

Protection of Victims of Armed Conflicts



OUTLINES OF THE MODLUE

- ▣ **1. INTRODUCTION**
- ▣ **2. PROTECTION OF CIVILIANS**
- ▣ **3.PROTECTION OF WOMEN**
- ▣ **4. PROTECTION OF CHILDREN**
- ▣ **5. PROTECTION OF PRISIONER OF WAR AND DETAINEES**
- ▣ **6. PROTECTION OF WOUNDED, SICK AND SHIPWRECKED**
- ▣ **7. REFUGEES AND DISPLACD PERSONS**

INTRODUCTION

- ❑ The Law of armed conflict is known as International Humanitarian Law (IHL)
- ❑ The IHL is specifically designed to protect and alleviate the sufferings of the victims of armed conflict.
- ❑ Further intended to limit the use of armed violence against people those who are not and no longer participate in the armed conflicts.

INTRODUCTION

- ❑ The normative framework of international law prohibits the use of force in international relations under Article 2(4) of the United Charter.
- ❑ However, armed conflicts continue to happen in the world and civilians, children, women are vulnerable to sufferings due to mindless violence committed by armed groups in the situation of armed conflict.

INTRODUCTION

- ❑ The fundamental objective of IHL is to protect the victims from the effects of the armed conflicts.
- ❑ The IHL affords protection to the victims of armed conflict, in general it is considered as protected persons under IHL.

INTRODUCTION

- The provisions of the Four Geneva Conventions of IHL 1949 and its Additional Protocols of 1977 specifically provides legal mechanisms to protect certain categories of people
- These categories includes civilians including women and children, civilians on the territory of the enemy, civilians internees, civilian in occupied territories, wounded, sick and ship wrecked members of the armed forces, prisoners of war, refugees and displaced persons and missing persons.

PROTECTION OF CIVILIANS

- Primarily, IHL recognizes two categories of persons in Armed Conflicts:
Combatants and civilians
 - **Combatants - Can be Attacked**
Combatants have the right to participate directly in hostilities

PROTECTION OF CIVILIANS

- ▣ **Civilians - Are Protected by IHL**
- ▣ Under IHL Civilians have the general right to protection against the effects of hostilities, but cannot participate in hostilities
- ▣ If they participate in armed conflict, the protections which are provided under IHL will be not extended.

PROTECTION OF CIVILIANS

- Civilians are defined under Art. 50 AP I.

- A civilian is any person who is not a combatant:
 - is not a member of the armed forces
 - has not taken arms spontaneously to resist an invading force
 - if in doubt treat as a civilian

PROTECTION OF CIVILIANS

- ❑ It is prohibited for civilians to:
 - engage in combat
 - engage in acts harmful to the enemy, such as sabotage or assisting a POW to escape
 - provide front line support.
 - take a direct part in hostilities;
- ❑ Civilians may not be the object of an attack unless they take a direct part in hostilities.

PROTECTION OF CIVILIANS

- ▣ Civilians bear criminal responsibility for killing or injuring members of the opposing force or for causing damage or destruction to property
- ▣ Civilians may be tried for breaches of IHL and other international crimes

PROTECTION OF CIVILIANS

- Civilians may only be punished as a result of a fair and regular trial;
- If captured, interned or detained civilians:
 - must be treated humanely; and
 - are not entitled to POW status.

PROTECTION OF CIVILIANS

- Responsibility of states for the protection of civilians:
- The IHL conventions obligates the state parties with specific obligations, it provides that
 - “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.”

PROTECTION OF CIVILIANS

- ❑ The convention also prohibits the use of civilians as a shield to protect certain areas or installations, usually of military importance, from enemy attack.
- ❑ The collective punishment of civilians and measures aimed at intimidating or terrorising the civilian populations, pillage, hostage taking and reprisals against civilians are forbidden.

PROTECTION OF CIVILIANS

- Civilians under the power of enemy forces must be treated humanely in all circumstances, without any adverse distinction of race, colour, sex, language, religion, belief, political or any other manner inconsistency with the obligations.
- Civilians must be protected against all forms of violence, inhumane and degrading treatment, including murder and torture.

