

# The updated ICRC Commentary on the Third Geneva Convention: A new tool to protect prisoners of war in the twenty-first century

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## Abstract

*Since their publication in the 1950s and 1980s respectively, the Commentaries on the Geneva Conventions of 1949 and their Additional Protocols of 1977 have become a major reference for the application and interpretation of those treaties. The International Committee of the Red Cross, together with a team of renowned experts, is currently updating these Commentaries in order to document developments and provide up-to-date interpretations of the treaty texts. This article highlights key points of interest covered in the updated Commentary on the Third*

\* The authors wish to acknowledge that this article summarizes some of the key findings of the updated Commentary and as such reflects the input of many experts involved in the drafting and review of the Commentary, including the authors' colleagues in the Commentaries Update Unit Bruno Demeyere, Yvette Issar, Eve La Haye and Heike Niebergall-Lackner.

*Geneva Convention. It explains the fundamentals of the Convention: the historical background, the personal scope of application of the Convention and the fundamental protections that apply to all prisoners of war (PoWs). It then looks at the timing under which certain obligations are triggered, those prior to holding PoWs, those triggered by the taking of PoWs and during their captivity, and those at the end of a PoW's captivity. Finally, the article summarizes key substantive protections provided in the Third Convention.*

**Keywords:** international humanitarian law, Geneva Convention III, updated Commentary, prisoners of war, internment, captivity, Detaining Power, humane treatment, protection of person and honour, equal treatment, non-discrimination, principle of assimilation, transfer, release and repatriation, seriously wounded and sick prisoners, quarters, food, clothing, medical care and sanitation, recreation, religion, relations with the exterior, labour, complaints, prisoners' representatives, disciplinary and judicial proceedings.

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In 2011, the International Committee of the Red Cross (ICRC) embarked on an ambitious project to update the Commentaries on the Geneva Conventions of 1949 and their Additional Protocols of 1977.<sup>1</sup> The updated Commentaries seek to reflect developments in how the law is applied and interpreted in practice, recognizing that over seventy years have passed since the Geneva Conventions were adopted. Previous milestones of this project include the completion of the updated Commentaries on Geneva Conventions I and II (GC I and GC II) in 2016 and 2017 respectively.<sup>2</sup> In 2020, the project reached another major milestone with the completion of the updated Commentary on Geneva Convention III relative to the Treatment of Prisoners of War (GC III).<sup>3</sup>

GC III protects members of the armed forces and other defined categories of persons who fall into the power of the enemy in times of international armed

1 Jean Pictet (ed.), *Commentary on the Geneva Conventions of 12 August 1949*, Vols 1–6, ICRC, Geneva, 1952–60. The ICRC has engaged in the writing of the original Commentaries, and the updating of those Commentaries, pursuant to its role as guardian and promoter of international humanitarian law (IHL). This role is recognized in the Statutes of the International Red Cross and Red Crescent Movement, in particular the ICRC's role "to work for the understanding and dissemination of knowledge of international humanitarian law applicable in armed conflicts and to prepare any development thereof". See Statutes of the International Red Cross and Red Crescent Movement, 1986, Arts 5(2)(c), 5(2)(g). On the ICRC's role in the interpretation of IHL, see also François Bugnion, *The International Committee of the Red Cross and the Protection of War Victims*, ICRC and Macmillan Education, Oxford, 2003, pp. 914–922.

2 For more details, see Bruno Demeyere, Jean-Marie Henckaerts, Heleen M Hiemstra and Ellen Nohle, "The Updated ICRC Commentary on the Second Geneva Convention: Demystifying the Law of Armed Conflict at Sea", *International Review of the Red Cross*, Vol. 98, No. 902, 2016; Lindsey Cameron, Bruno Demeyere, Jean-Marie Henckaerts, Eve La Haye and Heike Niebergall-Lackner, "The Updated Commentary on the First Geneva Convention – a New Tool for Generating Respect for International Humanitarian Law", *International Review of the Red Cross*, Vol. 97, No. 900, 2015.

3 ICRC, *Commentary on the Third Geneva Convention: Convention (III) relative to the Treatment of Prisoners of War*, 2nd ed., 2020 (ICRC Commentary on GC III), available at: <https://ihl-databases.icrc.org/ihl/full/GCIII-commentary> (all internet references were accessed in January 2021). The print edition of the updated Commentary will be published by Cambridge University Press in 2021.

conflicts.<sup>4</sup> Prisoners of war (PoWs) are not to be punished for their mere participation in hostilities; their detention is not a punishment but an act to prevent their further participation in hostilities. This understanding underpins the whole of GC III.<sup>5</sup>

GC III sets out a number of fundamental protections that apply to all PoWs. These fundamental protections serve as a foundation for the more prescriptive articles, which provide that PoWs must at all times be treated humanely, with respect for their person and their honour, and treated equally, without discrimination.<sup>6</sup> These principles in turn are supplemented by detailed provisions regulating the treatment of PoWs. These include provisions relating to the beginning of captivity, the provision of prisoners' basic needs, the transfer of prisoners, the use of prisoners' labour, the imposition of disciplinary or judicial proceedings, and the final release and repatriation of prisoners. The level of detail provided for the protection of PoWs at the time of drafting GC III in 1949 was unprecedented, and GC III continues to provide comprehensive protection to PoWs.

Updating the Commentaries on each of the 142 articles of GC III required consideration of a wide range of historical, legal, military, ethical, socio-cultural and technological issues. As with the updated Commentaries on GC I and GC II, the development of the updated Commentary on GC III involved a collaborative effort, with input from ICRC and non-ICRC lawyers, specialists with subject-matter expertise (including military personnel, protection officers specializing in detention, and academics), and others. In addition, the development of this Commentary has benefited from the fact that the ICRC has been able to draw on archival records of its work visiting PoWs over the last seventy years. This work has enabled the ICRC to witness measures taken to comply with GC III, and also challenges in its implementation.

GC III remains relevant today, as there continue to be prisoners of war. Its rules have informed parallel provisions protecting civilian internees under Geneva Convention IV (GC IV). No article of GC III was found to have fallen into desuetude, although it was sometimes more difficult to find recent practice in relation to certain topics, such as the financial resources of PoWs.<sup>7</sup>

The update of the Commentary on GC III follows the same methodology as that applied for the updated Commentaries on GC I and GC II, based on the rules of treaty interpretation set out in the 1969 Vienna Convention on the Law of Treaties, in particular Articles 31–33.<sup>8</sup> Pursuant to these rules, the contributors started from

4 It should be noted that in non-international armed conflicts, IHL foresees no entitlement to PoW status as it exists for international armed conflict.

5 ICRC Commentary on GC III, above note 3, Introduction, para. 20, and Art. 21, para. 1932.

6 Geneva Convention (III) relative to the Treatment of Prisoners of War of 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950) (GC III), Arts 13, 14, 16.

7 In international armed conflicts since 1949, Article 61 on supplementary pay for PoWs does not appear to have been resorted to. On absence of practice and desuetude, see also ICRC Commentary on GC III, above note 3, Introduction, section C.8.

8 Vienna Convention on the Law of Treaties, 1155 UNTS 18232, 23 May 1969. Articles 31–33 are generally considered to reflect customary international law. See, for example, International Court of Justice (ICJ), *Kasikili/Sedudu Island (Botswana v. Namibia)*, Judgment, 13 December 1999, *ICJ Reports 1999*, paras

the ordinary meaning of the terms of GC III in their context and in light of the object and purpose of the treaty. Although the updated Commentary has been drafted in English, the authors have consistently consulted and compared the English text of the Convention with the French text, which is equally authentic.<sup>9</sup> Close examination was also made of the preparatory work for each article of the Convention.

Where relevant, the updated Commentary also takes into account developments in branches of international law other than international humanitarian law (IHL), such as international criminal law and international human rights law. Other treaties are referred to on the understanding that they apply only to States which have ratified or acceded to them, and only if the conditions relating to their geographic, temporal and personal scope of application are fulfilled. Reference is made to international human rights law where relevant to interpret shared concepts (for example, cruel, inhuman and degrading treatment), as well as to provide practitioners with further information about certain topics, and in certain circumstances where GC III may be affected by international human rights obligations.<sup>10</sup> This does not mean that international human rights law and interpretations can be transposed mechanically to IHL provisions, and differences have also been pointed out where relevant.<sup>11</sup>

This article highlights key points of interest covered in the updated Commentary on GC III. It is divided into three parts. The first part covers the fundamentals of GC III: the historical background, the personal scope of application of the Convention, and the fundamental protections that apply to all PoWs. The second part provides a framework for understanding when certain obligations are triggered; these may be broadly grouped as the obligations of a Detaining Power prior to holding PoWs, the obligations triggered by the taking of PoWs and during their captivity, and the obligations that arise at the end of a PoW's captivity. The third part summarizes key substantive protections provided in GC III, providing examples of the depth of detail in the Convention when it comes to the protection of PoWs.

18–20; ICJ, *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Merits, Judgment, 26 February 2007, *ICJ Reports 2007*, para. 160; International Law Commission, “Subsequent Agreements and Subsequent Practice in Relation to the Interpretation of Treaties”, Conclusion 2.1 (adopted on second reading), *Report of the International Law Commission on the Work of its Seventieth Session*, UN Doc. A/73/10, 2018, p. 13.

