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Paper : P-8 Human Rights in times of Armed Conflict
Module : U-1 M-2 1949 Geneva Conventions and Additional Protocols, 1977

ज्ञान दिवालय विमुक्तये



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Description of Module	
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Pre-requisites	
Objectives	
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1949 Geneva Conventions and Additional Protocols, 1977



1. Module Overview

- This module will discuss the common, as well as specific, provisions of the four Geneva Conventions and the Additional Protocols;
- Discuss the relevance of the conventions in the contemporary international law regimes.

2. Learning Outcomes

- To give students an overview of the Geneva Conventions and the additional protocols, and their relevance in international humanitarian law;
- By the end of the module students will have a clear understanding of the relevance and purpose of the Geneva conventions and the additional protocols.

3. Introduction

Contemporary Law of Armed Conflict (LOAC) has formalized a set of rules governing actions of the states during war. Certain humanitarian rules are mandatory for all the states at the time of war. Even though International Humanitarian law with respect to victims of war has been in place for a long time, the present-day principles can find their base in the Geneva Conventions of 1949 and their

Additional Protocols. In 1949, an international conference built up on the existing treaties for protection of war victims revised them into four new conventions comprising of 429 articles, viz.,

Convention (I) for the Amelioration of Conditions of Wounded and Sick in Armed Forces in the Field;

Convention (II) for the Amelioration of Conditions of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea;

Convention (III) relative to Treatment of Prisoners of War; and

Convention (IV) relative to the Protection of Civilian Persons in Time of War

The Geneva Conventions immediately had a huge success. They entered into force already on 21 October 1950 after the first two ratifications. They were ratified by 74 States in the 1950's and obtained a further 48 ratifications in the 1960's. The ratification steadily increased in the 1970's (20 ratifications) and 1980's (20 ratifications). A wave of 26 new ratifications occurred in the early 1990's, resulting in particular from the break up of the Soviet Union, Czechoslovakia and the former Yugoslavia. With seven more ratifications post year 2000 the applicability of the Geneva Convention has today become universal, with 194 States party. The Geneva conventions are considered the foundation of modern humanitarian law.

In 1977 the international community came up with two additional protocols, which dealt with protection of victims in international and non-international armed conflicts, in order to supplement the Geneva Conventions. Although, unlike the Geneva Conventions, the Additional Protocols do not have close to universal acceptance, they are still considered essential to customary principles of humanitarian law.

Though the scope of these conventions applies to armed conflicts between one or more states, it also applies to conflicts between state and armed group where armed group possess a certain degree of organization and violence in the conflict reaches certain level of intensity. Each of these conventions has certain specific principles laid down along with general principles that are common in all of them.

4. General Principles Common in Conventions

Irrespective of specific subject matter and the nature of conflict, there are certain fundamental humanitarian rules that are essential to LOAC and have to be observed at any time. All parties of to a conflict are prohibited from activities such as torture, mutilation and cruel or inhumane treatment.

Perhaps the most important provision of all four Geneva conventions is Article 3, which is identical in all of them and extends the scope of the convention to non- international armed conflict. It lays down a special case for people who are not involved in the hostilities including hors de combat soldiers and those who have laid down their arms. It prohibits acts involving violence to life and person, murder, mutilation, cruel treatment and torture; taking hostages; outrage upon personal dignity, humiliating and degrading treatment; and passing sentence and executing without properly constituted court or judicial guarantees. Article 3 also lays down the requirement of an impartial body to offer services to parties to a conflict for the wounded, sick and shipwrecked.

Similarly, in the section of execution of conventions, all the four conventions provide for penal sanctions for general observation and Grave breaches.

Grave breaches comprises of acts such as willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health against the persons protected by the convention. Depending on the convention, each has additional acts, which

could qualify as grave breaches, however, in principle; the penalizing structure is same for all the four conventions.

The emphasis of International Humanitarian Law (IHL) on certain principles is pretty evident from the common clauses of the conventions. Let us now examine some of the specific provisions of each of the conventions and the protocols.

5. Specific Provisions



5.1. Convention (I) for the Amelioration of Conditions of Wounded and Sick in Armed Forces in the Field (Convention I)

The first Geneva Convention 1949 expands on the same subject matter, which was dealt with by the Geneva Convention of 1864. It targets the wounded and sick soldiers; medical personnel and facilities; wounded and sick civilians accompanying forces or those who spontaneously take up arms; and military chaplains.

The convention is divided into nine chapters. Some of the specific provisions that constitute the substance of the convention are discussed in this section.

Chapter II: Wounded and Sick

Article 12 states that wounded and sick members of armed forces have to be respected and protected without any discrimination on the basis of sex, race, nationality, region, political beliefs or other criteria. It also lays down that the wounded & sick shall not be murdered, exterminated, or subjected to torture or biological weapons. Article 15 protects the wounded and sick against pillage and lays down a requirement for search in order to collect and provide care for the wounded and sick.