PROTECTION OF CIVILIANS

- Article 75 of the AP1 and Article 4 of the AP II provides **fundamental guarantees** for the protection of the civilians as well as persons of *hors de combat*.
- Civilians in the occupied territories are protected by the Fourth Geneva Convention

PROTECTION OF WOMEN

Existing Legal Regime for the Protection of Women

Women are the most vulnerable groups of people during the situations of armed conflicts the IHL provides effective mechanism under

- Four Geneva Conventions of 1949
- Additional Protocols of 1977

PROTECTION OF WOMEN

- The UN response to sexual violence
 - Declaration on the Protection of Women and Children in Emergency and Armed Conflict, 1974
 - Declaration on the Elimination of Violence against Women, 1993
 - Security Council Resolution 1325 - Women, Peace and Security

PROTECTION OF WOMEN

- The protection of victims of armed conflict is an important objective of IHL
- The general IHL principles does not discriminate on the basis of sex, colour, race or any other manner inconsistent with objectives of IHL.

PROTECTION OF WOMEN

- However, IHL do provide specific legal provisions for the protection of women.
- The protection afforded to women by IHL is same as the protection provided to combatants or civilians or person *hors de combat*.
- This is considered as general protection under the law, along with the general protections.

PROTECTION OF WOMEN

- Prohibition is on discrimination and not on differentiation
 - Non-discrimination
 - Human treatment
 - Protection against the effects of hostilities
 - Restrictions and prohibitions on the use of specific weapons

PROTECTION OF WOMEN

- Along with the general protections, the Geneva Conventions and its Additional Protocols provides **specific protection** and **rights** for specific needs of the women since they have been increasingly affected by the armed conflict.

PROTECTION OF WOMEN

- ❑ Women as members of civilian population are subjected to various acts of violence during situations of armed conflict.
- ❑ They often suffer the **direct and indirect effects of the fighting** and they invariably have to bear greater responsibility for their children and their elderly relatives when the men in the family leave to fight or are detained or effected by any other manner due to the conflict situation.

PROTECTION OF WOMEN

- ❑ Women are often under direct threat from indiscriminate attack due to the proximity of the fighting
- ❑ Many women often do not flee the fighting because they and their families believe that the very fact that they are women will afford them a greater measure of protection from the conflicting parties.

PROTECTION OF WOMEN

- ❑ IHL provides certain **special protection** to women against attacks like “rape, enforced prostitution or any form of assault” under Article 27 of the Fourth Geneva Convention.
- ❑ This provision uses the term “honour”, which attracted much debate in recent past among the IHL scholars, because it failed to **recognise the brutal and gross violations of women rights instead it talks of honour of women.**

PROTECTION OF WOMEN

- ❑ So far, IHL mechanism failed to recognise rape as war crime.
- ❑ In recent past the International War Crime Tribunals made efforts to recognise rape and sexual violence against women as war crimes.

PROTECTION OF CHILDREN

- ❑ Children are the most vulnerable sections of population in the armed conflict.
- ❑ According to UNICEF reports 300,000 children all over the world under the age of 18 are used in combat, supportive roles as cooks, domestic assistants, messengers, porters by state and non-state armed groups.

PROTECTION OF CHILDREN

- The UN Convention on the Rights of the Child 1989, defines:
 - "a child means every human being below the age of eighteen years unless under the law applicable to the child majority is attained earlier."

PROTECTION OF CHILDREN

- ❑ The principles of IHL and IHRL provides specific legal mechanism in Preventing the use of children in armed conflict
- ❑ One, Protocol Additional I to the Geneva Convention of 1949 and relating to the Protection of Victims of International Armed Conflicts

PROTECTION OF CHILDREN

- Art. 77(2) of the AP I provides:
 - "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."

PROTECTION OF CHILDREN

- Article 4 (3) (c) Additional Protocol II to the Geneva Convention of 1949 provides Fundamental Guarantees
- "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."

PROTECTION OF CHILDREN

- Article 38 The Convention on the Rights of the Child provides:
 - "States Parties undertake to respect and to ensure respect for rules of IHL applicable to them in armed conflicts which are relevant to the child.
 - States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

PROTECTION OF CHILDREN

- Article 5(1) Statute of the International Criminal Court, 1998 provides jurisdiction with respect to the following crimes:
 - (a) The crime of genocide;
 - (b) Crimes against humanity;
 - (c) War crimes;
 - (d) The crime of aggression.

PROTECTION OF CHILDREN

- ❑ Art 8 (2)(b)(xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.
- ❑ Art. 8(2)(e) (vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in non-international armed conflicts.