9 GC III, Art. 133; Vienna Convention on the Law of Treaties, Art. 33.

10 For example, a discussion on the application of Article 100 on the death penalty would not be complete without acknowledging the existence of international treaties by which many States have committed to abolishing the death penalty. See ICRC Commentary on GC III, above note 3, Art. 100, para. 3979.

11 For an example in relation to the definition of torture, see *ibid.*, Art. 3, section G.2, and Art. 130, section D.2.a. For more information on the use of other relevant rules of international law, see *ibid.*, Introduction, section C.5.

## The fundamentals of Geneva Convention III

### The historical background of Geneva Convention III

Customs and codes regulating the capture and detention of enemy soldiers have existed for thousands of years, drawing on a variety of cultural, religious and ethical frameworks.<sup>12</sup> The development of an international treaty, however, began in earnest in the eighteenth and nineteenth centuries, at which time many States began to establish and consolidate professional armies, to enter bilateral agreements regarding the conditions of warfare,<sup>13</sup> and to include protections for PoWs in their military manuals.<sup>14</sup>

In 1874, a conference of fifteen European States adopted a draft text submitted by the Russian government, now known as the Brussels Declaration, which included twelve articles on the protection of PoWs. The Brussels Declaration never became a binding treaty, but many of its definitions were adopted essentially without change at the 1899 Hague Peace Conference.<sup>15</sup> The Hague Regulations annexed to the Hague Conventions of 1899 were the first binding multilateral agreement dealing with PoWs.<sup>16</sup> Seventeen articles of the Regulations dealt with PoWs, addressing, *inter alia*, the obligation to treat prisoners humanely and without distinction, to feed and clothe prisoners at a standard at least on par with the soldiers of the Detaining Power, and to ensure speedy repatriation of prisoners upon the end of the conflict.<sup>17</sup>

The provisions in the Hague Regulations proved to be insufficiently detailed, and during World War I some belligerents signed temporary agreements to clarify disputed points.<sup>18</sup> Further, the changing character of warfare, technological developments and the increased size of armies and wars led to significantly larger numbers of persons being taken captive during armed

12 *Ibid.*, Introduction, para. 4.

13 For example, during the Napoleonic Wars, the United Kingdom and France entered into an agreement which allowed for a “protecting power” to visit prisoners and provide additional food. In 1896 Italy and Ethiopia entered into the Treaty of Addis Ababa, which included the requirement of release of all prisoners, as well as an obligation on the part of Ethiopia to allow a detachment of the Italian Red Cross to facilitate this process. Alexander Gillespie, *A History of the Laws of War*, Vol. 1: *The Customs and Laws of War with Regards to Combatants and Captives*, Hart Publishing, Oxford, pp. 149, 164; James Molony Spaight, *War Rights on Land*, Macmillan, London, 1911, p. 37.

14 See Allan Rosas, *The Legal Status of Prisoners of War: A Study in International Humanitarian Law Applicable in Armed Conflicts*, Institute for Human Rights, Åbo Akademi University, Turku/Åbo, 1976 (reprinted 2005), pp. 69, 72–73; and, in particular, the Lieber Code of 1863: Instructions for the Government of Armies of the United States in the Field, prepared by Francis Lieber, promulgated as General Order No. 100 by President Abraham Lincoln, Washington, DC, 24 April 1863.

15 Regulations concerning the Laws and Customs of War on Land, Annexed to Convention (II) with respect to the Laws and Customs of War on Land, The Hague, 29 July 1899, Section II. Provisions dealing with PoWs can also be found in Institute of International Law, *The Laws of War on Land*, Oxford, 9 September 1880, e.g. Arts 21–22, 61–78.

16 A. Rosas, above note 14, p. 70.

17 ICRC Commentary on GC III, above note 3, Introduction, para. 7.

18 See, for example, the Agreement between the British and Ottoman Governments respecting Prisoners of War and Civilians, signed in Bern in December 1917 (HM Stationery Office, London, 1918).

conflicts of this period, most notably in World War I.<sup>19</sup> On the basis of general principles developed by the Tenth International Conference of the Red Cross and Red Crescent, the 1929 Convention relative to the Treatment of Prisoners of War was adopted, considerably supplementing the Hague Regulations.<sup>20</sup> Its eighty substantive articles included provisions on the prohibition of measures of reprisal and collective penalties, the organization of labour of PoWs, the ability of prisoners to elect their representatives, the codification of judicial procedures and punitive measures, and the official recognition of the role of the ICRC, generally and in regard to the organization of a central information agency. Forty-seven States were party to the 1929 Convention at the outbreak of World War II.<sup>21</sup> While the protections conferred by the 1929 Convention had an important impact in several theatres of World War II, in others they did not, in part because they were interpreted not to be applicable. For example, a narrow interpretation of the definition of PoW was used to deny PoW status to soldiers of several countries who surrendered following the capitulation of their State.<sup>22</sup>

The negotiations for what would become GC III were in turn heavily influenced by the experiences of World War II. As in World War I, quarter was regularly denied on a devastating scale.<sup>23</sup> Further, World War II witnessed the use of detention itself as a means to enable the killing of innumerable soldiers, including by summary execution, extreme acts of violence, ill-treatment, starvation and malnutrition.<sup>24</sup> Prisoners were treated differently depending on their nationality and on which State detained them, and at the end of the war, the repatriation of prisoners was significantly drawn out.<sup>25</sup>

In the immediate aftermath of World War II, several expert conferences were convened in Geneva, where preparatory material gathered by the ICRC and first drafts for the new conventions were discussed. The most important of these conferences were the Preliminary Conference of National Red Cross Societies in 1946 and the Conference of Government Experts in 1947. The drafts prepared by these conferences were presented to the 1948 International Conference of the Red Cross and Red Crescent in Stockholm, where further amendments were adopted. The Stockholm Drafts served as the basis for negotiation at the Diplomatic Conference that met in Geneva from 21 April to 12 August 1949. Fifty-nine

19 During World War I, for example, it is estimated that an unprecedented 7 to 8 million soldiers were taken as PoWs. On treatment issues for PoWs in World War I, see A. Gillespie, above note 13, pp. 166–172.

20 See François Bugnion, above note 1, p. 121, for more detail on the preparatory steps that led to the adoption of the 1929 Convention.

21 In addition, Japan declared that it was ready to apply the Convention during World War II “under conditions of reciprocity and *mutatis mutandis*”. ICRC, *Report on Activities during the Second World War*, Vol. 1, Geneva, 1948, p. 229.

22 ICRC Commentary on GC III, above note 3, Art. 4, section D.1. See also *ibid.*, para. 1041, in relation to the denial of PoW status to soldiers of governments or authorities not recognized by the Detaining Power.

23 See, for example, A. Gillespie, above note 13, p. 186.

24 See, for example, A. Rosas, above note 14, p. 78; A. Gillespie, above note 13, pp. 192–200; Sandra Krähenmann, “Protection of Prisoners in Armed Conflict”, in Dieter Fleck (ed.), *The Handbook of International Humanitarian Law*, 3rd ed., Oxford University Press, Oxford, 2013, p. 362.

25 For example, it is estimated that there were still 630,000 German prisoners of war in France in 1947. S. Krähenmann, above note 24, p. 363.

States were officially represented by delegations with full powers to discuss the texts; four States sent observers.

In general terms, the 1949 GC III is considerably more detailed than the 1929 Convention. It clarifies and expands the scope of persons to whom it applies; it provides clearer regulation to keep prisoners in good health; it elaborates on the guarantees they are due in cases of disciplinary or penal sanction; it provides stricter regulation on the use of PoW labour; and it clarifies the obligation to repatriate prisoners at the end of active hostilities. Like the other three Geneva Conventions, GC III also contains a system for the suppression of breaches of the Convention, by defining the concept of “grave breaches” against PoWs, by creating obligations on States to pass legislation criminalizing grave breaches, and by obliging States to search for and to try or extradite those who are suspected of having committed such breaches. It provides for a greater role for relief societies and acknowledges the “special position” of the ICRC in this respect. Finally, GC III allows for the ICRC to visit PoWs and forms the basis for its Central Tracing Agency.<sup>26</sup>

### The personal scope of application of Geneva Convention III

Article 4 is perhaps the best known and most debated provision of GC III. This article defines PoWs and, accordingly, is central to understanding the personal scope of application of the Convention. It provides, in short, that a PoW is a person belonging to one of six categories defined in Article 4(A) at the time that they “fall into the power of the enemy” in an international armed conflict.<sup>27</sup> Article 4(A) mirrors the list of protected persons in Article 13 of GC I and GC II, which provide protection for wounded, sick and shipwrecked military personnel. Wounded, sick and shipwrecked persons covered by GC I or GC II who fall into the power of the enemy are simultaneously protected by GC III as well as GC I or CG II.<sup>28</sup>

#### *Members of the armed forces*

The first of the six categories is “members of the armed forces”. Numerically, this is likely to be the most significant category. “Members of the armed forces” refers to all military personnel under a command responsible to a party to the conflict. The requirement for membership in the armed forces is not prescribed in

26 The requirement that the ICRC be allowed to visit “all places where prisoners of war may be” is provided for in GC III, Art. 126. The creation of a Central Tracing Agency, operating under the responsibility of the ICRC, is established in GC III, Art. 123.

27 For a discussion on the expression “fallen into the power of the enemy”, see ICRC Commentary on GC III, above note 3, Art. 5, paras 1100–1101.

