervision.
6. The Party which is in control of a locality governed by such an agreement shall mark it, so far as possible, by such signs as may be agreed upon with the other Party, which shall be displayed where they are clearly visible, especially on its perimeter and limits and on highways.
7. A locality loses its status as a non-defended locality when it ceases to fulfil the conditions laid down in paragraph 2 or in the agreement referred to in paragraph 5. In such an eventuality, the locality shall continue to enjoy the protection provided by the other provisions of this Protocol and the other rules of international law applicable in armed conflict.

#### Art 60. Demilitarized zones

1. It is prohibited for the Parties to the conflict to extend their military operations to zones on which they have conferred by agreement the status of demilitarized zone, if such extension is contrary to the terms of this agreement.
2. The agreement shall be an express agreement, may be concluded verbally or in writing, either directly or through a Protecting Power or any impartial humanitarian organization, and may consist of reciprocal and concordant declarations. The agreement may be concluded in peacetime, as well as after the outbreak of hostilities, and should define and describe, as precisely as possible, the limits of the demilitarized zone and, if necessary, lay down the methods of supervision.

3. The subject of such an agreement shall normally be any zone which fulfils the following conditions:

- (a) all combatants, as well as mobile weapons and mobile military equipment, must have been evacuated;
- (b) no hostile use shall be made of fixed military installations or establishments;
- (c) no acts of hostility shall be committed by the authorities or by the population; and
- (d) any activity linked to the military effort must have ceased.

The Parties to the conflict shall agree upon the interpretation to be given to the condition laid down in subparagraph (d) and upon persons to be admitted to the demilitarized zone other than those mentioned in paragraph 4.

4. The presence, in this zone, of persons specially protected under the Conventions and this Protocol, and of police forces retained for the sole purpose of maintaining law and order, is not contrary to the conditions laid down in paragraph 3.

5. The Party which is in control of such a zone shall mark it, so far as possible, by such signs as may be agreed upon with the other Party, which shall be displayed where they are clearly visible, especially on its perimeter and limits and on highways.

6. If the fighting draws near to a demilitarized zone, and if the Parties to the conflict have so agreed, none of them may use the zone for purposes related to the conduct of military operations or unilaterally revoke its status.

7. If one of the Parties to the conflict commits a material breach of the provisions of paragraphs 3 or 6, the other Party shall be released from its obligations under the agreement conferring upon the zone the status of demilitarized zone. In such an eventuality, the zone loses its status but shall continue to enjoy the protection provided by the other provisions of this Protocol and the other rules of international law applicable in armed conflict.

#### **Chapter VI. Civil defence**

Art 61. - Definitions and scope

For the purpose of this Protocol:

(1) "Civil defence" means the performance of some or all of the undermentioned humanitarian tasks intended to protect the civilian population against the dangers, and to help it to recover from the immediate effects, of hostilities or disasters and also to provide the conditions necessary for its survival. These tasks are:

- (a) warning;
- (b) evacuation;
- (c) management of shelters;
- (d) management of blackout measures;
- (e) rescue;
- (f) medical services, including first aid, and religious assistance;
- (g) fire-fighting;
- (h) detection and marking of danger areas;
- (i) decontamination and similar protective measures;
- (j) provision of emergency accommodation and supplies;
- (k) emergency assistance in the restoration and maintenance of order in distressed areas;
- (l) emergency repair of indispensable public utilities;
- (m) emergency disposal of the dead;
- (n) assistance in the preservation of objects essential for survival;

(o) complementary activities necessary to carry out any of the tasks mentioned above, including, but not limited to, planning and organization;

(2) "Civil defence organizations" means those establishments and other units which are organized or authorized by the competent authorities of a Party to the conflict to perform any of the tasks mentioned under (1), and which are assigned and devoted exclusively to such tasks; (3) "Personnel" of civil defence organizations means those persons assigned by a Party to the conflict exclusively to the performance of the tasks mentioned under (1), including personnel assigned by the competent authority of that Party exclusively to the administration of these organizations;

(4) "Matériel" of civil defence organizations means equipment, supplies and transports used by these organizations for the performance of the tasks mentioned under (1).

#### Art 62. General protection

1. Civilian civil defence organizations and their personnel shall be respected and protected, subject to the provisions of this Protocol, particularly the provisions of this section. They shall be entitled to perform their civil defence tasks except in case of imperative military necessity.

2. The provisions of paragraph 1 shall also apply to civilians who, although not members of civilian civil defence organizations, respond to an appeal from the competent authorities and perform civil defence tasks under their control.

3. Buildings and matériel used for civil defence purposes and shelters provided for the civilian population are covered by Article 52. Objects used for civil defence purposes may not be destroyed or diverted from their proper use except by the Party to which they belong.

#### Art 63. Civil defence in occupied territories

1. In occupied territories, civilian civil defence organizations shall receive from the authorities the facilities necessary for the performance of their tasks. In no Circumstances shall their personnel be compelled to perform activities which would interfere with the proper performance of these tasks. The Occupying Power shall not change the structure or personnel of such organizations in any way which might jeopardize the efficient performance of their mission. These organizations shall not be required to give priority to the nationals or interests of that Power.

2. The Occupying Power shall not compel, coerce or induce civilian civil defence organizations to perform their tasks in any manner prejudicial to the interests of the civilian population.

3. The Occupying Power may disarm civil defence personnel for reasons of security.

4. The Occupying Power shall neither divert from their proper use nor requisition buildings or matériel belonging to or used by civil defence organizations if such diversion or requisition would be harmful to the civilian population.

5. Provided that the general rule in paragraph 4 continues to be observed, the Occupying Power may requisition or divert these resources, subject to the following particular conditions:

(a) that the buildings or matériel are necessary for other needs of the civilian population; and  
(b) that the requisition or diversion continues only while such necessity exists.

6. The Occupying Power shall neither divert nor requisition shelters provided for the use of the civilian population or needed by such population.

Art 64. Civilian civil defence organizations of neutral or other States not Parties to the conflict and international co-ordinating organizations

1. Articles 62, 63, 65 and 66 shall also apply to the personnel and matériel of civilian civil defence organizations of neutral or other States not Parties to the conflict which perform civil defence tasks mentioned in Article 61 in the territory of a Party to the conflict, with the consent and under the control of that Party. Notification of such assistance shall be given as soon as possible to any adverse Party concerned. In no circumstances shall this activity be deemed to be an interference in the conflict. This activity should, however, be performed with due regard to the security interests of the Parties to the conflict concerned.