PROTECTION OF CHILDREN

- Article 1 of the Optional Protocol to the CRC on the involvement of children in armed conflict 2000
 - "States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities."

PROTECTION OF CHILDREN

- Article 3 (1) of the Optional Protocol to the CRC provides :
 - States Parties shall raise the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in article 38, paragraph 3, of the Convention on the Rights of the Child, taking account of the principles contained in that article and recognizing that under the Convention persons under the age of 18 years are entitled to special protection.

PROTECTION OF CHILDREN

Art. 3(3) States Parties that permit voluntary recruitment into their national armed forces under the age of 18 years shall maintain safeguards to ensure, as a minimum, that:

- (a) Such recruitment is genuinely voluntary;
- (b) Such recruitment is carried out with the informed consent of the person's parents or legal guardians;
- (c) Such persons are fully informed of the duties involved in such military service;
- (d) Such persons provide reliable proof of age prior to acceptance into national military service.

PROTECTION OF CHILDREN

- Art. 4 further provides that
- "Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.
- States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalise such practices.

PRISONERS OF WAR

- ▣ The third Geneva Convention protects combatants that fall within the power of the enemy, whether they get captured or surrender, by granting them the **status of prisoners of war**.

PRISONERS OF WAR

- ▣ PoWs must be respected and protected. Once captured or surrendered, shall be evacuated to camps situated in an area far enough from the combat zone for them to be out of danger (Art.19 and 20 GC III).
- ▣ They can be interned in those camps until the end of the conflict (Art.21-23 GC III), unless they get seriously injured or sick in which case they shall be repatriated (Art. 109 GC III).

PRISONERS OF WAR

- They can be questioned but are not bound to reveal more than their **surname, first names and rank, date of birth, and army, regiment, personal or serial number**, or failing this, equivalent information (Art.17 GC III).
- PoWs shall not be prosecuted for acts committed in relation with the hostilities, except for war crimes (Art.82 and 99 GC III).

PRISONERS OF WAR

- The Detaining Power shall establish a list of the PoWs and communicate it to the national Prisoners of War Information Bureau or to the ICRC (Art.20 and 122 GC III).
- PoWs who are not repatriated earlier shall be released and repatriated without delay after the cessation of active hostilities (Art.118 GC III).

PRISONERS OF WAR

- Requirements under GC for the eligibility of PoWs Status:
 - with respect to wounded, sick or shipwrecked combatants, the status of “combatants” is only defined with respect to IAC and does not exist in NIAC.
 - The status of PoWs only applies in situations of IAC.

PRISIONERS OF WAR

- ❑ In IAC every combatant who becomes *hors de combat* is entitled to protection as PoWs.
- ❑ The notion of “combatant” is the same as explained in the previous section with respect to wounded, sick and shipwrecked combatants.

PRISONERS OF WAR

- A combatant is considered “*hors de combat*” if:
 - he is in the power of an adverse Party,
 - he clearly expresses its intention to surrender, or
 - 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 (Art. 41.2 AP I).

PRISONERS OF WAR

- ▣ Civilians who have acted outside an organised armed forces, persons having taken part to attacks without distinguishing themselves from the civilians, mercenaries (Art.47 AP I, ICRC Customary Rule 108), spies (Art.46 AP I, ICRC Customary Rule 107), are considered unlawful combatants.

PRISONERS OF WAR

- ❑ Unlawful combatants are not entitled to the prisoner of war status, their only protection consists of the **fundamental guarantees** provided in Art. 75 AP I,
- ❑ They can be tried for their actions related to the armed conflict, whilst prisoners of war cannot be sued for its participation to hostilities unless they have committed war crimes.

PRISONERS OF WAR

- In case of doubt on the status of combatant of the person captured by the enemy, this person shall benefit from this status and be treated as a PoWs until the issue is addressed by a competent tribunal (Art.5.2 GC III, Art.45 AP I) offering all the judicial guarantees provided for by Art.84, 89-108 GC III and Art.75 AP I.

PROTECTION OF REFUGEES

- Refugees and Stateless persons are protected under IHL
- Fourth Geneva Convention Article 44; and Article 73 of AP I
- Refugees and Stateless persons are vulnerable at all times. During international armed conflict, they shall be deemed to be protected persons within the meaning of the GC IV.

▣ **Thank you for your attention!!!!**