28 For details, see Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950) (GC I), Art. 14; Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950) (GC II), Art. 16.

international law and is instead a matter of domestic regulation.<sup>29</sup> This first category also includes members of militia or volunteer corps forming part of the armed forces – that is to say, formally incorporated into the armed forces and under the responsible command of a party to the conflict.<sup>30</sup> It may also include paramilitary and armed law enforcement agencies that are formally incorporated into the armed forces through the national law of a State.<sup>31</sup> Members of the armed forces are required to distinguish themselves from the civilian population during military operations. Under customary IHL, failure to do so while engaged in an attack or in a military operation preparatory to an attack results in their forfeiting the right to PoW status.<sup>32</sup> This provides an example of how the updated Commentary refers to customary IHL where it may be considered a “relevant [rule] of international law applicable in the relations between the parties”.<sup>33</sup>

*Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a party to the conflict and fulfilling the four conditions*

The second category of PoWs consists of members of “other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict”<sup>34</sup> and fulfilling four prescribed conditions. This category concerns groups that are not incorporated into the armed forces but otherwise “belong” to a party to the conflict.

A group belongs to a party to the conflict for the purpose of Article 4(A)(2) if the group fights on behalf of that party and that party accepts this fighting role. This acceptance can be express – for example, when a party gives a formal authorization to the group or acknowledges that the group fights on its behalf. It can also be implicit or tacit, such as when a group fights alongside the State and claims to be fighting on its behalf and the State does not deny this relationship when given the opportunity. The acceptance of a “belonging to” relationship can also be demonstrated by the overall control that the party exercises over the group.<sup>35</sup>

For members of such militia or volunteer corps to be considered PoWs upon falling into the power of the enemy, the militia and volunteer corps must collectively fulfil four conditions, each of which serves a protective purpose: they must be commanded by a person responsible for his or her subordinates, they

29 ICRC Commentary on GC III, above note 3, Art. 4, para. 977.

30 *Ibid.*, Art. 4, para. 979.

31 *Ibid.*, Art. 4, paras 979–982.

32 Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. 1: *Rules*, Cambridge University Press, Cambridge, 2005 (ICRC Customary Law Study), Rule 106, available at: <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1>. For further discussion on this point, see ICRC Commentary on GC III, above note 3, Art. 4, paras 983–987.

33 Vienna Convention on the Law of Treaties, Art. 31(3). See also ICRC Commentary on GC III, above note 3, Introduction, paras 92–95.

34 GC III, Art. 4(A)(2).

35 For a more in-depth discussion on the meaning of “belonging to” under Article 4(A)(2), see ICRC Commentary on GC III, above note 3, Art. 4, paras 1001–1009.



must have a fixed distinctive sign recognizable at a distance, they must carry arms openly, and they must conduct their operations in accordance with the laws and customs of war. A structured hierarchy can ensure internal discipline and that operations are planned, coordinated and carried out in a way that is consistent with the laws and customs of war. Having a fixed distinctive sign and carrying arms openly facilitates the distinguishing of combatants from the civilian population. The condition that the militia or volunteer corps conduct operations in accordance with the laws and customs of war serves as an additional encouragement for the groups to comply with IHL, in order for their members to receive protective PoW status in the event that they fall into the power of the enemy.

The Commentary also considers the question of whether these four conditions, which appear in Article 4(A)(2) but not in 4(A)(1), also apply to 4(A)(1) forces.<sup>36</sup> In the ICRC's view, while the four conditions are obligations for regular armed forces, they are not *collective conditions* for PoW status.<sup>37</sup> The four conditions reflect the usual practice of State armed forces. By definition, such forces are commanded by a person responsible for their subordinates.<sup>38</sup> Further, as mentioned above, members of the armed forces are under an obligation to distinguish themselves sufficiently from the civilian population and not to conceal their weapons during military operations. The ICRC's understanding is that a combatant loses eligibility for PoW status if he/she fails to distinguish him/herself. Such loss of eligibility, however, applies only on an individual basis and not to the group as a whole.<sup>39</sup> Compliance with the laws and customs of war is a standard requirement under the Geneva Conventions and general international law,<sup>40</sup> and Article 85 of GC III makes it clear that PoWs keep their protected status if convicted for acts committed prior to capture.<sup>41</sup> If and when regular armed forces are perceived as not fulfilling these obligations, avenues other than a collective denial of PoW status are available to States under international law to induce compliance.<sup>42</sup> The ICRC recognizes, however, that there are diverging views as to whether the four conditions under Article 4(A)(2) are collective conditions for PoW status for members of a State's regular armed forces.<sup>43</sup>

### *Members of regular armed forces who profess allegiance to a government or authority not recognized by the detaining power*

The third category consists of members of regular armed forces who profess allegiance to a government or authority not recognized by the detaining power. Members of the regular armed forces of a party to an international armed conflict

36 *Ibid.*, Art. 4, paras 1028–1039.

37 *Ibid.*, para. 1039.

38 *Ibid.*

39 *Ibid.*, paras 983, 1039.

40 *Ibid.*, para. 1039.

41 See also *ibid.*, para. 1033.

42 *Ibid.*, para. 1039.

43 *Ibid.*, para. 1036.

are included within the definition of PoWs under the first category described above, but World War II saw the denial of PoW status to certain groups on the basis that the authorities or governments to whom those armed forces pledged allegiance were not recognized by the enemy State.<sup>44</sup> To avoid a repetition of this abusive interpretation, the definition of PoWs in GC III expressly includes all members of regular armed forces, irrespective of whether the enemy recognizes the legitimacy of their government or authority.<sup>45</sup>

*Persons authorized to accompany and in fact accompanying the armed forces without being members thereof*

The fourth and fifth categories of PoWs are the only two categories of persons entitled to PoW status without equally being entitled to combatant status, immunity or privileges. The fourth category consists of persons authorized to accompany and in fact accompanying the armed forces without being members thereof.<sup>46</sup> The inclusion of this category recognizes that the proximity of such persons to the armed forces increases the risks of their being interned with combatants and makes explicit the protective framework that applies to them. It might include, for example, civilian contractors authorized to accompany the armed forces providing services such as laundry or transportation.<sup>47</sup> The authorization of a person to accompany the armed forces is evidenced by the provision of an identity card of a similar model to that annexed to GC III in Annex IV(A), and could also be evidenced by co-location, shared logistical arrangements, contractual arrangements and/or apparel.<sup>48</sup>

*Members of the crew of the merchant marine or civil aircraft of the parties to the conflict who do not benefit from other more favourable treatment in international law*

The fifth category consists of members of the crew of the merchant marine or civil aircraft of the parties to the conflict who do not benefit from other more favourable treatment in international law. The inclusion of the crew of the merchant marine sought to remedy uncertainty as to their status and inconsistencies in the protection provided to such persons during World War II. Civilian members of aircraft crews were also included, recognizing the increasing role of aircraft in providing deliveries to combat areas.<sup>49</sup>

44 For example, PoW status was denied by Germany to French forces operating under the command of General de Gaulle, and to Italian units in southern Italy following the signing of an armistice between the Allies and Italy in September 1943. ICRC, *Preliminary Documents submitted by the ICRC to the Conference of Government Experts of 1947*, Vol. 2, Geneva, 1947, p. 4.

45 *Ibid.*, p. 4.

46 For more information, see ICRC Commentary on GC III, above note 3, Art. 4, paras 1047–1050.

47 For a more detailed discussion, see *ibid.*, Art. 4, paras 1047–1050. See para. 1051 in relation to private military and security companies.

48 *Ibid.*, para. 1050.

49 *Ibid.*, paras 1052–1060.

In relation to treatment, GC III makes no distinction between PoWs who are combatants and those who are civilians. However, some provisions of the Convention presume the existence of membership in the armed forces and are silent as to their application in relation to the other categories of PoWs. For example, certain provisions in relation to the use of PoW labour, such as the rate of payment, are framed around the rank of PoWs.<sup>50</sup> If a Detaining Power interns PoWs who are civilians, it must apply these provisions in good faith and in line with the rationale behind the provisions in question.<sup>51</sup>

### *Levée en masse*

The sixth and final category of PoWs consists of participants in what is commonly referred to as a *levée en masse*. More precisely, this category comprises any 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. This is the only category of PoWs which is entirely autonomous from the State. The persons under this category do not “belong to” the State, nor do they require any level of organization, command structure or fixed distinctive sign.<sup>52</sup>

The circumstances in which the conditions for a *levée en masse* apply are limited. First, the term refers only to those that take up arms during an invasion period, where territory is not yet occupied, or in an area where the previous Occupying Power has lost control over the administration of the territory and is attempting to regain it. Second, the persons in question must have spontaneously taken up arms in response to the invading army. This category does not include persons or groups who organize or are organized in advance of the invasion. Finally, persons in this category must carry their arms openly and must respect the laws and customs of war.

In addition to these six categories, Article 4 also sets out two categories of persons who are not PoWs *per se*, but are to be treated as PoWs.<sup>53</sup> The definition in Article 4 is supplemented in this respect by Additional Protocol I (AP I) (and customary IHL), which excludes spies, saboteurs and mercenaries from PoW status.<sup>54</sup>

The drafters of GC III gave considerable attention to defining which categories of persons qualify for PoW status, and in many ways reduced the uncertainties that existed within previous definitions under the Hague Regulations and 1929 Convention. Notwithstanding this, doubt as to the status of persons may still arise. An important innovation in GC III was to provide a

50 See GC III, Art. 60.

51 ICRC Commentary on GC III, above note 3, Art. 4, para. 1046.

52 *Ibid.*, para. 1062.