2. The Parties to the conflict receiving the assistance referred to in paragraph 1 and the High Contracting Parties granting it should facilitate international co-ordination of such civil defence actions when appropriate. In such cases the relevant international organizations are covered by the provisions of this Chapter.

3. In occupied territories, the Occupying Power may only exclude or restrict the activities of civilian civil defence organizations of neutral or other States not Parties to the conflict and of international co-ordinating organizations if it can ensure the adequate performance of civil defence tasks from its own resources or those of the occupied territory.

Art 65. Cessation of protection

1. The protection to which civilian civil defence organizations, their personnel, buildings, shelters and matériel are entitled shall not cease unless they commit or are used to commit, outside their proper tasks, acts harmful to the enemy. Protection may, however, cease only after a warning has been given setting, whenever appropriate, a reasonable time-limit, and after such warning has remained unheeded.

2. The following shall not be considered as acts harmful to the enemy:

(a) that civil defence tasks are carried out under the direction or control of military authorities;

(b) that civilian civil defence personnel co-operate with military personnel in the performance of civil defence tasks, or that some military personnel are attached to civilian civil defence organizations;

(c) that the performance of civil defence tasks may incidentally benefit military victims, particularly those who are hors de combat.

3. It shall also not be considered as an act harmful to the enemy that civilian civil defence personnel bear light individual weapons for the purpose of maintaining order or for self-defence. However, in areas where land fighting is taking place or is likely to take place, the Parties to the conflict shall undertake the appropriate measures to limit these weapons to handguns, such as pistols or revolvers, in order to assist in distinguishing between civil defence personnel and combatants. Although civil defence personnel bear other light individual weapons in such areas, they shall nevertheless be respected and protected as soon as they have been recognized as such.

4. The formation of civilian civil defence organizations along military lines, and compulsory service in them, shall also not deprive them of the protection conferred by this Chapter.

Art 66. Identification

1. Each Party to the conflict shall endeavour to ensure that its civil defence organizations, their personnel, buildings and matériel are identifiable while they are exclusively devoted to

the performance of civil defence tasks. Shelters provided for the civilian population should be similarly identifiable.

2. Each Party to the conflict shall also endeavour to adopt and implement methods and procedures which will make it possible to recognize civilian shelters as well as civil defence personnel, buildings and matériel on which the international distinctive sign of civil defence is displayed.

3. In occupied territories and in areas where fighting is taking place or is likely to take place, civilian civil defence personnel should be recognizable by the international distinctive sign of civil defence and by an identity card certifying their status.

4. The international distinctive sign of civil defence is an equilateral blue triangle on an orange ground when used for the protection of civil defence organizations, their personnel, buildings and matériel and for civilian shelters.

5. In addition to the distinctive sign, Parties to the conflict may agree upon the use of distinctive signals for civil defence identification purposes.

6. The application of the provisions of paragraphs 1 to 4 is governed by Chapter V of Annex I to this Protocol.

7. In time of peace, the sign described in paragraph 4 may, with the consent of the competent national authorities, be used for civil defence identification purposes.

8. The High Contracting Parties and the Parties to the conflict shall take the measures necessary to supervise the display of the international distinctive sign of civil defence and to prevent and repress any misuse thereof.

9. The identification of civil defence medical and religious personnel, medical units and medical transports is also governed by Article 18.

Art 67. Members of the armed forces and military units assigned to civil defence organizations

1. Members of the armed forces and military units assigned to civil defence organizations shall be respected and protected, provided that:

(a) such personnel and such units are permanently assigned and exclusively devoted to the performance of any of the tasks mentioned in Article 61;

(b) if so assigned, such personnel do not perform any other military duties during the conflict;

(c) such personnel are clearly distinguishable from the other members of the armed forces by prominently displaying the international distinctive sign of civil defence, which shall be as large as appropriate, and such personnel are provided with the identity card referred to in Chapter V of Annex I to this Protocol certifying their status;

(d) such personnel and such units are equipped only with light individual weapons for the purpose of maintaining order or for self-defence. The provisions of Article 65, paragraph 3 shall also apply in this case;

(e) such personnel do not participate directly in hostilities, and do not commit, or are not used to commit, outside their civil defence tasks, acts harmful to the adverse Party

(f) such personnel and such units perform their civil defence tasks only within the national territory of their Party.

The non-observance of the conditions stated in (e) above by any member of the armed forces who is bound by the conditions prescribed in (a) and (b) above is prohibited.

2. Military personnel serving within civil defence organizations shall, if they fall into the power of an adverse Party, be prisoners of war. In occupied territory they may, but only in the interest of the civilian population of that territory, be employed on civil defence tasks in so far as the need arises, provided however that, if such work is dangerous, they volunteer for such tasks.

3. The buildings and major items of equipment and transports of military units assigned to civil defence organizations shall be clearly marked with the international distinctive sign of civil defence. This distinctive sign shall be as large as appropriate.

4. The matériel and buildings of military units permanently assigned to civil defence organizations and exclusively devoted to the performance of civil defence tasks shall, if they fall into the hands of an adverse Party, remain subject to the laws of war. They may not be diverted from their civil defence purpose so long as they are required for the performance of civil defence tasks, except in case of imperative military necessity, unless previous arrangements have been made for adequate provision for the needs of the civilian population.

## Section II. Relief in Favour of the Civilian Population

### Art 68. Field of application

The provisions of this Section apply to the civilian population as defined in this Protocol and are supplementary to Articles 23, 55, 59, 60, 61 and 62 and other relevant provisions of the Fourth Convention.

### Art 69. Basic needs in occupied territories

1. In addition to the duties specified in Article 55 of the Fourth Convention concerning food and medical supplies, the Occupying Power shall, to the fullest extent of the means available to it and without any adverse distinction, also ensure the provision of clothing, bedding, means of shelter, other supplies essential to the survival of the civilian population of the occupied territory and objects necessary for religious worship.

2. Relief actions for the benefit of the civilian population of occupied territories are governed by Articles 59, 60, 61, 62, 108, 109, 110 and 111 of the Fourth Convention, and by Article 71 of this Protocol, and shall be implemented without delay.

### Art 70. Relief actions

1. If the civilian population of any territory under the control of a Party to the conflict, other than occupied territory, is not adequately provided with the supplies mentioned in Article 69, relief actions which are humanitarian and impartial in character and conducted without any adverse distinction shall be undertaken, subject to the agreement of the Parties concerned in such relief actions. Offers of such relief shall not be regarded as interference in the armed conflict or as unfriendly acts. In the distribution of relief consignments, priority shall be given to those persons, such as children, expectant mothers, maternity cases and nursing mothers, who, under the Fourth Convention or under this Protocol, are to be accorded privileged treatment or special protection.

