



## A safety net for prisoners of war: five key principles of the Third Geneva Convention

April 27, 2023, Detention / GCIII Commentary / Humanitarian Action / Law and Conflict

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*After the Second World War, countries came together to improve the legal protection available to certain categories of persons – including prisoners of war – many of whom had suffered greatly during the conflict. The provisions relating to the protection of prisoners of war are contained in the Third Geneva Convention that was adopted in 1949. The vast majority of the 143 articles of that Convention relate to the material conditions for the internment of prisoners of war.*

*In this post, former ICRC Legal Adviser Yvette Issar discusses some of the key principles that run through the Third Convention, underpinning the rules that serve to protect prisoners of war who have been subjected to internment. These principles inform every facet of life for prisoners of war, from standards relating to accommodation, food, and clothing, to the penal and disciplinary regime which is applicable to them. Fuller treatment of these principles is contained in the ICRC’s recently updated *Commentary on the Third Geneva Convention*.*

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The Third Geneva Convention consists of 143 articles. These contain prescriptions concerning the beginning and end of internment, and they govern the material conditions of internment for prisoners of war (POWs). These rules cover accommodation, minimum standards of hygiene and medical care required to keep prisoners of war in good health and prevent the spread of communicable diseases or diseases caused by malnourishment or lack of movement. They include rules that prevent torture, forced labour and other forms of ill treatment. While these rules vary in terms of substance, they have one thing in common: they are all concerned with *protecting the human dignity of prisoners of war*.

The vast majority of the rules of the Third Convention result from an interplay between several key principles that run through it like threads. Together, these principles – from the principles of military necessity and humanity to principles on equal treatment, non-adverse distinction and assimilation – help weave the safety net that is intended to protect prisoners of war while they are interned.

### The principle of military necessity

The principle of *military necessity* is fundamental to international humanitarian law (IHL). It ‘permits measures which are actually necessary to accomplish a legitimate military purpose and are not otherwise prohibited by international humanitarian law.’

#### **Article 21 – Restriction of liberty of movement and release on parole**

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.

In line with the principle of military necessity, a Party to the conflict *may intern the combat forces of its adversary* to prevent their return to the battlefield. In other words, the principle of military necessity permits the internment of an entire category of persons during international armed conflicts. It also informs *the rules regarding their release*, which occurs when military necessity no longer justifies internment.

Since internment is carried out for reasons of military necessity, rules in the Convention prescribe that, for the duration of their internment, captured combatants should not be treated as criminals for having participated in the conflict, the so-called principle of combatant immunity. They must not be subjected to close confinement (Art. 21) and they must not be held with criminal detainees (Art. 22).

## The principle of humanity

By interning prisoners of war, the Detaining Power achieves the legitimate purpose of weakening the military capacity of its enemy. While enemy soldiers are interned, the conditions to which they are subjected must satisfy the overall requirements of humane treatment.

The principle of humane treatment is anchored in a very fundamental understanding that the inherent dignity of human beings is inviolable. Although humane treatment runs through all the rules of the Convention, it's most clearly articulated in Articles 13 and 14.

### Article 13 – Humane treatment of prisoners

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.

### Article 14 – Respect for the persons and honour of prisoners

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.

Several rules follow directly from the principle of humane treatment. These include that prisoners of war may never be subjected to physical or psychological torture. They must be protected against acts of violence, intimidation, insults, and *public curiosity*. Measures of reprisal against them are prohibited, as is *disrespect to their honour*.

While the term “humane treatment” is not defined in any of the IHL treaties, the updated Commentary provides further *guidance* on what the obligation to treat prisoners of war humanely entails in the context of specific rules. The Commentary explains that obligation to provide humane treatment is not the mere prohibition of inhumane treatment. The obligation to treat prisoners of war humanely includes all prohibitions on treatment that is inhuman or degrading, but it goes beyond, and in some cases requires the Detaining Power to *undertake positive action*.

While certain types of treatment will always constitute inhuman treatment, what constitutes humane treatment may in addition depend on a wide variety of factors, including a prisoner's cultural, social or religious background, gender and age.