Chapter III-VI: Medical Units, Establishments, Personnel, Buildings, and Transports

Article 19 of Chapter III provides special protection to establishments and mobile medical units of Medical service from any attack. Such protection does not cease to exist unless they engage in activities outside humanitarian duties to harm the enemy (Article 21). Medical Personnel, auxiliary personnel, and personnel of aid societies enjoy similar protection under Chapter IV of the convention.

Medical transport and aircraft are required to be allowed to perform their functions of aiding the wounded.

5.2. Convention (II) for the Amelioration of Conditions of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea

The second Geneva Convention extends the humanitarian principles for armed forces to wounded and sick combatants at sea. The 63 articles in of the convention aim to advance protection to wounded, sick or shipwrecked armed forces members; hospital ships and medical personnel; and civilians who accompany the armed forces. Some of the specific provisions are as follows:

Chapter II: Wounded, Sick and Shipwrecked

Article 12 of the second convention establishes a similar standard of protection to be administered for those who are wounded, sick and shipwrecked at sea and those wounded on land. It requires humane treatment and proper care without any discrimination and prohibits any attempts on lives or violence on their persons. Further women shall be treated with due consideration to their sex. Article 18 additionally states that parties are required to search for, collect and care for the shipwrecked. Neutral vessels can be asked for help to collect and care for wounded, sick and shipwreck but they cannot be captured by virtue of being neutral. Warships are allowed to hold wounded, sick or shipwrecked as prisoners of war, provided it has the facilities to care for them and they can safely move (Article 14).

Chapter III- V: Hospital ships, Personnel & Medical Transports

This convention lays down that hospital ships, medical personnel serving on ship and medical transport ships cannot be attacked or captured. The names and description of the hospital ships must be conveyed to all the parties in conflict (Article 22) to avoid conflict. Articles 37 and 38 provide for a separate protection for religious, medical and hospital personnel even serving on combat ships. Even in case such personnel are captured, they have to be sent back to their side as soon as possible.

5.3. Convention (III) relative to Treatment of Prisoners of War

The third convention sets out specific rules for treatment of Prisoners of War. An elaborate convention with 143 Articles, it lays down that POWs need to be treated humanely, receive sufficient food, clothing and medical care, and should be adequately housed. It also establishes guidelines on discipline, labour and a criminal trial for the POWs. Some of the specific provisions include:

Part II: General Protection of Prisoners of War

Article 12 – 16 states the requirement of humane treatment for POWs, respect of person of prisoners, maintenance of prisoners and responsibility for treatment. POWs must not be subjected to torture or medical experimentation and have to be protected against violence, insults and public curiosity.

Part III: Captivity

Captors ought not to engage in any reprisals or discriminate on the basis of race, nationality, religious beliefs, political opinions or other criteria. Female POWs have to be treated with due regard to their

sex. Hygiene and medical attention, quarters, food and clothing have to be sufficiently taken care of. Chapter V of Part III discusses the religious, intellectual and physical activities of the prisoners. POWs can be made to work. However, the convention also lays down the requirement for that. Section III, Part III sets out the minimum working conditions, pay and medical supervision of the labour along with prohibition of dangerous or humiliating labor. Section V of the same part requires the name of the prisoners to be sent to the central tracing agency of ICRC and POWs have to be allowed to correspond with their families and receive packages. On other occasions, the part enumerates on the judicial process that needs to be ensured for prisoners' trials.

Part IV: Termination of Captivity

The convention requires seriously ill POWs to be repatriated. Otherwise, after the conflict has ended, the POWs are to be released and sent home without delay.

The captors are also responsible for making wills & death certificates in cases of deaths amongst POWs. The detaining authorities are responsible for honourable burial or cremation for the deceased POWs.

Other than the responsibilities of the detaining authorities under various parts, ICRC has special rights to carry out humanitarian activities on behalf of the POWs and have to be allowed by concerned parties to visit the prisoners privately and ensure that the convention's standards are met.

5.4. Convention (IV) relative to the Protection of Civilian Persons in Time of War

The fourth and final Geneva Convention focuses on civilians in areas of armed conflict and occupied territories.



Part II: General Protection of Populations against certain Consequences of War

Civilians must be protected from murder, torture or brutality, and from discrimination on the basis of race, nationality, religion and political opinion. The convention points out the need for Hospital and safety zones for wounded, sick, aged, children, expected mothers, and mothers of children under seven. Convention provides protection for civilian hospital staffs and care for children who are orphaned or separated from their families.

Part III: Status and Treatment of Protected Persons

Safety, honour, family rights, customs and religious practices of the civilians have to be respected in a conflict territory. Medical supplies and objects for religious worships cannot be restricted passage and the occupier is responsible for providing maintain medical and public health facilities as necessary for the population. Articles 33 and 34 of the Part have a collective effect of prohibition of acts such as Pillage, reprisals, indiscriminate destruction of property and the taking of hostages. Section IV of this

Part aims to ensure that the civilians must be permitted to lead normal lives unless security concerns are present. Even if they are interned, their living conditions should meet a minimum standard with adequate food, clothing, medical care and protection from risks attached with a war. Just like POWs, at the time of death, the internees have a right to honorable burial or cremation.

