

Geneva convention

March 7, 2019

Manifest Pedagogy

- The actions taken by India against Pakistan and all the issues surrounding it have brought out many topics relevant to the syllabus like :

1. Geneva convention
2. Nuclear Security Doctrine
3. Indo-Pak Wars
4. Terrorism
5. Problems in Kashmir and solutions

- Being highly publicized issue, it is important for aspirants to prepare all its dimensions.

In news

Geneva convention provisions in the recent context of the release of Abhinandan

Placing it in the syllabus

Important International institutions, agencies, and fora-their structure, mandate.

Static dimensions

1. Indo Pak wars
2. Protection available during wars under Geneva convention

Current dimensions

Recent issue of Pulwama attack and India's action against it

Content

What are Geneva conventions?

The Geneva Conventions and their additional Protocols are **international treaties that are at the core of international humanitarian law**. They contain the most important rules regulating the conduct of armed conflicts and seeks to specifically protect civilians, health and aid workers, as well as soldiers no longer participating in the hostilities, such as prisoners of war (PoW) and wounded personnel.

Background

- **The original Geneva Convention was adopted in 1864 to establish the Red Cross emblem** signifying neutral status and protection of medical services and volunteers.
- The first Convention was initiated by what is now the **International Committee for the Red Cross and Red Crescent (ICRC)**. This convention produced a treaty designed to protect wounded and sick soldiers during wartime.
- The Swiss Government agreed to hold the Conventions in Geneva, and a few years later, a similar agreement to protect shipwrecked soldiers was produced.

About the convention

- **The Geneva Conventions is a body of Public International Law, also known as the Humanitarian Law of Armed Conflicts**, whose purpose is to provide minimum protections, standards of humane treatment, and fundamental guarantees of respect to individuals who become victims of armed conflicts.
- **The Geneva Conventions are a series of treaties on the treatment of civilians, prisoners of war (POWs) and soldiers who are otherwise rendered *hors de combat* (French, literally “outside the fight”), or incapable of fighting.**

- In 1949, after World War II, two new Conventions were added, and all four were ratified by a number of countries.
- The 1949 versions of the Conventions, along with two additional Protocols (1977), are in force today.

Following are **several conventions**:

- **Convention I:** This Convention **protects wounded and infirm soldiers and medical personnel** who are not taking active part in hostility against a Party. It ensures humane treatment without discrimination founded on race, color, sex, religion or faith, birth or wealth, etc. To that end, the Convention prohibits torture, assaults upon personal dignity, and execution without judgment (Article 3). It also grants the right to proper medical treatment and care.
- **Convention II:** This agreement extended the **protections described in the first Convention to shipwrecked soldiers and other naval forces**, including special protections afforded to hospital ships.
- **Convention III:** One of the treaties created during the 1949 Convention, **this defined "Prisoner of War,"** and accorded such prisoners proper and humane treatment as specified by the first Convention. Specifically, it required POWs to give only their names, ranks, and serial numbers to their captors. **Nations party to the Convention may not use torture to extract information from POWs.**
- **Convention IV:** Under this Convention, **civilians are afforded the same protections from inhumane treatment and attack afforded to sick and wounded soldiers in the first Convention.** Further, additional regulations regarding the treatment of civilians were introduced. Specifically, **it prohibits attacks on civilian hospitals, medical transports, etc.** It also specifies the rights of internees (POWs) and saboteurs. Finally,

it discusses how occupiers are to treat an occupied populace.

Various Protocols under the conventions

- **Protocol I:** The signing Nations agreed to further restrictions on the treatment of “protected persons” according to the original Conventions, and clarification of the terms used in the Conventions was introduced. Finally, new rules regarding the treatment of the deceased, cultural artifacts, and dangerous targets (such as dams and nuclear installations) were produced.
- **Protocol II:** In this Protocol, **the fundamentals of “humane treatment” were further clarified.** Additionally, the rights of interned persons were specifically enumerated, providing protections for those charged with crimes during wartime. It also identified new protections and rights of civilian populations.
- **Protocol III:** Adopted in 2005 to add another emblem, the “red crystal,” to the list of emblems used to identify neutral humanitarian aid workers.

Importance of Article 3 of the convention

- Article 3, Commonly Applied to All Four Protocols of the General Conventions.
- Article 3 of the Geneva Conventions **covered, for the first time, situations of non-international armed conflicts.**
- Types vary greatly and include traditional civil wars or internal armed conflicts that spill over into other States, as well as internal conflicts in which third-party States or multinational forces intervene alongside the government.
- Common Article 3 functions **like a mini-Convention within the larger Geneva Convention itself and establishes fundamental rules from which no derogation is permitted,** containing the essential rules of the Geneva Convention

in a condensed format, and making them applicable to non-international conflicts.

- It **requires humane treatment for all persons in enemy hands, without discrimination.** It specifically prohibits murder, mutilation, torture, the taking of hostages, unfair trial, and cruel, humiliating and degrading treatment.
- It requires that the wounded, sick and shipwrecked be collected and cared for.
- It grants the ICRC the right to offer its services to the parties to the conflict.
- It calls on the parties to the conflict to bring all or parts of the Geneva Conventions into force through “special agreements.”
- It recognizes that the application of these rules does not affect the legal status of the parties to the conflict.
- Given that most armed conflicts today are non-international, applying Common Article 3 is of the utmost importance. Its full respect is required.

Applicability of the Geneva Conventions

- The Conventions **apply to all cases of declared war between signatory nations.** This is the original sense of applicability, which predates the 1949 version.
- The Conventions **apply to all cases of armed conflict between two or more signatory nations, even in the absence of a declaration of war.** This language was added in 1949 to accommodate situations that have all the characteristics of war without the existence of a formal declaration of war, such as a police action (a military action was undertaken without a formal declaration of war).
- **The Conventions apply to a signatory nation even if the opposing nation is not a signatory, but only if the opposing nation “accepts and applies the provisions” of**

the Conventions.

Enforcement of the Geneva Conventions

- The Geneva Conventions provide for **universal jurisdiction**, as opposed to a more traditional (and limited) territorial jurisdiction that was designed to respect the sovereignty of States over their citizens.
- The doctrine of universal jurisdiction is based on the notion that some crimes, such as genocide, crimes against humanity, torture, and war crimes, are so exceptionally grave that they affect the fundamental interests of the international community as a whole.
- It renders the convicts or accused of such crimes to the jurisdiction of all signatory States, regardless of their nationality or territoriality of their crime.
- Every State bound by the treaties is under the legal obligation to search for and prosecute those in its territory suspected of committing such crimes, regardless of the nationality of the suspect or victim, or of the place where the act was allegedly committed.
- The State may hand the suspect over to another State or an international tribunal for trial. Where domestic law does not allow for the exercise of universal jurisdiction, a State must introduce the necessary domestic legislative provisions before it can do so, and must actually exercise the jurisdiction, unless it hands the suspect over to another country or international tribunal.

How did the Geneva Conventions help in ensuring that the pilot returns home?

- As per **Article 118 of Convention III**, PoWs “shall be released and repatriated without delay after the cessation of active hostilities”. Furthermore, even if the countries at conflict are not able to reach an agreement toward the cessation of hostilities, “each of

the Detaining Powers shall itself establish and execute without delay a plan of repatriation in conformity with the principle laid down (above)".

- In June 1999, Flight Lieutenant Kambampati Nachiketa, the only PoW during the Kargil War was repatriated home after the Indian authorities rejected Pakistan's idea of a public handover at their foreign office by citing the Geneva Conventions.