2. The Parties to the conflict and each High Contracting Party shall allow and facilitate rapid and unimpeded passage of all relief consignments, equipment and personnel provided in accordance with this Section, even if such assistance is destined for the civilian population of the adverse Party.

3. The Parties to the conflict and each High Contracting Party which allow the passage of relief consignments, equipment and personnel in accordance with paragraph 2:

(a) shall have the right to prescribe the technical arrangements, including search, under which such passage is permitted;

(b) may make such permission conditional on the distribution of this assistance being made under the local supervision of a Protecting Power;

(c) shall, in no way whatsoever, divert relief consignments from the purpose for which they are intended nor delay their forwarding, except in cases of urgent necessity in the interest of the civilian population concerned.

4. The Parties to the conflict shall protect relief consignments and facilitate their rapid distribution.

5. The Parties to the conflict and each High Contracting Party concerned shall encourage and facilitate effective international co-ordination of the relief actions referred to in paragraph 1.

Art 71. Personnel participating in relief actions

1. Where necessary, relief personnel may form part of the assistance provided in any relief action, in particular for the transportation and distribution of relief consignments; the participation of such personnel shall be subject to the approval of the Party in whose territory they will carry out their duties.

2. Such personnel shall be respected and protected.

3. Each Party in receipt of relief consignments shall, to the fullest extent practicable, assist the relief personnel referred to in paragraph 1 in carrying out their relief mission. Only in case of imperative military necessity may the activities of the relief personnel be limited or their movements temporarily restricted.

4. Under no circumstances may relief personnel exceed the terms of their mission under this Protocol. In particular they shall take account of the security requirements of the Party in whose territory they are carrying out their duties. The mission of any of the personnel who do not respect these conditions may be terminated.

Section III. Treatment of Persons in the Power of a Party to the Conflict

### **Chapter I. Field of application and protection of persons and objects**

Art 72. Field of application

The provisions of this Section are additional to the rules concerning humanitarian protection of civilians and civilian objects in the power of a Party to the conflict contained in the Fourth Convention, particularly Parts I and III thereof, as well as to other applicable rules of international law relating to the protection of fundamental human rights during international armed conflict.

Art 73. Refugees and stateless persons

Persons who, before the beginning of hostilities, were considered as stateless persons or refugees under the relevant international instruments accepted by the Parties concerned or under the national legislation of the State of refuge or State of residence shall be protected persons within the meaning of Parts I and III of the Fourth Convention, in all circumstances and without any adverse distinction.

Art 74. Reunion of dispersed families

The High Contracting Parties and the Parties to the conflict shall facilitate in every possible way the reunion of families dispersed as a result of armed conflicts and shall encourage in particular the work of the humanitarian organizations engaged in this task in accordance with the provisions of the Conventions and of this Protocol and in conformity with their respective security regulations.

#### Art 75. Fundamental guarantees

1. In so far as they are affected by a situation referred to in Article 1 of this Protocol, persons who are in the power of a Party to the conflict and who do not benefit from more favourable treatment under the Conventions or under this Protocol shall be treated humanely in all circumstances and shall enjoy, as a minimum, the protection provided by this Article without any adverse distinction based upon race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria. Each Party shall respect the person, honour, convictions and religious practices of all such persons.

2. The following acts are and shall remain prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents:

(a) violence to the life, health, or physical or mental well-being of persons, in particular:

(i) murder;

(ii) torture of all kinds, whether physical or mental;

(iii) corporal punishment; and

(iv) mutilation;

(b) outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault;

(c) the taking of hostages;

(d) collective punishments; and

(e) threats to commit any of the foregoing acts.

3. Any person arrested, detained or interned for actions related to the armed conflict shall be informed promptly, in a language he understands, of the reasons why these measures have been taken. Except in cases of arrest or detention for penal offences, such persons shall be released with the minimum delay possible and in any event as soon as the circumstances justifying the arrest, detention or internment have ceased to exist.

4. No sentence may be passed and no penalty may be executed on a person found guilty of a penal offence related to the armed conflict except pursuant to a conviction pronounced by an impartial and regularly constituted court respecting the generally recognized principles of regular judicial procedure, which include the following:

(a) the procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him and shall afford the accused before and during his trial all necessary rights and means of defence;

(b) no one shall be convicted of an offence except on the basis of individual penal responsibility;

(c) no one shall be accused or convicted of a criminal offence on account or any act or omission which did not constitute a criminal offence under the national or international law to which he was subject at the time when it was committed; nor shall a heavier penalty be imposed than that which was applicable at the time when the criminal offence was committed; if, after the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;

(d) anyone charged with an offence is presumed innocent until proved guilty according to law;

(e) anyone charged with an offence shall have the right to be tried in his presence;

(f) no one shall be compelled to testify against himself or to confess guilt;

(g) anyone charged with an offence shall have the right to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(h) no one shall be prosecuted or punished by the same Party for an offence in respect of which a final judgement acquitting or convicting that person has been previously pronounced under the same law and judicial procedure;

(i) anyone prosecuted for an offence shall have the right to have the judgement pronounced publicly; and

(j) a convicted person shall be advised on conviction of his judicial and other remedies and of the time-limits within which they may be exercised.

5. 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.

6. Persons who are arrested, detained or interned for reasons related to the armed conflict shall enjoy the protection provided by this Article until their final release, repatriation or re-establishment, even after the end of the armed conflict.

7. In order to avoid any doubt concerning the prosecution and trial of persons accused of war crimes or crimes against humanity, the following principles shall apply:

(a) persons who are accused of such crimes should be submitted for the purpose of prosecution and trial in accordance with the applicable rules of international law; and

(b) any such persons who do not benefit from more favourable treatment under the Conventions or this Protocol shall be accorded the treatment provided by this Article, whether or not the crimes of which they are accused constitute grave breaches of the Conventions or of this Protocol.

8. No provision of this Article may be construed as limiting or infringing any other more favourable provision granting greater protection, under any applicable rules of international law, to persons covered by paragraph 1

## **Chapter II. Measures in favour of women and children**

### **Art 76. Protection of women**

1. Women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault.

2. 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.

3. 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 77. Protection of children**

1. Children shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason.

2. The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular,

they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years the Parties to the conflict shall endeavour to give priority to those who are oldest.

3. If, in exceptional cases, despite the provisions of paragraph 2, children who have not attained the age of fifteen years take a direct part in hostilities and fall into the power of an adverse Party, they shall continue to benefit from the special protection accorded by this Article, whether or not they are prisoners of war.

