The Fourth Geneva Convention was the first humanitarian law convention dedicated to protections for civilians during armed conflict. Amongst its numerous protective rules, it also provides the main rules of international humanitarian law (IHL) governing the exceptional practice of internment of protected persons – detention of such persons for security reasons during international armed conflict.

In this post, part of a series that delves into the grounds and procedures for internment contained in the Fourth Geneva Convention, Camilla Guldahl Cooper, Associate Professor at the Norwegian Defence Command and Staff College, gives some context to certain rules in the Fourth Geneva Convention which apply to the initial decision to intern a protected person. She elaborates on what these rules require and how they have been taken into account in Norway’s military manual.
Internment is therefore interpreted to require a strict assessment of the need to intern. The person must pose a risk to the detaining alternatives to detention once the person is under the control of the armed forces. If the armed forces holding a person is in doubt on whether internment if the person in question is considered a lawful target of attack, due to his or her direct participation in hostilities, there are few, if any, realistic threat, available resources, and the character of the situation at the time.

The process connected with the security detention will depend on the circumstances. In some cases, the initial internment is based on a perceived threat, which must then be confirmed as soon as possible. Whether this can be done at the scene or requires further consideration will depend on the type of threat, available resources, and the character of the situation at the time.

If the person in question is considered a lawful target of attack, due to his or her direct participation in hostilities, there are few, if any, realistic alternatives to detention once the person is under the control of the armed forces. If the armed forces holding a person is in doubt on whether internment
would comply with applicable rules of engagement and procedures developed to ensure compliance with LOAC, the person can be interned temporarily until the determination is made by higher levels of command. In such cases, there would usually be a temporal limitation for making the determination and if needed, release the person.

In other situations, if a known person is considered to be a security risk, the appropriate measures can be considered by the appropriate level of command and staff officers. The role of the armed forces involved in internning the person would then be to comply with the order to intern, in accordance with the operational procedures in place setting out amongst others the amount of force that may be used.

Do you have any thoughts on how Rule 6.96 could be applied in situations where an internment decision must be taken quickly?

In addition to the legal limitation on internment, due to the operational and logistical challenges involved in having to ensure appropriate treatment of interned persons and transport them back to an appropriate facility, the decision is never taken lightly. In most cases, the initial decision to intern is a reaction to emergent situations, such as a perceived threat or suspicious activity, and the decision must be made quickly.

To aid the troops in making the decision, they may be provided examples of situations where internment is appropriate. Such operation specific examples can for instance be issued in standard operating procedures (SOPs) or tactical directives, or be included as part of the training. The need to intern will then be subject to a more detailed consideration conducted by qualified personnel once the intern is brought onto a military facility.

Compilation of rules discussed from Norwegian Manual

Rule 6.88
Internment shall not be a routine measure and may only be implemented on the basis of an individual assessment of the threat presented by a given individual, without discrimination of any kind.

Rule 6.96
Internment is a serious intervention in personal liberty, and the conditions under which it may be imposed are therefore strict. In order for security internment of a civilian in an armed conflict to be permissible, other options such as deportation, obligatory periodic reporting to the police for registration or similar measures must be deemed insufficient to safeguard security.

Rule 6.99
No specific level of suspicion can be established as a requirement, but there must be reasonable grounds for believing that the person in question represents a serious threat to security and that it is therefore absolutely necessary to intern him or her. The level of suspicion required to place a person in security internment depends on the specific situation. The seriousness of the threat will be among the relevant factors. If the threat is very serious, such as specific information that one or more persons will attack Norwegian forces with lethal means in the near future, a smaller degree of suspicion will be required than if the question is one of internning a person suspected of passing along information that is of military value but does not constitute a specific deadly threat to Norwegian forces.

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