53 See GC III, Art. 4(B)(1)–(2); ICRC Commentary on GC III, above note 3, paras 1069–1090.

54 For more information on the exclusion of “spies and saboteurs”, see ICRC Commentary on GC III, above note 3, paras 988–991. For more information on the exclusion of “mercenaries”, see para. 998.

mechanism to address these situations. Article 5(2) of GC III provides that in case of doubt regarding the status of persons who have committed belligerent acts and fall into the hands of the enemy, such persons enjoy the protection of the Convention until a determination of their status has been made by a competent tribunal. The term “competent tribunal” was employed in order to encompass review by a court or military tribunal, and to prevent “arbitrary decisions [being made] by a local commander, who may be of a very low rank”.<sup>55</sup> In practice, the status of individuals has been decided by civil courts, military tribunals or courts, and boards of inquiry.<sup>56</sup>

A determination should be made within a reasonable time frame, in good faith, and on a case-by-case basis; the requirement that determinations be made by a “competent tribunal” prevents arbitrary, “on-the-spot” decision-making. That noted, the particular procedural guarantees applicable to status determinations are not regulated by IHL and are a matter of domestic law.<sup>57</sup>

Doubt as to a person’s status arises when it is not clear whether the person belongs to any of the categories discussed above. For example, it can arise in relation to persons who accompany the armed forces and have lost their identity card, persons engaged in belligerent acts without wearing a uniform in zones of active hostilities, or persons suspected of being spies. It may also arise where a person or the Power on which he or she depends asserts PoW status and this is not immediately accepted. Conversely, it may arise where a person asserts that they are not a PoW. The existence of a doubt that triggers a determination by a competent tribunal must not depend solely on the subjective belief of the Detaining Power; rather, a Detaining Power must consider each situation in good faith, on a case-by-case basis, with a proper assessment of the facts.<sup>58</sup>

Any person determined to be a PoW will continue to enjoy the protections of GC III. A person determined not to fall within the categories of Article 4 of GC III will otherwise be considered a civilian and is protected by GC IV (including Articles 43 and 78), and/or Article 75 of AP I, as applicable, and customary IHL.<sup>59</sup>

## Fundamental principles for the protection of prisoners of war

GC III embodies a balance between the requirements of humanity and military necessity. Its overall object and purpose is to ensure that PoWs are humanely treated at all times, while allowing belligerents to intern captured enemy

55 *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-B, 1949, p. 270. See also H. W. William Caming, “Nuremberg Trials: Partisans, Hostages and Reprisals”, *Judge Advocate Journal*, Vol. 4, 1950, p. 19, in relation to the infamous Barbarossa Jurisdiction Order issued on 13 May 1941. This order directed that “partisan suspects” be brought before an officer who would determine whether they were to be shot. This was considered during the Nuremberg Trials as “patently criminal” as it “permitted the immediate killing of alleged partisans and ‘partisan suspects’ without investigation and at the discretion of a junior officer”.

56 ICRC Commentary on GC III, above note 3, Art. 5, para. 1126.

57 *Ibid.*, para. 1127.

58 *Ibid.*, paras 1119–1121.

59 *Ibid.*, para. 1115.

combatants in order to prevent them from returning to the battlefield.<sup>60</sup> The authorization to intern, contained in Article 21 of the Convention, gives expression to military necessity: interning PoWs for the duration of active hostilities aims to ensure that captured enemy personnel are not able to participate again in the hostilities, which would pose a military threat to the Detaining Power.<sup>61</sup>

Reflecting the requirements of humanity, on the other hand, GC III provides a set of general protections for PoWs, setting standards below which the treatment afforded to and conditions enjoyed by such prisoners must not fall. These overarching protections include the obligations of humane and equal treatment, the prohibition of adverse distinction, and respect for prisoners' persons and honour. GC III deals with an extremely broad range of issues, and many articles in the Convention are more specific iterations of these obligations. The drafters did not intend, however, to set out detailed rules or codes for every single area covered. Instead, the Convention refers in certain articles, through the principle of assimilation, to rules and regulations that are applicable to the Detaining Power's own armed forces. In those cases, PoWs are to be treated in accordance with these rules and regulations, while the Convention's standards on humane treatment continue to apply and act as a minimum standard.

The requirement to treat PoWs humanely is stated in Article 13 of GC III. It is complemented by the obligations in Article 14 to respect PoWs' person and honour, as well as the requirement to treat PoWs equally and the prohibition on discrimination in Article 16. These provisions provide for the minimum standard of treatment. They are interconnected and underpin all protections owed to PoWs.

The requirement to treat a PoW humanely (or in the equally authentic French version, "avec humanité") requires the respect of the prisoner's inherent human dignity and inviolable quality as a human being.<sup>62</sup> Article 13 provides certain express articulations of what this requires, including the prohibition of physical mutilation, medical or scientific experiments, acts of violence, intimidation, insults and public curiosity. The protection against public curiosity is particularly relevant in the age of mass media and social media, given the ease with which images and comments can be spread around the world.<sup>63</sup>

This obligation clearly cannot be separated from the obligation to respect a prisoner's person and their honour. Respect for the person of the PoW relates not only to the physical integrity of the prisoner, prohibiting acts of violence and physical torture, but also to their moral integrity—namely, the essential attributes that make up a person, including their religious, political, intellectual and social convictions, their gender and their sexual orientation.<sup>64</sup> Respect for the honour of

60 *Ibid.*, Introduction, para. 89.

61 *Ibid.*, Art. 21, para. 1932. Further expressions of military necessity can be found in the rules that serve the maintenance of security, discipline and good order in PoW camps. See, for example, GC III, Arts 42 (use of weapons against PoWs), 76 (censorship and examination), 92 (unsuccessful escape) and 95 (disciplinary procedures), which specifically mentions "camp order and discipline".

62 ICRC Commentary on GC III, above note 3, Art. 13, para. 1570.

63 *Ibid.*, para. 1563.

64 *Ibid.*, Art. 14, para. 1665.

a PoW more specifically entails due respect for the sense of value that every person has of themselves.<sup>65</sup> GC III expressly protects certain aspects of honour with regard to military structures, distinctions and codes of honour – for example, in providing that badges of rank and decorations may not be taken away from PoWs, and that they may not be deprived of their rank.<sup>66</sup> How the person and honour of the PoW is to be respected depends on a wide range of factors, including their cultural, social or religious background, their gender and their age.<sup>67</sup>

This, in turn, relates to the protection contained in Article 16 of GC III, which provides for the equality of treatment of PoWs and the prohibition of “adverse distinction based on race, nationality, religious belief or political opinions, or any other distinction founded on similar criteria”.

Equal treatment does not necessarily require identical treatment. PoWs in different situations and with different needs may need to be treated differently in order to achieve substantive equality of treatment.<sup>68</sup> Article 16 expressly lists health, age and professional qualifications as potential grounds for “privileged treatment”, and also requires consideration of provisions relating to rank and sex in GC III.<sup>69</sup> These considerations should not be taken as an exhaustive list upon which non-adverse distinction may be permitted or is required.<sup>70</sup>

In relation to discrimination, the prohibition in Article 16 identifies a number of grounds on which adverse differentiated treatment is prohibited: race, nationality, religious belief or political opinion, as well as “any other distinction founded on similar criteria”. AP I provides a longer list of prohibited grounds: “race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or ... any other similar criteria”.<sup>71</sup> Adverse distinctions founded on other grounds, such as ethnicity, disability, level of education or family connections of a PoW and, as noted above, age or state of health, would equally be prohibited. Any list of prohibited criteria will necessarily be incomplete and should be interpreted in light of legal and social developments. The residual category of “any other distinction based on similar criteria” makes express provision for this.

It is in conjunction with the minimum standards and safeguards provided in GC III that the principle of assimilation operates. This principle reflects an understanding that, with respect to certain issues, PoWs are to be treated in the same or a similar manner as members of the Detaining Power’s own forces.<sup>72</sup> In

65 *Ibid.*, para. 1658.

66 GC III, Arts 18(3), 44.

67 ICRC Commentary on GC III, above note 3, Art. 14, para. 1659.

68 *Ibid.*, Art. 16, para. 1742.

69 With regard to different treatment in relation to sex, GC III, Art. 14(2) provides that female PoWs are to be treated “with all the regard due to their sex” and, most importantly, that their treatment may in no case be inferior to that of male PoWs.

70 See ICRC Commentary on GC III, above note 3, Art. 16, paras 1743–1744.

71 See GC III, Art. 9(1); Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 1125 UNTS 3, 8 June 1977 (entered into force 7 December 1978) (AP I), Art. 75(1). See also ICRC Customary Law Study, above note 32, Rule 88.

72 See, in particular, GC III, Arts 20 (conditions of evacuation), 25 (quarters), 46 (conditions for transfer), 82 (applicable legislation), 84 (courts), 87 (penalties), 88 (execution of penalties), 95 (confinement awaiting

this way, it complements the prohibition on adverse distinction as it ensures that all PoWs interned by a Detaining Power are subject to the same or similar conditions and standards, irrespective of their country of origin. This would not necessarily be the case if the Detaining Power treated PoWs from different countries according to the standards and conditions prevailing in each of those different armed forces.