The principle of humane treatment informs every aspect of life for a prisoner of war – from the moment of capture, initial questioning, evacuation to the rear and the conditions to which they may be subjected throughout the duration of their internment. More than a hundred provisions of the Convention translate this requirement of humane treatment into more specific areas, such as *food and clothing*, hygiene and medical care, and contacts with the outside world. All these provisions underpin the protective framework of the Convention and confirm that the Detaining Power must *respect the inherent human dignity of prisoners of war* and their inviolable quality as human beings.

The *updated Commentary to the Third Geneva Convention* takes great care to make these links evident, as promoting the humane treatment of POWs is at the heart of the ICRC's work. The requirement of humane treatment is a thread running through the Convention and a major part of its object and purpose.

## The principles of equal treatment and non-adverse distinction

The principles of equal treatment and non-adverse distinction are a related pair, and both feature in Article 16.

### Article 16 – Equality of treatment of prisoners

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.

In providing that all prisoners of war must be treated alike, the rule requires equal, not identical, treatment. The different situations and needs of particular (categories of) prisoners must therefore be taken into account. The obligation to treat prisoners of war alike, might then, in some cases, require differentiated treatment.

Certain beneficial distinctions, i.e. distinctions that are justified by the substantively different situations and needs of protected persons, are allowed and may even be required. The text of the article itself points to privileged treatment based on state of health, age or professional qualifications. Other factors may also provide objective and reasonable justification for differentiated treatment. For example, as the *updated Commentary* mentions, specific measures may be required to make camp services and facilities accessible to prisoners with a disability.

Article 16 specifically prohibits adverse distinction based on race, nationality, religious belief or political opinion, and importantly “any similar criteria”. The list is non-exhaustive; the drafters anticipated that it would evolve, and the article must be interpreted in light of new legal and social developments.

## The principle of assimilation

The principle of assimilation reflects an understanding that POWs are to benefit from treatment and living conditions similar to those enjoyed by members of the Detaining Power’s own armed forces. This logic was already in evidence in the 1899 and 1907 Hague Regulations, as well as in the 1929 Convention on prisoners of war. It occupies a particularly significant place in the chapter on penal and disciplinary sanctions, where it is articulated, for the purposes of that chapter, in the first sentence of *Article 82 on applicable legislation*.

The principle of assimilation has a practical value. It facilitates the task of administering the internment of prisoners of war, since the Detaining Power is called to apply rules and standards that are already in force for its own troops. The Detaining Power is necessarily familiar with, and has pre-existing experience of, implementing those rules and standards and thus can readily apply them to prisoners of war.

Several rules of the Third Convention refer to the principle of assimilation as the starting point for determining the living conditions and standards of treatment to be accorded to POWs. However, the principle does not operate in a vacuum, but rather in conjunction with certain minimum standards in the Convention, in particular those concerning humane treatment.

We can see this interplay in Article 25, for example, which addresses conditions for the living quarters of POWs. Assimilation with the Detaining Power’s own forces is the starting point of the rule. According to Article 25, POWs “shall be quartered under conditions as favourable as those for the forces of the Detaining Power who are billeted in the same area.” However, this is followed by the requirement to make allowance of the prisoners’ “habits and customs”, and a minimum safeguard requiring that conditions “in no case be prejudicial to [the prisoners’] health.”

We can also look at Article 84 on courts. Paragraph 1 reflects the principle of assimilation. It requires that POWs be tried by military court unless the Detaining Power’s legislation permits civilian courts to try members of its own armed forces for a particular offence. Paragraph 2 sets out absolute and minimum standards for the trial of prisoners of war, since military and civilian justice systems of different states may vary considerably.

So, with respect to the rules that invoke the principle of assimilation, national standards are taken as the starting point, but when the treatment afforded by a Detaining Power to its own armed forces on these matters falls short of the minimum standards set out in the Third Convention, it is the Convention’s standards that apply to prisoners of war.

## Conclusion

The principles that are discussed in this post operate together to inform the rules that apply to prisoners of war who are facing internment. In its updated Commentary on the Third Geneva Conventions, the ICRC has provided guidance about how these principles – and the detailed rules that are based on them – should be interpreted in contemporary contexts.

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