4. If arrested, detained or interned for reasons related to the armed conflict, children shall be held in quarters separate from the quarters of adults, except where families are accommodated as family units as provided in Article 75, paragraph 5.

5. The death penalty for an offence related to the armed conflict shall not be executed on persons who had not attained the age of eighteen years at the time the offence was committed.

#### Art 78. Evacuation of children

1. No Party to the conflict shall arrange for the evacuation of children, other than its own nationals, to a foreign country except for a temporary evacuation where compelling reasons of the health or medical treatment of the children or, except in occupied territory, their safety, so require. Where the parents or legal guardians can be found, their written consent to such evacuation is required. If these persons cannot be found, the written consent to such evacuation of the persons who by law or custom are primarily responsible for the care of the children is required. Any such evacuation shall be supervised by the Protecting Power in agreement with the Parties concerned, namely, the Party arranging for the evacuation, the Party receiving the children and any Parties whose nationals are being evacuated. In each case, all Parties to the conflict shall take all feasible precautions to avoid endangering the evacuation.

2. Whenever an evacuation occurs pursuant to paragraph 1, each child's education, including his religious and moral education as his parents desire, shall be provided while he is away with the greatest possible continuity.

3. With a view to facilitating the return to their families and country of children evacuated pursuant to this Article, the authorities of the Party arranging for the evacuation and, as appropriate, the authorities of the receiving country shall establish for each child a card with photographs, which they shall send to the Central Tracing Agency of the International Committee of the Red Cross. Each card shall bear, whenever possible, and whenever it involves no risk of harm to the child, the following information:

- (a) surname(s) of the child;
- (b) the child's first name(s);
- (c) the child's sex;
- (d) the place and date of birth (or, if that date is not known, the approximate age);
- (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 languages he speaks;
- (j) the address of the child's family;
- (k) any identification number for the child;

- (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 where the child was found;
- (p) the date on which and the place from which the child left the country;
- (q) the child's religion, if any;
- (r) the child's present address in the receiving country;
- (s) should the child die before his return, the date, place and circumstances of death and place of interment.

### **Chapter III. Journalists**

#### **Art 79. Measures or protection for journalists**

1. Journalists engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians within the meaning of Article 50, paragraph 1.
2. They shall be protected as such under the Conventions and this Protocol, provided that they take no action adversely affecting their status as civilians, and without prejudice to the right of war correspondents accredited to the armed forces to the status provided for in Article 4 (A) (4) of the Third Convention.
3. They may obtain an identity card similar to the model in Annex II of this Protocol. This card, which shall be issued by the government of the State of which the Journalist is a national or in whose territory he resides or in which the news medium employing him is located, shall attest to his status as a journalist.

#### **Part V. Execution of the Conventions and of its Protocols**

##### **Section I. General Provisions**

#### **Art 80. Measures for execution**

1. The High Contracting Parties and the Parties to the conflict shall without delay take all necessary measures for the execution of their obligations under the Conventions and this Protocol.
2. The High Contracting Parties and the Parties to the conflict shall give orders and instructions to ensure observance of the Conventions and this Protocol, and shall supervise their execution.

#### **Art 81. Activities of the Red Cross and other humanitarian organizations**

1. The Parties to the conflict shall grant to the International Committee of the Red Cross all facilities, within their power so as to enable it to carry out the humanitarian functions assigned to it by the Conventions and this Protocol in order to ensure protection and assistance to the victims of conflicts; the International Committee of the Red Cross may also carry out any other humanitarian activities in favour of these victims, subject to the consent of the Parties to the conflict concerned.
2. The Parties to the conflict shall grant to their respective Red Cross (Red Crescent, Red Lion and Sun) organizations the facilities necessary for carrying out their humanitarian activities in favour of the victims of the conflict, in accordance with the provisions of the Conventions and this Protocol and the fundamental principles of the Red Cross as formulated by the International Conferences of the Red Cross.
3. The High Contracting Parties and the Parties to the conflict shall facilitate in every possible way the assistance which Red Cross (Red Crescent, Red Lion and Sun) organizations and the League of Red Cross Societies extend to the victims of conflicts in

accordance with the provisions of the Conventions and this Protocol and with the fundamental principles of the red Cross as formulated by the International Conferences of the Red Cross.

4. The High Contracting Parties and the Parties to the conflict shall, as far as possible, make facilities similar to those mentioned in paragraphs 2 and 3 available to the other humanitarian organizations referred to in the Conventions and this Protocol which are duly authorized by the respective Parties to the conflict and which perform their humanitarian activities in accordance with the provisions of the Conventions and this Protocol.

#### Art 82. Legal advisers in armed forces

The High Contracting Parties at all times, and the Parties to the conflict in time of armed conflict, shall ensure that legal advisers are available, when necessary, to advise military commanders at the appropriate level on the application of the Conventions and this Protocol and on the appropriate instruction to be given to the armed forces on this subject.

#### Art 83. Dissemination

1. The High Contracting Parties undertake, in time of peace as in time of armed conflict, to disseminate the Conventions and this Protocol as widely as possible in their respective countries and, in particular, to include the study thereof in their programmes of military instruction and to encourage the study thereof by the civilian population, so that those instruments may become known to the armed forces and to the civilian population.

2. Any military or civilian authorities who, in time of armed conflict, assume responsibilities in respect of the application of the Conventions and this Protocol shall be fully acquainted with the text thereof.

#### Art 84. Rules of application

The High Contracting Parties shall communicate to one another, as soon as possible, through the depositary and, as appropriate, through the Protecting Powers, their official translations of this Protocol, as well as the laws and regulations which they may adopt to ensure its application.

### Section II. Repression of Breaches of the Conventions and of this Protocol

#### Article 85 - Repression of breaches of this Protocol

1. The provisions of the Conventions relating to the repression of breaches and grave breaches, supplemented by this Section, shall apply to the repression of breaches and grave breaches of this Protocol.

2. Acts described as grave breaches in the Conventions are grave breaches of this Protocol if committed against persons in the power of an adverse Party protected by Articles 44, 45 and 73 of this Protocol, or against the wounded, sick and shipwrecked of the adverse Party who are protected by this Protocol, or against those medical or religious personnel, medical units or medical transports which are under the control of the adverse Party and are protected by this Protocol.