The principle of assimilation also facilitates the task of administering the internment of PoWs, since the Detaining Power has to apply to them some of the rules and standards that are already in force for its own troops. The Detaining Power is necessarily familiar with and has pre-existing experience with implementing those rules and standards and thus can readily apply them to PoWs as well.

The principle of assimilation does not operate in a vacuum; rather, it operates in conjunction with the minimum standards and safeguards spelled out in the rest of GC III, in particular those concerning the humane treatment of PoWs discussed above.<sup>73</sup> This is made explicit in several rules, including Article 82.<sup>74</sup> The approach to protecting PoWs by reference to the rules of both national and international law is also reflected in the provisions on penal and disciplinary sanctions (discussed below). Several of these provisions expressly make the principle of assimilation subject to compliance with minimum standards that must be applied to all PoWs, irrespective of the standards or conditions applicable to members of the armed forces of the Detaining Power. Accordingly, when the treatment afforded by a Detaining Power to its own armed forces falls short of the minimum standards set out in the Convention, the latter standards apply with respect to PoWs.

## Timing of obligations

### Planning and preparation

Because of the wide range of issues dealt with in GC III, proper planning and preparation, including making sure the domestic legal framework is up to date, are indispensable for its successful implementation.<sup>75</sup> An important part of this planning and preparation is the requirement for the Detaining Power to instruct the armed forces of their duties.<sup>76</sup> In this respect, Article 127(1) provides for the

hearing), 102 (conditions for validity of sentence), 103 (confinement awaiting proceedings), 106 (right to appeal) and 108 (premises and conditions for serving a sentence). The principle is also implicit in Articles 33 (rights and privileges of retained personnel), 52 (dangerous or humiliating labour) and 60 (advances of pay).

73 See *ibid.*, Art. 13, and the provisions that give expression to the requirement of humane treatment in specific areas, such as quarters (Art. 25), food (Art. 26), clothing (Art. 27) and hygiene (Art. 29).

74 “However, no proceedings or punishments contrary to the provisions of this Chapter shall be allowed.” For further examples, see *ibid.*, Arts 25 (quarters), 46 (conditions of transfer), 50 (authorized work), 84 (courts), 87 (penalties), 95 (confinement awaiting hearing), 102 (conditions for validity of sentence), 103 (confinement awaiting trial) and 108 (execution of penalties).

75 This is consistent with the reference to provisions to be implemented in peacetime in *ibid.*, Art. 2(1).

76 This point was emphasized in the United Kingdom’s Baha Mousa Public Inquiry Report. Although the Inquiry concerned the treatment of Iraqi civilian internees by UK armed forces, it contained general

dissemination of the text of the Convention in time of peace and in time of armed conflict “so that the principles thereof may become known to all their armed forces and to the entire population”. Article 127(2) requires that authorities who assume responsibility for PoWs must possess the text of the Convention and be specially instructed in its provisions.

The implementation of some provisions of GC III requires action to be taken prior to the capture of prisoners. For example, the Convention requires that PoWs be interned on land, with every guarantee afforded for their hygiene and health; that they must not be held in penitentiaries except in particular cases where it is in the interests of the prisoners themselves;<sup>77</sup> and that they be quartered under conditions as favourable as those of the Detaining Power.<sup>78</sup> Providing accommodation that meets these standards requires infrastructure, equipment, logistics, trained staff, a budget and operating procedures. This may be challenging for the Detaining Power once it is engaged in an international armed conflict. Successfully establishing humane, compliant internment of PoWs requires States to develop plans, even in peacetime, with regard to how they would hold such potential prisoners, including the types and location of internment facilities.

## On taking prisoners of war captive

Once a person in one of the categories of Article 4 falls into the power of the enemy, GC III applies as a whole. GC III does, however, take the different stages of captivity into consideration. For example, it contains a section dedicated to the beginning of captivity, outlining the obligations of the Detaining Power immediately after prisoners fall into its hands: Article 17 deals with the questioning of prisoners, Article 18 addresses the property of prisoners, and Articles 19 and 20 concern the evacuation of prisoners from the combat zone. While these articles are most relevant soon after combatants fall into the power of the enemy and during the initial processing of prisoners, they remain relevant beyond the immediate time and location of the point of capture, and in some cases, throughout captivity. For

conclusions and recommendations that are also relevant to PoWs. With regard to training, the Inquiry concluded that the general training the soldiers received in the law of armed conflict “lacked specific guidance on how to handle a prisoner; what the permitted treatment of a prisoner actually was in practical terms; and most importantly what type of treatment was expressly forbidden” (Vol. 2, para. 6.67). In addition, the Inquiry identified deficiencies in specific teaching courses, including the training given to tactical questioners and interrogators. Accordingly, it made several recommendations, both general (Recommendations 47–58) and specific (Recommendations 59–73), on training soldiers in the handling of prisoners. See Sir William Gage, *The Report of the Baha Mousa Inquiry*, HM Stationery Office, London, September 2011, Vol. 2, paras 6.66–6.73, 6.339–6.349, and Vol. 3, pp. 1279–1282, 1282–1286, available at: [www.gov.uk/government/publications/the-baha-mousa-public-inquiry-report](http://www.gov.uk/government/publications/the-baha-mousa-public-inquiry-report). The Al Sweady Public Inquiry Report referred to several of these recommendations; see Sir Thayne Forbes, *The Report of the Al Sweady Inquiry*, Vol. 2, HM Stationery Office, London, December 2014, para. 5.101, available at: [www.gov.uk/government/publications/al-sweady-inquiry-report](http://www.gov.uk/government/publications/al-sweady-inquiry-report).

<sup>77</sup> GC III, Art. 22(1).

<sup>78</sup> *Ibid.*, Art. 25. This is discussed further below.



example, the prohibition on torture and coercion during questioning set out in Article 17 remains valid during the entire time of internment.<sup>79</sup>

The principle of humane treatment discussed above underpins these articles as they seek to ensure that, where prisoners are taken, they are brought to safety and are properly identified and processed. Often the first obligation for a Detaining Power is to evacuate the persons who have fallen into its power to an area that is far enough removed from the combat zone for the prisoners to be out of danger.<sup>80</sup> This evacuation must be carried out humanely and in conditions similar to those for the forces of the Detaining Power when they change positions.<sup>81</sup>

Depending on the circumstances, such as the distance and available means of transport, it may be that PoWs pass through transit camps during their evacuation. Such camps may be established temporarily and even close to the combat zone. Considering these *ad hoc* circumstances, it will usually be difficult for a Detaining Power to fulfil all the material conditions of the entire Convention. Accordingly, the stay in such camps must be as brief as possible.<sup>82</sup> These camps can be distinguished from permanent transit camps. If a Detaining Power has such permanent establishments which it uses to screen and process prisoners, they must offer conditions similar to those of other PoW camps, and prisoners therein must benefit from the same treatment as in other camps.<sup>83</sup>

After their evacuation and processing, PoWs typically arrive in a permanent PoW camp. However, they do not always stay in one place, nor under the responsibility of the same Power. During their captivity, they may be transferred to other camps and/or to other Powers. GC III regulates both the physical transfer of PoWs to another location, irrespective of whether they remain under the control of the same Power, and the transfer of PoWs from one Power to another.<sup>84</sup> For the transfer of a prisoner to another location, the Convention has a similar provision as for evacuation: the transfer must be effected in a humane manner and in conditions not less favourable than those under which the Detaining Power's own forces are transferred. This provision is slightly more stringent, however, than the provision on evacuation, as the conditions in the former case must only be "similar". This is understandable considering the more predictable nature of a transfer compared to an evacuation from the battlefield.<sup>85</sup>

During captivity, a prisoner may also be transferred to another Power if that receiving Power is also a party to GC III<sup>86</sup> and after the original Detaining Power can satisfy itself of the willingness and ability of the receiving Power to

79 See ICRC Commentary on GC III, above note 3, Art. 17, para. 1822.

80 GC III, Art. 19(1).

81 *Ibid.*, Art. 20(1).

82 *Ibid.*, Art. 20(3).

83 ICRC Commentary on GC III, above note 3, Art. 24, paras 2058, 2063–2065.

84 GC III, Arts 12(2)–(3), 46–48.

85 Keiichiro Okimoto, "Evacuation and Transfer of Prisoners of War", in Andrew Clapham, Paola Gaeta and Marco Sassòli (eds), *The 1949 Geneva Conventions: A Commentary*, Oxford University Press, Oxford, 2015, p. 965, quoted in ICRC Commentary on GC III, above note 3, Art. 46, n. 16.