The four Geneva Conventions could be described as unified efforts of the international community to ensure protection to all the stakeholders in a war. Each dealing with a specific subject matter, the conventions were drafted in a way to accommodate for damage to all parties involved in a war.

4. Additional Protocols 1977

The principles of Humanitarian Law never stopped evolving after the Geneva Conventions of 1949. In 1977, the negotiations resulted in two additional protocols that intended to supplement the existing rules of the Geneva Conventions. Though not all countries have ratified to the additional protocols; those have are still bound by all the provisions of the Conventions regardless of whether they have ratified the additional protocols or not.

Protocol I aimed to protect the Victims of International Armed Conflicts. It brought up special protection for women, children and civilian medical personnel along with a measure of protection for journalists. Destruction of dunes, cultural objects, places of worship, food, water, other material of survival for civilians; were all outlawed by the Additional Protocol I. Some of the most important contributions of Additional Protocol I is a restriction on target of attack. It disallows targeting civilians or civilian objects. Further, the protocol also prohibits use of indiscriminate attacks, which affect both civilian and military targets without distinction. In addition to the principle of distinction, the protocol expressly lays down the requirements of proportionality and precautions. It sets requirements for

parties to only use alternative that causes minimum loss of life and property, while any other alternative would result in a violation of the protocol. The protocol realised the importance of restricting methods of warfare including weapons. It prohibited the use of weapons that cause superfluous injury or unnecessary suffering or cause severe damage to the environment. Article 77 of the Protocol prohibited recruitment of children under the age of 15 in armed forces. The additional protocol adds support to and clarifies the existing principles already mentioned in the Geneva Conventions. Even without ratification, Additional Protocol has been accepted to represent customary principles of IHL and thereby wielding strong authority.

Protocol II, on the other hand, dealt with protections of victims of Non-International Armed Conflicts. Non-international Armed Conflict here does not include disturbances such as riots, demonstrations or isolated acts of violence. Protocol II prohibits terrorism, murder and cruel treatment, slavery, hostage taking, outrages upon personal dignity, collective punishment and pillage. It advances the persons interned during internal conflicts the same humane treatment as specified by the Geneva Conventions. Attacks are forbidden on civilians and on “objects indispensable to civilian survival” such as crops, irrigation systems or drinking water sources, cultural objects, and places of worship. Other provisions include same humane treatment of Persons interned or detained during internal conflicts as specified by the Geneva Conventions and evacuation of children to safe areas and to be reunited with their families. Even in internal armed conflicts, impartial humanitarian relief organizations cannot be restricted from doing their work.

5. Significance of the Geneva Conventions in Contemporary IHL

The Geneva Conventions of 1949 have attained virtually universal recognition. They have been accepted by more states than most of the conventions. Rather, a number of their rules have become recognised as customary rules and have received the status of *jus cogens*. International Humanitarian

Principles developed many folds over the past few decades. However, the starting shot that led to the acceleration of the movement is still attributed to the Geneva and Hague Conventions. United Nations Security Council has set up two international criminal tribunals to prosecute people responsible for humanitarian violations, viz., International Criminal Tribunal for Former Yugoslavia and International Criminal Tribunal for Rwanda. In addition to these, the International Criminal Court criminalises violations of Geneva conventions under War crimes. It develops its jurisprudence on the existing interpretation of the Geneva Conventions. The importance given to Human rights in defining Humanitarian principles can be observed in the Geneva Conventions 1949, following which the intermingle between the two regimes was recognized by the international community on various occasions. Therefore, it is not incorrect to say that the Geneva Conventions formed the cornerstone from which the movement towards stronger humanitarian principles took place.

6. Summary

In this module we briefly went over some of the provisions of the Geneva Conventions and the additional protocols. We started with an introduction to the relevant protocols. We discussed the common features of all the four conventions, which include very important concepts of grave breaches of the conventions and, more specifically, we dealt with Article 3, which defines certain activities as prohibited under any armed conflict. Then we discussed the main subject matters of each of the convention separately. The first convention deals with the condition of wounded and sick members of armed forces; the second deals with wounded, sick and shipwrecked in the sea; the third deals with prisoners of war; and finally the fourth convention deals with protection of civilians. All of the conventions define protected personnel and protects medical and humanitarian services to be attacked, in addition to other protections. Following them, we discussed the two additional protocols I and II, which protect civilians from international armed conflict and non-international armed conflict respectively. The additional protocols add to clarify the protection offered under the Geneva Conventions and define concepts. The principles of distinction, proportionality and precaution with

respect to attacks are predominantly established and explained in the Additional Protocol I. Lastly, we very briefly understood the relevance of the Geneva laws in the current International Humanitarian Law regime. Geneva Conventions not only form the cornerstone for modern IHL but is also the most important part which forms customary IHL.