3. In addition to the grave breaches defined in Article 11, the following acts shall be regarded as grave breaches of this Protocol, when committed wilfully, in violation of the relevant provisions of this Protocol, and causing death or serious injury to body or health:

(a) making the civilian population or individual civilians the object of attack;

(b) launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in Article 57, paragraph 2 (a)(iii);

- (c) launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in Article 57, paragraph 2 (a)(iii);
- (d) making non-defended localities and demilitarized zones the object of attack;
- (e) making a person the object of attack in the knowledge that he is hors de combat;
- (f) the perfidious use, in violation of Article 37, of the distinctive emblem of the red cross, red crescent or red lion and sun or of other protective signs recognized by the Conventions or this Protocol.

4. In addition to the grave breaches defined in the preceding paragraphs and in the Conventions, the following shall be regarded as grave breaches of this Protocol, when committed wilfully and in violation of the Conventions or the Protocol:

- (a) the transfer by the occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory, in violation of Article 49 of the Fourth Convention;
- (b) unjustifiable delay in the repatriation of prisoners of war or civilians;
- (c) practices of apartheid and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination;
- (d) making the clearly-recognized historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and to which special protection has been given by special arrangement, for example, within the framework of a competent international organization, the object of attack, causing as a result extensive destruction thereof, where there is no evidence of the violation by the adverse Party of Article 53, subparagraph (b), and when such historic monuments, works of art and places of worship are not located in the immediate proximity of military objectives;
- (e) depriving a person protected by the Conventions or referred to in paragraph 2 of this Article of the rights of fair and regular trial.

5. Without prejudice to the application of the Conventions and of this Protocol, grave breaches of these instruments shall be regarded as war crimes.

#### Art 86. Failure to act

1. The High Contracting Parties and the Parties to the conflict shall repress grave breaches, and take measures necessary to suppress all other breaches, of the Conventions or of this Protocol which result from a failure to act when under a duty to do so.

2. The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach.

#### Art 87. Duty of commanders

1. The High Contracting Parties and the Parties to the conflict shall require military commanders, with respect to members of the armed forces under their command and other persons under their control, to prevent and, where necessary, to suppress and to report to competent authorities breaches of the Conventions and of this Protocol.

2. In order to prevent and suppress breaches, High Contracting Parties and Parties to the conflict shall require that, commensurate with their level of responsibility, commanders ensure that members of the armed forces under their command are aware of their obligations under the Conventions and this Protocol.

3. The High Contracting Parties and Parties to the conflict shall require any commander who is aware that subordinates or other persons under his control are going to commit or have committed a breach of the Conventions or of this Protocol, to initiate such steps as are necessary to prevent such violations of the Conventions or this Protocol, and, where appropriate, to initiate disciplinary or penal action against violators thereof.

#### Art 88. Mutual assistance in criminal matters

1. The High Contracting Parties shall afford one another the greatest measure of assistance in connexion with criminal proceedings brought in respect of grave breaches of the Conventions or of this Protocol.

2. Subject to the rights and obligations established in the Conventions and in Article 85, paragraph 1 of this Protocol, and when circumstances permit, the High Contracting Parties shall co-operate in the matter of extradition. They shall give due consideration to the request of the State in whose territory the alleged offence has occurred.

3. The law of the High Contracting Party requested shall apply in all cases. The provisions of the preceding paragraphs shall not, however, affect the obligations arising from the provisions of any other treaty of a bilateral or multilateral nature which governs or will govern the whole or part of the subject of mutual assistance in criminal matters.

#### Art 89. Co-operation

In situations of serious violations of the Conventions or of this Protocol, the High Contracting Parties undertake to act jointly or individually, in co-operation with the United Nations and in conformity with the United Nations Charter.

#### Art 90. International Fact-Finding Commission

1. (a) An International Fact-Finding Commission (hereinafter referred to as “the Commission”) consisting of 15 members of high moral standing and acknowledged impartiality shall be established;

(b) When not less than 20 High Contracting Parties have agreed to accept the competence of the Commission pursuant to paragraph 2, the depositary shall then, and at intervals of five years thereafter, convene a meeting of representatives of those High Contracting Parties for the purpose of electing the members of the Commission. At the meeting, the representatives shall elect the members of the Commission by secret ballot from a list of persons to which each of those High Contracting Parties may nominate one person;

(c) The members of the Commission shall serve in their personal capacity and shall hold office until the election of new members at the ensuing meeting;

(d) At the election, the High Contracting Parties shall ensure that the persons to be elected to the Commission individually possess the qualifications required and that, in the Commission as a whole, equitable geographical representation is assured;

(e) In the case of a casual vacancy, the Commission itself shall fill the vacancy, having due regard to the provisions of the preceding subparagraphs;

(f) The depositary shall make available to the Commission the necessary administrative facilities for the performance of its functions.

2. (a) The High Contracting Parties may at the time of signing, ratifying or acceding to the Protocol, or at any other subsequent time, declare that they recognize ipso facto and without special agreement, in relation to any other High Contracting Party accepting the same obligation, the competence of the Commission to inquire into allegations by such other Party, as authorized by this Article;
  - (b) The declarations referred to above shall be deposited with the depositary, which shall transmit copies thereof to the High Contracting Parties;
  - (c) The Commission shall be competent to:
    - (i) inquire into any facts alleged to be a grave breach as defined in the Conventions and this Protocol or other serious violation of the Conventions or of this Protocol;
    - (ii) facilitate, through its good offices, the restoration of an attitude of respect for the Conventions and this Protocol;
  - (d) In other situations, the Commission shall institute an inquiry at the request of a Party to the conflict only with the consent of the other Party or Parties concerned;
  - (e) Subject to the foregoing provisions of this paragraph, the provisions of Article 52 of the First Convention, Article 53 of the Second Convention, Article 132 of the Third Convention and Article 149 of the Fourth Convention shall continue to apply to any alleged violation of the Conventions and shall extend to any alleged violation of this Protocol.
3. (a) Unless otherwise agreed by the Parties concerned, all inquiries shall be undertaken by a Chamber consisting of seven members appointed as follows:
    - (i) five members of the Commission, not nationals of any Party to the conflict, appointed by the President of the Commission on the basis of equitable representation of the geographical areas, after consultation with the Parties to the conflict;
    - (ii) two ad hoc members, not nationals of any Party to the conflict, one to be appointed by each side;
  - (b) Upon receipt of the request for an inquiry, the President of the Commission shall specify an appropriate time-limit for setting up a Chamber. If any ad hoc member has not been appointed within the time-limit, the President shall immediately appoint such additional member or members of the Commission as may be necessary to complete the membership of the Chamber.
4. (a) The Chamber set up under paragraph 3 to undertake an inquiry shall invite the Parties to the conflict to assist it and to present evidence. The Chamber may also seek such other evidence as it deems appropriate and may carry out an investigation of the situation in loco;
  - (b) All evidence shall be fully disclosed to the Parties, which shall have the right to comment on it to the Commission;
  - (c) Each Party shall have the right to challenge such evidence.
5. (a) The Commission shall submit to the Parties a report on the findings of fact of the Chamber, with such recommendations as it may deem appropriate;
  - (b) If the Chamber is unable to secure sufficient evidence for factual and impartial findings, the Commission shall state the reasons for that inability;
  - (c) The Commission shall not report its findings publicly, unless all the Parties to the conflict have requested the Commission to do so.
6. The Commission shall establish its own rules, including rules for the presidency of the Commission and the presidency of the Chamber. Those rules shall ensure that the functions

of the President of the Commission are exercised at all times and that, in the case of an inquiry, they are exercised by a person who is not a national of a Party to the conflict.