86 This does not serve as a limitation today, as the Geneva Conventions are universally ratified.

apply the Convention.<sup>87</sup> Because of the general understanding that only States can be High Contracting Parties to the Geneva Conventions, this means that PoWs may not be transferred to entities other than States, such as non-State armed groups and paramilitary and non-military organizations.<sup>88</sup>

An important obligation due to the transferring Power is that if the receiving Power “fails to carry out the provisions of the Convention in any important respect”, it must “take effective measures to correct the situation or shall request the return of the prisoners of war”.<sup>89</sup> The Convention does not explain what “important respect” means. One benchmark for determining whether a breach is “important” is whether it violates the general obligation of humane treatment as articulated in Article 13. This covers acts that qualify as grave breaches. Failure to provide for the basic needs of prisoners with respect to their quarters, food, water and medical care, in a way that would endanger the health of the prisoners, or denying prisoners contact with the outside world, including visits from the ICRC, would also be covered. These examples are not exhaustive.<sup>90</sup>

There are different ways for a transferring Power to rectify such a failure to comply. As the Convention itself specifies, in some situations, the transferring Power must request the return of the prisoners. Where the failure is due to inadequate material conditions of internment, such as lack of space, food, water or medical care, measures to correct the situation may consist of direct assistance provided by the transferring Power, such as food, medical staff and equipment. In situations where the failure is more systemic, for example when it relates to a denial of judicial guarantees or ill-treatment by camp staff, a request for the return of the prisoner may be the only adequate measure.<sup>91</sup>

## On the end of captivity

GC III also regulates the end of captivity of PoWs. For most PoWs, captivity will cease at the end of active hostilities. Article 118 establishes a unilateral and non-reciprocal obligation on Detaining Powers to release and repatriate PoWs without delay after the cessation of active hostilities.<sup>92</sup> This obligation logically follows from the purpose of internment, which is to prevent further participation in hostilities.<sup>93</sup> Once hostilities between the two or more States have ended, there is no longer a need to keep PoWs interned.<sup>94</sup> Release and repatriation at the end of

87 GC III, Art. 12(2). This includes neutral States. See ICRC Commentary on GC III, above note 3, Art. 12, section C.2.a.

88 See, however, ICRC Commentary on GC III, above note 3, Art. 12, for a discussion on transfers to non-State entities, including armed groups under the overall control of a State, international organizations or international courts and tribunals, at paras 1530–1532.

89 GC III, Art. 12(3).

90 For a discussion and examples, see ICRC Commentary on GC III, above note 3, Art. 12, section E.2.

91 For further discussion, see *ibid.*, section E.4.

92 PoWs against whom criminal proceedings are pending or who are serving a criminal sentence may be kept back: see GC III, Art. 119(5).

93 See ICRC Commentary on GC III, above note 3, Art. 21, section C.1., and in particular para. 1932.

94 *Ibid.*, Art. 118, para. 4444.

active hostilities marks the end of application of GC III for these prisoners. Repatriation at the end of hostilities must take place “without delay”. While this implies that repatriation does not have to be instantaneous, it must happen as soon as feasible considering the circumstances. This may depend, for example, on the number of persons to be repatriated, the security situation, the location of the camp(s) and available logistical means, and the ability of the State on which the prisoners depend to receive the prisoners.<sup>95</sup>

GC III does not address the situation in which a PoW does not want to be repatriated. As already recognized in the 1960 Pictet Commentary, and reiterated in the updated Commentary, an exception to the obligation to repatriate PoWs may be made if, as determined on an individual case-by-case-basis, there are

serious reasons for fearing that a prisoner of war who is himself opposed to being repatriated may, after his repatriation, be the subject of unjust measures affecting his life or liberty, especially on grounds of race, social class, religion or political views, and that consequently repatriation would be contrary to the general principles of international law for the protection of the human being.<sup>96</sup>

An interpretation of Article 118 allowing for such an exception is in line with the principle of *non-refoulement* under international law, by which a State cannot transfer persons within its control to another State if there is a real risk that they may face violations of certain fundamental rights.<sup>97</sup>

The updated Commentary on Article 118 also discusses the obligation to release and repatriate in situations where the legal classification of a conflict changes from an international to a non-international armed conflict, because of a change of circumstances on the ground. In such circumstances, a party to the conflict is unlikely to be willing to release and repatriate any PoWs that it holds. This is an example of a situation where the updated Commentary indicates divergent views and highlights issues not yet settled. There are two main approaches to this issue. Under the first approach, the obligation to release and repatriate PoWs is not triggered because the hostilities between the same actors have not ceased, even if the legal classification of the armed conflict has changed. Accordingly, GC III remains the legal basis for the internment of PoWs and for their protection. Under the second approach, the hostilities related to the international armed conflict and the non-international armed conflict are

<sup>95</sup> *Ibid.*, para. 4462.

<sup>96</sup> Jean Pictet (ed.), *Commentary on the Geneva Conventions of 12 August 1949*, Vol. 3: *Geneva Convention relative to the Treatment of Prisoners of War*, ICRC, Geneva, 1960, p. 547; ICRC Commentary on GC III, above note 3, Art. 118, para. 4469.

<sup>97</sup> See Cordula Droege, “Transfers of Detainees: Legal Framework, *Non-refoulement* and Contemporary Challenges”, *International Review of the Red Cross*, Vol. 90, No. 871, 2008, p. 671; Emmanuela-Chiara Gillard, “There’s No Place Like Home: States’ Obligations in Relation to Transfers of Persons”, *International Review of the Red Cross*, Vol. 90, No. 871, 2008, p. 704; Christopher Michaelsen, “The Renaissance of Non-refoulement? The Othman (Abu Qatada) Decision of the European Court of Human Rights”, *International and Comparative Law Quarterly*, Vol. 61, No. 3, 2012, p. 753. See also ICRC Commentary on GC III, above note 3, Art. 3, section G.7.

considered to be distinct. Because the hostilities related to the international armed conflict have ceased, the obligation to release and repatriate PoWs is triggered on the basis of Article 118 of GC III. In that case, the latter no longer provides a legal basis for the internment of the prisoners, and if the detaining party believes it must continue to hold such persons for imperative reasons of security, another legal basis for their internment is required.<sup>98</sup>

In addition to the obligation to release and repatriate PoWs at the end of active hostilities, certain PoWs must be released and repatriated earlier than this. GC III dedicates a number of articles to the repatriation of seriously wounded or sick PoWs during hostilities.<sup>99</sup> Again, this is a logical consequence of the purpose of internment. The assumption is that such prisoners are no longer able to participate in hostilities and therefore their continued internment would no longer be justified by military necessity.<sup>100</sup> A safeguard is built into the Convention though, as it includes an explicit prohibition against re-employing such repatriated prisoners on active military service; this is particularly important in modern warfare, given the wider variety of assignments that might make the redeployment of seriously wounded or sick prisoners possible.<sup>101</sup>

Finally, GC III also contains rules applicable to the Detaining Power when a prisoner dies during captivity. Needless to say, full compliance with GC III may reduce instances of fatalities, both through proper care of prisoners and through ensuring the repatriation of the seriously wounded and sick. In the event that prisoners do pass away during internment, the Detaining Power retains certain obligations towards the deceased, which indirectly benefit their family. First, as an important means of accountability and to prevent people going missing, death certificates or certified lists must be prepared for any person who dies while a PoW. These documents should record the identity of the dead, the circumstances of death, and the burial site (or details of cremation, if applicable).<sup>102</sup> They must be forwarded to the national information bureau as rapidly as possible, which today, generally means electronically.<sup>103</sup> At the same time, if not done previously, the will of the deceased should also be transmitted to the Protecting Power, and a certified copy sent to the Central Tracing Agency.<sup>104</sup> These processes are not only important for families' "closure" but may also have important legal implications.

Respecting the honour of a prisoner extends to the dead: Detaining Powers are required to ensure that PoWs who have died in captivity are honourably buried, if possible according to the rites of their religion, and that their graves are respected and suitably maintained and marked.<sup>105</sup> AP I goes further, requiring parties to

98 For a detailed discussion, see ICRC Commentary on GC III, above note 3, Art. 118, paras 4459–4460, and Art. 5, section C.4.

99 GC III, Art. 110.

100 ICRC Commentary on GC III, above note 3, Art. 109, para. 4245.

101 On the temporal scope of the obligation, see *ibid.*, Art. 117, section C.3.

102 Details should be included as to why cremation was chosen (e.g. religious reasons, the wishes of the deceased), given the presumption in GC III in favour of burial. See *ibid.*, Art. 120, para. 4576.

103 *Ibid.*, Art. 120, para. 4563.

104 GC III, Art. 120(1).

105 This includes the establishment of an official grave registration service: *ibid.*, Art. 120(6).

conclude agreements as soon as circumstances permit “to facilitate the return of the remains of the deceased and of personal effects to the home country”.<sup>106</sup> The ICRC can and has acted as a neutral intermediary in the return of bodies to the families of the deceased.<sup>107</sup>

## Substantive protections

As discussed above, in addition to setting out fundamental principles for the protection of PoWs, GC III elucidates express protections on many facets of the life of a PoW. The following discussion summarizes a number of these protections.

### *Internment in a PoW camp*

In the event that a PoW is interned, he or she should not be held in a penitentiary unless it is in his or her best interests.<sup>108</sup> Further, unless they are subjected to penal or disciplinary sanctions, which are further discussed below, or when necessary to safeguard their health, PoWs may not be held in close confinement.<sup>109</sup>

While it is not an obligation for the Detaining Power to intern PoWs, generally it will choose to do so, and GC III provides detailed conditions for such internment. Below is a summary of some of the provisions provided for interned PoWs.

### *Quarters*

Article 25 provides that PoWs who are interned must be “quartered under conditions as favourable as those of the forces of the Detaining Power who are billeted in the same area”. Again, this provision is underpinned not only by the fundamental protections described above (including respecting the person and the honour of PoWs) but also by the consideration that holding PoWs is not intended to be for punitive reasons. Furthermore, allowance must also be made for the customs and habits of PoWs, and the Detaining Power must ensure that the accommodation is not “prejudicial to their health”.<sup>110</sup>

While there can be wide disparities between the standards of quarters provided by the Detaining Power to its own forces, quarters provided for PoWs must be at least of the standard genuinely used by the Detaining Power to accommodate a significant number of those forces.<sup>111</sup> The quarters must also be protected from the vagaries of the weather and vermin and should be periodically

106 AP I, Art. 34(2)(c). See also ICRC Customary Law Study, above note 32, Rule 114.

107 ICRC Commentary on GC III, above note 3, Art. 120, para. 4598.

108 GC III, Art. 22(1).

109 *Ibid.*, Art. 21(1).

110 *Ibid.*, Art. 25(1).

111 ICRC Commentary on GC III, above note 3, Art. 21, para. 2076.

visited by a doctor or other suitably qualified person to ensure that they are not prejudicial to the health of the prisoners.<sup>112</sup>

According to Article 25, women must be provided with dormitories separate from men, but it is not necessarily required that the quarters as a whole be separated.<sup>113</sup> In the event that infants or very young children are present in PoW camps (for instance, because they were born there), they must be accommodated with their parents.<sup>114</sup>

## Food

Article 26 requires the Detaining Power to allow for basic daily food rations that are “sufficient in quantity, quality and variety”, as well as sufficient drinking water. Care must be taken of prisoners with health conditions by appropriately adapting food rations to their condition. Rations provided for older PoWs, pregnant or lactating prisoners, or any children present in PoW camps have to be adapted to their needs.<sup>115</sup> Where PoWs carry out physical work, they will also need to be provided with additional rations to permit them to remain in good health.<sup>116</sup>

Article 26 further requires the Detaining Power to take into account the habitual diet of the prisoners.<sup>117</sup> One means to implement this provision is to involve them in the preparation of their own meals.<sup>118</sup>

GC III requires that “[t]he use of tobacco shall be permitted.” At the time of drafting the Convention, the health hazards of tobacco use were not commonly known. Today, it would be appropriate and consistent with the requirement to provide for a healthy environment for internees for a Detaining Power to impose reasonable restrictions on tobacco use, such as measures to protect people against passive smoking and to prevent minors from gaining access to tobacco.<sup>119</sup> This may also be required by other applicable rules of international law.<sup>120</sup>

Parties to an armed conflict shall also provide canteens where “foodstuffs, soap and tobacco and ordinary articles in daily use” must be available for purchase.<sup>121</sup> However, in certain situations, for example in conflicts of short duration or where PoWs are to be transferred to another camp or to another

112 *Ibid.*, Art. 25, paras 2078–2079.

113 In comparison, see GC III, Art. 108(2), which requires women PoWs undergoing confinement to be held in separate quarters. See also AP I, Art. 75(5), and ICRC Customary Law Study, above note 32, Rule 119, which refer to separate quarters for women.

114 See also AP I, Arts 75(5), 77(4), and also ICRC Commentary on GC III, above note 3, Art. 25, para. 2104.

115 ICRC Commentary on GC III, above note 3, Art. 26, para. 2113.

116 GC III, Art. 26(2); ICRC Commentary on GC III, above note 3, Art. 26, para. 2126.

117 See, for example, Canada, *Prisoner of War Handling Manual*, 2004, p. 3F-10: “Ration scales are to be tailored, as far as is possible, to the national dietary requirements of [PoWs], bearing in mind that a diet which is totally suited to [PoWs] from one nation may be inadequate or unsuitable for those from a different nation. There may also be religious or ethnic dietary requirements for which, whenever possible, provision should be made.” See also ICRC Commentary on GC III, above note 3, Art. 26, para. 2121.

118 GC III, Art. 26(4).

119 ICRC Commentary on GC III, above note 3, Art. 26, para. 2131.

120 See, for example, the WHO Framework Convention on Tobacco Control, 2003.

121 GC III, Art. 28.

party to the conflict, it may be unnecessary or unreasonable to establish such a canteen.<sup>122</sup>

### *Clothing*

Article 27 of GC III requires the Detaining Power to supply clothing, underwear and footwear to PoWs. To ensure that the health of captives is not affected, the Detaining Power must provide sufficient clothing adapted to the climate where the prisoners are interned, such as sweaters, hats and gloves in cold climates.<sup>123</sup> PoWs generally require at least two sets of clothing and sleepwear to enable a change when one set is being washed or repaired.<sup>124</sup>

The type of clothing provided must also be in line with the fundamental protections described above, in particular the obligation to respect the person's honour. Clothing must be adapted, for example, to the prisoner's age, gender, and religious and cultural background.<sup>125</sup> PoWs may not be compelled to wear the uniform of their enemies or other clothing that may negatively impact their sense of allegiance or honour.<sup>126</sup>

### *Medical care and sanitation*

Every PoW camp must have its own infirmary to tend to the health-care needs of prisoners. PoWs requiring medical attention are entitled to receive it at the cost of the Detaining Power.<sup>127</sup> Meeting the health-care needs of prisoners may require, in some circumstances, transferring prisoners with health conditions that require specialized treatment to a military or civilian medical unit where such treatment can be given.<sup>128</sup> All medical care must comply with the applicable standards of medical ethics, which include the duty to provide medical care impartially and without adverse distinction. Such standards also address the principle of voluntary and informed consent.<sup>129</sup>

GC III refers to the use of isolation wards for "contagious or mental disease". Any decision to use isolation wards must be taken exclusively on the advice of a medical doctor or other appropriately qualified health professional, and should only be for as long as necessary. The reference in Article 30 to isolating people with mental health conditions "if necessary" should be read in line with the other obligations of the Detaining Power, including the fundamental protections mentioned above.<sup>130</sup> Imposing isolation on PoWs with mental health conditions should be avoided – it may aggravate the person's condition, may be

122 ICRC Commentary on GC III, above note 3, Art. 28, para. 2164.

123 *Ibid.*, Art. 27, para. 2149.

124 *Ibid.*, para. 2148.

125 *Ibid.*, para. 2151.

126 *Ibid.*, para. 2151.

127 GC III, Art. 15.

128 *Ibid.*, Art. 30(2).

129 ICRC Commentary on GC III, above note 3, Art. 30, paras 2232, 2245.

130 *Ibid.*, para. 2242.

inconsistent with the prohibition on adverse distinction, and may amount to torture or other ill-treatment as it can lead to psychotic symptoms and/or significant functional impairments, self-harm or even suicide.<sup>131</sup>

In order to prevent illness, GC III also provides an obligation on Detaining Powers to take all necessary sanitary measures to ensure cleanliness and “healthfulness” of camps and to prevent the spread of infectious diseases.<sup>132</sup> Upholding hygienic standards and reducing the risk of disease transmission within places of detention is of immediate practical value to the Detaining Power, as it reduces the risk of transmission to personnel of the Detaining Power, such as guards, as well as the neighbouring community.<sup>133</sup>

### *Recreation and religion*

Maintaining the health of a PoW and ensuring respect for their person requires attention not only to the physical well-being but also to the mental well-being of the prisoner. One of the ways in which this is acknowledged and addressed in GC III is through the requirement of allowing prisoners “complete latitude” to exercise their religious duties (or in the equally authentic French, “l’exercice de leur religion”), provided this complies with any disciplinary routine prescribed by the military authorities. GC III also requires the Detaining Power to encourage “the practice of intellectual, educational, and recreational pursuits, sports and games amongst prisoners”.<sup>134</sup>

Allowing prisoners to practice their faith is an important way through which the Detaining Power can enable PoWs to process their current situation and the hardships that come with it.<sup>135</sup> It is also consistent with the obligations both to treat PoWs humanely and to respect their person and honour. Detaining Powers must take religious practices into account in many aspects of camp life, such as setting up the place of internment (for example, providing facilities for washing), food preparation (consistent with religious precepts and taboos) and work schedules (for example, allowing time for prayer).<sup>136</sup> Various armed forces employ cultural advisers to help them better understand the human and cultural environments in which they operate.<sup>137</sup>

In relation to recreational activities, Article 38 specifies that the individual preferences of each prisoner must be respected to ensure that the provision is not used as a pretext to oblige prisoners to take place in ideological or political propaganda under the guise of “recreation”.<sup>138</sup> The Detaining Power must

131 *Ibid.*, para. 2243.

132 GC III, Art. 29(1).

133 ICRC Commentary on GC III, above note 3, Art. 29, para. 2185.

134 GC III, Arts 34, 38.

135 ICRC Commentary on GC III, above note 3, Art. 34, para. 2359.

136 *Ibid.*, Art. 34, para. 2365.

137 *Ibid.*, para. 2366.

138 See also GC III, Art. 16; ICRC Commentary on GC III, above note 3, Art. 14, para. 1671.



provide prisoners with adequate premises and necessary equipment for this purpose, including sufficient open spaces for physical exercise.

Educational opportunities are particularly important for PoWs who are interned for long periods of time. In some international armed conflicts, the ICRC has been allowed to supply writing materials, notebooks, textbooks and other books, subject to the Detaining Power's approval, as well as sporting equipment.<sup>139</sup>

### *Relations with the exterior*

Maintaining connection with the outside world is another vital means of maintaining morale for PoWs, as well as serving as a check on their treatment and preventing disappearances.