7. The administrative expenses of the Commission shall be met by contributions from the High Contracting Parties which made declarations under paragraph 2, and by voluntary contributions. The Party or Parties to the conflict requesting an inquiry shall advance the necessary funds for expenses incurred by a Chamber and shall be reimbursed by the Party or Parties against which the allegations are made to the extent of 50 per cent of the costs of the Chamber. Where there are counter-allegations before the Chamber each side shall advance 50 per cent of the necessary funds.

#### Art 91. Responsibility

A Party to the conflict which violates the provisions of the Conventions or of this Protocol shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.

#### Part IV. Final Resolutions

#### Art 92. Signature

This Protocol shall be open for signature by the Parties to the Conventions six months after the signing of the Final Act and will remain open for a period of twelve months.

#### Art 93. Ratification

This Protocol shall be ratified as soon as possible. The instruments of ratification shall be deposited with the Swiss Federal Council, depositary of the Conventions.

#### Art 94. Accession

This Protocol shall be open for accession by any Party to the Conventions which has not signed it. The instruments of accession shall be deposited with the depositary.

#### Art 95.- Entry into force

1. This Protocol shall enter into force six months after two instruments of ratification or accession have been deposited.

2. For each Party to the Conventions thereafter ratifying or acceding to this Protocol, it shall enter into force six months after the deposit by such Party of its instrument of ratification or accession.

#### Art 96. Treaty relations upon entry into force of this Protocol

1. When the Parties to the Conventions are also Parties to this Protocol, the Conventions shall apply as supplemented by this Protocol.

2. When one of the Parties to the conflict is not bound by this Protocol, the Parties to the Protocol shall remain bound by it in their mutual relations. They shall furthermore be bound by this Protocol in relation to each of the Parties which are not bound by it, if the latter accepts and applies the provisions thereof.

3. The authority representing a people engaged against a High Contracting Party in an armed conflict of the type referred to in Article 1, paragraph 4, may undertake to apply the Conventions and this Protocol in relation to that conflict by means of a unilateral declaration addressed to the depositary. Such declaration shall, upon its receipt by the depositary, have in relation to that conflict the following effects:

- (a) the Conventions and this Protocol are brought into force for the said authority as a Party to the conflict with immediate effect;
- (b) the said authority assumes the same rights and obligations as those which have been assumed by a High Contracting Party to the Conventions and this Protocol; and

(c) the Conventions and this Protocol are equally binding upon all Parties to the conflict.

#### Art 97. Amendment

1. Any High Contracting Party may propose amendments to this Protocol. The text of any proposed amendment shall be communicated to the depositary, which shall decide, after consultation with all the High Contracting Parties and the International Committee of the Red Cross, whether a conference should be convened to consider the proposed amendment.
2. The depositary shall invite to that conference all the High Contracting Parties as well as the Parties to the Conventions, whether or not they are signatories or this Protocol.

#### Art 98. Revision of Annex I

1. Not later than four years after the entry into force of this Protocol and thereafter at intervals of not less than four years, the International Committee of the Red Cross shall consult the High Contracting Parties concerning Annex I to this Protocol and, if it considers it necessary, may propose a meeting of technical experts to review Annex I and to propose such amendments to it as may appear to be desirable. Unless, within six months of the communication of a proposal for such a meeting to the High Contracting Parties, one third of them object, the International Committee of the Red Cross shall convene the meeting, inviting also observers of appropriate international organizations. Such a meeting shall also be convened by the International Committee of the Red Cross at any time at the request of one third of the High Contracting Parties.
2. The depositary shall convene a conference of the High Contracting Parties and the Parties to the Conventions to consider amendments proposed by the meeting of technical experts if, after that meeting, the International Committee of the Red Cross or one third of the High Contracting Parties so request.
3. Amendments to Annex I may be adopted at such a conference by a two-thirds majority of the High Contracting Parties present and voting.
4. The depositary shall communicate any amendment so adopted to the High Contracting Parties and to the Parties to the Conventions. The amendment shall be considered to have been accepted at the end of a period of one year after it has been so communicated, unless within that period a declaration of non-acceptance of the amendment has been communicated to the depositary by not less than one third of the High Contracting Parties.
5. An amendment considered to have been accepted in accordance with paragraph 4 shall enter into force three months after its acceptance for all High Contracting Parties other than those which have made a declaration of non-acceptance in accordance with that paragraph. Any Party making such a declaration may at any time withdraw it and the amendment shall then enter into force for that Party three months thereafter.
6. The depositary shall notify the High Contracting Parties and the Parties to the Conventions of the entry into force of any amendment, of the Parties bound thereby, of the date of its entry into force in relation to each Party, of declarations of non-acceptance made in accordance with paragraph 4, and of withdrawals of such declarations.

#### Article 99 - Denunciation

1. In case a High Contracting Party should denounce this Protocol, the denunciation shall only take effect one year after receipt of the instrument of denunciation. If, however, on the expiry of that year the denouncing Party is engaged in one of the situations referred to in Article I, the denunciation shall not take effect before the end of the armed conflict or occupation and not, in any case, before operations connected with the final release,

repatriation or re-establishment of the persons protected by the Convention or this Protocol have been terminated.

2. The denunciation shall be notified in writing to the depositary, which shall transmit it to all the High Contracting Parties.

3. The denunciation shall have effect only in respect of the denouncing Party.

4. Any denunciation under paragraph 1 shall not affect the obligations already incurred, by reason of the armed conflict, under this Protocol by such denouncing Party in respect of any act committed before this denunciation becomes effective.