Article 70 of GC III provides that a PoW's capture, sickness, hospitalization and transfer should be communicated at the earliest possible moment to the prisoner's family and also to the Central Tracing Agency (previously known as the Central Prisoners of War Agency). This is facilitated by enabling PoWs to write "capture cards" which are forwarded as rapidly as possible to the Central Tracing Agency and to the family of the prisoner.

For more substantive communications, Article 71 provides for the right of PoWs to send and receive letters and cards. The importance of being connected to families was well understood at the time of drafting GC III. As expressed by the ICRC shortly after the adoption of the Geneva Conventions, "[e]ven the most favourable living conditions do not compensate, in the eyes of the prisoner, for absence of news or slowness in mail delivery".<sup>140</sup> In practice, where postal services are not functioning, the ICRC regularly facilitates correspondence through its "Red Cross messages" service, enabling families to connect and share content of a strictly private and familial nature.<sup>141</sup>

Article 71 also recognizes that in circumstances where PoWs have been without news for a long period of time or are unable to receive news from their next of kin or by the ordinary postal route, they "shall be permitted to send telegrams". Clearly this is a product of the time of drafting, but the purpose behind this provision should be respected with the use of more modern means of communication, such as email, telephone calls or video calls.<sup>142</sup>

Another additional protection provided for PoWs is that they may receive relief shipments. Detaining Powers cannot charge "import, customs or other dues" on such shipments, or "postal dues".<sup>143</sup>

139 See ICRC Commentary on GC III, above note 3, Art. 34, para. 2377, and Art. 38, para. 2461.

140 ICRC, *The Geneva Conventions of August 12, 1949: Analysis for the Use of National Red Cross Societies*, Vol. 2, Geneva, 1950, p. 27.

141 For more information, see ICRC Commentary on GC III, above note 3, Art. 71, para. 3215.

142 *Ibid.*, para. 3218.

143 GC III, Art. 74.

## *The use of PoWs' labour*

The ability to use a PoW's labour is of potential benefit to the Detaining Power. The framework provided for PoW labour also assists in supporting the well-being of prisoners, maintaining them in a good state of physical and mental health. The absence of meaningful activity, coupled with isolation and uncertainty about the future, can lead to boredom and impact prisoners' mental and physical well-being.<sup>144</sup>

PoWs may only be engaged in certain types of work and may not be engaged in work that is unhealthy or dangerous unless they volunteer. In addition, for permitted labour, certain health and safety measures are expressly prescribed, such as the requirement of suitable accommodation, food, clothing and equipment for the tasks in which the prisoners are employed; these may not be inferior to those enjoyed by nationals of the Detaining Power employed in similar work. In relation to the duration of labour, three essential safeguards are put in place: the duration of labour must not be excessive,<sup>145</sup> the maximum duration of work is fixed as the maximum allowed under the domestic legislation of the Detaining Power for civilians in the same work, and the time taken to travel to and from the place of work must be counted within the working hours. Detaining Powers must allow for a minimum of one hour's rest in the middle of the day, a day of rest per week, and a period of eight consecutive rest days every year.<sup>146</sup>

Article 62 provides that PoWs shall be paid "a fair working rate of pay by the detaining authorities direct", and that this rate shall be fixed by the authorities "but shall at no time be less than one-fourth of one Swiss franc for a full working day".<sup>147</sup> Even factoring in the Swiss consumer price index, 0.25 Swiss francs in 1949 corresponded to just 1.25 Swiss francs in 2019.<sup>148</sup> In many contexts around the globe, this amount would not be considered a fair working rate, and accordingly the Detaining Power must consider in good faith an adequate increase.<sup>149</sup>

## *Relations with the detaining authorities*

GC III contains three categories of provisions regarding the relationship between PoWs and the detaining authorities. These cover circumstances where the prisoners have complaints about their conditions of captivity; the mechanism for facilitating communication between prisoners and the detaining authorities

144 ICRC Commentary on GC III, above note 3, Art. 49, para. 2675.

145 *Ibid.*, Art. 53, para. 2762.

146 GC III, Art. 53.

147 ICRC Commentary on GC III, above note 3, Art. 62, para. 2952.

148 See "Indice suisse des prix à la consommation: La calculatrice du renchérissement", available at: [www.portal-stat.admin.ch/lik\\_rechner/f/lik\\_rechner.htm](http://www.portal-stat.admin.ch/lik_rechner/f/lik_rechner.htm).

149 For further discussion on the fixing of a fair rate, see ICRC Commentary on GC III, above note 3, Art. 62, paras 2952–2955.

(namely, through PoW representatives); and circumstances where the detaining authorities have complaints about the conduct of detainees (penal and disciplinary sanctions).

PoWs have a right to “make known” their requests about the conditions of their captivity to the prison authorities, as well as to the prisoners’ representative or even directly to the Protecting Powers. They cannot be punished for making these requests. In practice, complaints are often communicated to the ICRC, through channels including confidential interviews with ICRC delegates pursuant to Article 126. The role of the ICRC in this regard is important given the absence of Protecting Powers in most international armed conflicts since 1949.<sup>150</sup>

Prisoners’ representatives are PoWs who are elected by the other prisoners and are tasked with representing prisoners before military authorities, Protecting Powers, the ICRC and other organizations. They work for the well-being of PoWs, and they carry out a number of other duties defined in GC III.<sup>151</sup> Prisoners’ representatives are to be supported in this role by the Detaining Powers, by having the right to “all material facilities”,<sup>152</sup> the ability to appoint advisers or assistants,<sup>153</sup> an exemption from work if it makes fulfilling their duties difficult,<sup>154</sup> and the freedom to move about the camp or visit other locations in order to fulfil their duties.<sup>155</sup>

In some circumstances, there may be cause for a Detaining Power to pursue disciplinary or judicial proceedings against a PoW. Underlying the framework for disciplinary and judicial proceedings is the principle of assimilation, according to which PoWs are “subject to the laws, regulations and orders in force in relation to the armed forces of the Detaining Power”.<sup>156</sup>

In deciding whether to proceed with disciplinary or judicial proceedings, Detaining Powers are required to apply “the greatest leniency”, recognizing that prisoners owe no allegiance to the Detaining Power.<sup>157</sup> The only four types of disciplinary punishments allowed for are fines, discontinuance of privileges, fatigue duties and confinement.<sup>158</sup> More arduous labour may not be imposed as a disciplinary punishment.<sup>159</sup>

If a PoW is to face prosecution for an offence, they can only be tried in a court that offers the essential guarantees of independence and impartiality, and in particular the procedure of which affords the accused the necessary rights and

150 *Ibid.*, Art. 78, para. 3433. On the absence of Protecting Powers in general, see also *ibid.*, Introduction, paras 49–51.

151 ICRC Commentary on GC III, above note 3, Art. 80, section D.

152 *Ibid.*, Art. 80, para. 3528.

153 See *ibid.*, Art. 80, para. 3525, in relation to the different usage of the terms “adviser” and “assistant”.

154 Prisoners’ representatives and their assistants/advisers are paid out of canteen funds, unless there are no such funds available, in which case they are paid by the detaining authorities: *ibid.*, Art. 62, para. 2944.

155 GC III, Art. 81(2).

156 GC III, Art. 82(1). For a detailed discussion on the principle of assimilation in relation to disciplinary or judicial proceedings, see ICRC Commentary on GC III, above note 3, Art. 82, section C. For a wider discussion of the principle of assimilation in GC III, see *ibid.*, Introduction, section A.3.c.

157 GC III, Art. 83.

158 *Ibid.*, Art. 89.

159 ICRC Commentary on GC III, above note 3, Art. 51, paras 2737–2738.

means of defence.<sup>160</sup> While the principle of assimilation will ordinarily ensure the application of a robust framework for judicial guarantees and due process, GC III expressly sets out a number of protections, including the prohibition against double jeopardy, the principle of legality (the prisoner may not be tried or sentenced for an act which was not prohibited by the law of the Detaining Power or by international law at the time the act was committed) and the right to present one's own defence with the assistance of a qualified advocate or counsel.<sup>161</sup> In the event that the standards provided for in the domestic law of the Detaining Power fall short of these minimum standards, the rules of the Convention prevail and PoWs must benefit from the protections that it offers.

## Conclusion

GC III provides a robust framework for the protection of PoWs, whereby prisoners must be treated humanely, their person and honour is to be respected, they must be treated equally, and discrimination is prohibited.

The articulation of these principles within GC III is detailed. Learning from the experiences of previous conflicts, in particular World War II, the drafters recognized the essential applications of these principles that are needed to ensure the humane treatment of PoWs and respect for their person and honour. The drafters understood from experience what was essential to keep PoWs in good mental and physical health. They also understood the realities of providing for the care of prisoners while in the midst of active hostilities. The 142 articles of GC III provide a rich framework of realistic but essential protections covering all aspects of a prisoner's capture until their final release and repatriation. Some articles refer to outdated technologies or understandings of science, but after many decades of visiting PoWs, the ICRC is firmly convinced that the provisions remain as relevant and important for prisoners today as they were when first drafted.

The updated ICRC Commentary on GC III is the third of the series of updated Commentaries to be published by the ICRC. Research continues with respect to the protections of civilians in times of war (GC IV), and an updated Commentary will be published on this and on Additional Protocols I and II consecutively over the coming years.

160 GC III, Art. 84(2). See also Art. 105.

161 *Ibid.*, Arts 86, 99.