#### Article 100 - Notifications

The depositary shall inform the High Contracting Parties as well as the Parties to the Conventions, whether or not they are signatories of this Protocol, of:

(a) signatures affixed to this Protocol and the deposit of instruments of ratification and accession under Articles 93 and 94;

(b) the date of entry into force of this Protocol under Article 95;

(c) communications and declarations received under Articles 84, 90 and 97;

(d) declarations received under Article 96, paragraph 3, which shall be communicated by the quickest methods; and

(e) denunciations under Article 99.

#### Art 101. Registration

1. After its entry into force, this Protocol shall be transmitted by the depositary to the Secretariat of the United Nations for registration and publication, in accordance with Article 102 of the Charter of the United Nations.

2. The depositary shall also inform the Secretariat of the United Nations of all ratifications, accessions and denunciations received by it with respect to this Protocol.

#### Art 102. Authentic texts

**The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the depositary, which shall transmit certified true copies thereof to all the Parties to the Conventions.**

**ANEXO G – Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977**

Preamble

The High Contracting Parties, Recalling that the humanitarian principles enshrined in Article 3 common to the Geneva Conventions of 12 August 1949, constitute the foundation of respect for the human person in cases of armed conflict not of an international character, Recalling furthermore that international instruments relating to human rights offer a basic protection to the human person,

Emphasizing the need to ensure a better protection for the victims of those armed conflicts, Recalling that, in cases not covered by the law in force, the human person remains under the protection of the principles of humanity and the dictates of the public conscience,

Have agreed on the following:

Part I. Scope of this Protocol

Art 1. Material field of application

1. This Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions or application, shall apply to all armed conflicts which are not covered by Article 1 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.

2. This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.

Art 2. Personal field of application

1. This Protocol shall be applied without any adverse distinction founded on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria (hereinafter referred to as “adverse distinction”) to all persons affected by an armed conflict as defined in Article 1.

2. At the end of the armed conflict, all the persons who have been deprived of their liberty or whose liberty has been restricted for reasons related to such conflict, as well as those deprived of their liberty or whose liberty is restricted after the conflict for the same reasons, shall enjoy the protection of Articles 5 and 6 until the end of such deprivation or restriction of liberty.

Art 3. Non-intervention

1. Nothing in this Protocol shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State.

2. Nothing in this Protocol shall be invoked as a justification for intervening, directly or indirectly, for any reason whatever, in the armed conflict or in the internal or external affairs of the High Contracting Party in the territory of which that conflict occurs.

## Part II. Humane Treatment

### Art 4 Fundamental guarantees

1. All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour and convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction. It is prohibited to order that there shall be no survivors.

2. Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph I are and shall remain prohibited at any time and in any place whatsoever:

(a) violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;

(b) collective punishments;

(c) taking of hostages;

(d) acts of terrorism;

(e) outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;

(f) slavery and the slave trade in all their forms;

(g) pillage;

(h) threats to commit any of the foregoing acts.

3. Children shall be provided with the care and aid they require, and in particular:

(a) they shall receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care;

(b) all appropriate steps shall be taken to facilitate the reunion of families temporarily separated;

(c) children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities;

(d) the special protection provided by this Article to children who have not attained the age of fifteen years shall remain applicable to them if they take a direct part in hostilities despite the provisions of subparagraph (c) and are captured;

(e) measures shall be taken, if necessary, and whenever possible with the consent of their parents or persons who by law or custom are primarily responsible for their care, to remove children temporarily from the area in which hostilities are taking place to a safer area within the country and ensure that they are accompanied by persons responsible for their safety and well-being.

### Art 5. Persons whose liberty has been restricted

1. In addition to the provisions of Article 4 the following provisions shall be respected as a minimum with regard to persons deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained;

(a) the wounded and the sick shall be treated in accordance with Article 7;

(b) the persons referred to in this paragraph shall, to the same extent as the local civilian population, be provided with food and drinking water and be afforded safeguards as regards

health and hygiene and protection against the rigours of the climate and the dangers of the armed conflict;

(c) they shall be allowed to receive individual or collective relief;

(d) they shall be allowed to practise their religion and, if requested and appropriate, to receive spiritual assistance from persons, such as chaplains, performing religious functions;

(e) they shall, if made to work, have the benefit of working conditions and safeguards similar to those enjoyed by the local civilian population.

2. Those who are responsible for the internment or detention of the persons referred to in paragraph 1 shall also, within the limits of their capabilities, respect the following provisions relating to such persons:

(a) except when men and women of a family are accommodated together, women shall be held in quarters separated from those of men and shall be under the immediate supervision of women;

(b) they shall be allowed to send and receive letters and cards, the number of which may be limited by competent authority if it deems necessary;

(c) places of internment and detention shall not be located close to the combat zone. The persons referred to in paragraph 1 shall be evacuated when the places where they are interned or detained become particularly exposed to danger arising out of the armed conflict, if their evacuation can be carried out under adequate conditions of safety;

(d) they shall have the benefit of medical examinations;

(e) their physical or mental health and integrity shall not be endangered by any unjustified act or omission. Accordingly, it is prohibited to subject the persons described in this Article to any medical procedure which is not indicated by the state of health of the person concerned, and which is not consistent with the generally accepted medical standards applied to free persons under similar medical circumstances.

3. Persons who are not covered by paragraph 1 but whose liberty has been restricted in any way whatsoever for reasons related to the armed conflict shall be treated humanely in accordance with Article 4 and with paragraphs 1 (a), (c) and (d), and 2 (b) of this Article.

4. If it is decided to release persons deprived of their liberty, necessary measures to ensure their safety shall be taken by those so deciding.

#### Art 6. Penal prosecutions

1. This Article applies to the prosecution and punishment of criminal offences related to the armed conflict.

2. No sentence shall be passed and no penalty shall be executed on a person found guilty of an offence except pursuant to a conviction pronounced by a court offering the essential guarantees of independence and impartiality.

In particular:

(a) the procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him and shall afford the accused before and during his trial all necessary rights and means of defence;

(b) no one shall be convicted of an offence except on the basis of individual penal responsibility;

(c) no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under the law, at the time when it was committed; nor shall a heavier penalty be imposed than that which was applicable at the time

when the criminal offence was committed; if, after the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;

(d) anyone charged with an offence is presumed innocent until proved guilty according to law;

(e) anyone charged with an offence shall have the right to be tried in his presence;

(f) no one shall be compelled to testify against himself or to confess guilt.

3. A convicted person shall be advised on conviction of his judicial and other remedies and of the time-limits within which they may be exercised.

4. The death penalty shall not be pronounced on persons who were under the age of eighteen years at the time of the offence and shall not be carried out on pregnant women or mothers of young children.

5. At the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained.

### Part III. Wounded, Sick and Shipwrecked

#### Art 7. Protection and care

1. All the wounded, sick and shipwrecked, whether or not they have taken part in the armed conflict, shall be respected and protected.

2. In all circumstances they shall be treated humanely and shall receive to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them founded on any grounds other than medical ones.

#### Art 8. Search

Whenever circumstances permit and particularly after an engagement, all possible measures shall be taken, without delay, to search for and collect the wounded, sick and shipwrecked, to protect them against pillage and ill-treatment, to ensure their adequate care, and to search for the dead, prevent their being despoiled, and decently dispose of them.

#### Art 9. Protection of medical and religious personnel

1. Medical and religious personnel shall be respected and protected and shall be granted all available help for the performance of their duties. They shall not be compelled to carry out tasks which are not compatible with their humanitarian mission.

2. In the performance of their duties medical personnel may not be required to give priority to any person except on medical grounds.

#### Art 10. General protection of medical duties

1. Under no circumstances shall any person be punished for having carried out medical activities compatible with medical ethics, regardless of the person benefiting therefrom.

2. Persons engaged in medical activities shall neither be compelled to perform acts or to carry out work contrary to, nor be compelled to refrain from acts required by, the rules of medical ethics or other rules designed for the benefit of the wounded and sick, or this Protocol.

3. The professional obligations of persons engaged in medical activities regarding information which they may acquire concerning the wounded and sick under their care shall, subject to national law, be respected.

4. Subject to national law, no person engaged in medical activities may be penalized in any way for refusing or failing to give information concerning the wounded and sick who are, or who have been, under his care.

#### Art 11. Protection of medical units and transports

1. Medical units and transports shall be respected and protected at all times and shall not be the object of attack.

2. The protection to which medical units and transports are entitled shall not cease unless they are used to commit hostile acts, outside their humanitarian function. Protection may, however, cease only after a warning has been given, setting, whenever appropriate, a reasonable time-limit, and after such warning has remained unheeded.

#### Art 12. The distinctive emblem

Under the direction of the competent authority concerned, the distinctive emblem of the red cross, red crescent or red lion and sun on a white ground shall be displayed by medical and religious personnel and medical units, and on medical transports. It shall be respected in all circumstances. It shall not be used improperly.

#### Part IV. Civilian Population

##### Art 13. Protection of the civilian population

1. The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances.

2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.

3. Civilians shall enjoy the protection afforded by this part, unless and for such time as they take a direct part in hostilities.

##### Art 14. Protection of objects indispensable to the survival of the civilian population

Starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless for that purpose, objects indispensable to the survival of the civilian population such as food-stuffs, agricultural areas for the production of food-stuffs, crops, livestock, drinking water installations and supplies and irrigation works.

##### Art 15. Protection of works and installations containing dangerous forces

Works or installations containing dangerous forces, namely dams, dykes and nuclear electrical generating stations, shall not be made the object of attack, even where these objects are military objectives, if such attack may cause the release of dangerous forces and consequent severe losses among the civilian population.

##### Art 16. Protection of cultural objects and of places of worship

Without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, it is prohibited to commit any acts of hostility directed against historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples, and to use them in support of the military effort.

##### Art 17. Prohibition of forced movement of civilians

1. The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.

2. Civilians shall not be compelled to leave their own territory for reasons connected with the conflict.

#### Art 18. Relief societies and relief actions

1. Relief societies located in the territory of the High Contracting Party, such as Red Cross (Red Crescent, Red Lion and Sun) organizations may offer their services for the performance of their traditional functions in relation to the victims of the armed conflict. The civilian population may, even on its own initiative, offer to collect and care for the wounded, sick and shipwrecked.

2. If the civilian population is suffering undue hardship owing to a lack of the supplies essential for its survival, such as food-stuffs and medical supplies, relief actions for the civilian population which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction shall be undertaken subject to the consent of the High Contracting Party concerned.

#### Part V. Final Provisions

##### Art 19. Dissemination

This Protocol shall be disseminated as widely as possible.

##### Art 20. Signature

This Protocol shall be open for signature by the Parties to the Conventions six months after the signing of the Final Act and will remain open for a period of twelve months.

##### Art 21. Ratification

This Protocol shall be ratified as soon as possible. The instruments of ratification shall be deposited with the Swiss Federal Council, depositary of the Conventions.

##### Art 22. Accession

This Protocol shall be open for accession by any Party to the Conventions which has not signed it. The instruments of accession shall be deposited with the depositary.

##### Art 23. Entry into force

1. This Protocol shall enter into force six months after two instruments of ratification or accession have been deposited.

2. For each Party to the Conventions thereafter ratifying or acceding to this Protocol, it shall enter into force six months after the deposit by such Party of its instrument of ratification or accession.

##### Art 24. Amendment

1. Any High Contracting Party may propose amendments to this Protocol. The text of any proposed amendment shall be communicated to the depositary which shall decide, after consultation with all the High Contracting Parties and the International Committee of the Red Cross, whether a conference should be convened to consider the proposed amendment.

2. The depositary shall invite to that conference all the High Contracting Parties as well as the Parties to the Conventions, whether or not they are signatories of this Protocol.

##### Art 25. Denunciation

1. In case a High Contracting Party should denounce this Protocol, the denunciation shall only take effect six months after receipt of the instrument of denunciation. If, however, on the expiry of six months, the denouncing Party is engaged in the situation referred to in Article 1, the denunciation shall not take effect before the end of the armed conflict. Persons who have been deprived of liberty, or whose liberty has been restricted, for reasons related to

the conflict shall nevertheless continue to benefit from the provisions of this Protocol until their final release.

2. The denunciation shall be notified in writing to the depositary, which shall transmit it to all the High Contracting Parties.

#### Art 26. Notifications

The depositary shall inform the High Contracting Parties as well as the Parties to the Conventions, whether or not they are signatories of this Protocol, of:

- (a) signatures affixed to this Protocol and the deposit of instruments of ratification and accession under Articles 21 and 22;
- (b) the date of entry into force of this Protocol under Article 23; and
- (c) communications and declarations received under Article 24.

#### Art 27. Registration

1. After its entry into force, this Protocol shall be transmitted by the depositary to the Secretariat of the United Nations for registration and publication, in accordance with Article 102 of the Charter of the United Nations.

2. The depositary shall also inform the Secretariat of the United Nations of all ratifications, accessions and denunciations received by it with respect to this Protocol.

#### Art 28. - Authentic texts

The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the depositary, which shall transmit certified true copies thereof to all the Parties to the Conventions.