

Commentary on the First Geneva Convention

Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field

The application and interpretation of the four Geneva Conventions of 1949 and their two Additional Protocols of 1977 have developed significantly in the sixty years since the International Committee of the Red Cross (ICRC) first published its Commentaries on these important humanitarian treaties. To promote a better understanding of, and respect for, this body of law, the ICRC commissioned a comprehensive update of its original Commentaries, of which this is the first volume.

The First Convention is a foundational text of international humanitarian law. It contains the essential rules on the protection of the wounded and sick, those assigned to their care, and the red cross and red crescent emblems. This article-by-article Commentary takes into account developments in the law and practice to provide up-to-date interpretations of the Convention. The new Commentary has been reviewed by humanitarian-law practitioners and academics from around the world. It is an essential tool for anyone working or studying within this field.

INTERNATIONAL COMMITTEE OF THE RED CROSS

COMMENTARY ON THE FIRST GENEVA CONVENTION

Convention (I) for the Amelioration of the
Condition of the Wounded and Sick in
Armed Forces in the Field

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CONTENTS

	<i>Foreword by Peter Maurer</i>	page xi
	<i>Acknowledgements</i>	xiii
	<i>Abbreviations</i>	xxiv
	Introduction	1
	<i>Jean-Marie Henckaerts and Heike Niebergall-Lackner</i>	
	Preamble	27
	<i>Iris Müller</i>	
Chapter I.	General provisions	33
Article 1:	Respect for the Convention	35
	<i>Jean-Marie Henckaerts</i>	
Article 2:	Application of the Convention	68
	<i>Tristan Ferraro and Lindsey Cameron</i>	
Article 3:	Conflicts not of an international character	126
	<i>Lindsey Cameron, Bruno Demeyere, Jean-Marie Henckaerts, Eve La Haye and Iris Müller, with contributions by Cordula Droege, Robin Geiss and Laurent Gisél</i>	
Article 4:	Application by neutral Powers	326
	<i>Bruno Demeyere</i>	
Article 5:	Duration of application	340
	<i>Lindsey Cameron</i>	
Article 6:	Special agreements	344
	<i>Lindsey Cameron</i>	
Article 7:	Non-renunciation of rights	360
	<i>Lindsey Cameron</i>	
Article 8:	Protecting Powers	369
	<i>François Bugnion</i>	

vi	<i>Contents</i>	
Article 9:	Activities of the ICRC and other impartial humanitarian organizations <i>Bruno Demeyere</i>	401
Article 10:	Substitutes for Protecting Powers <i>François Bugnion</i>	426
Article 11:	Conciliation procedure <i>Sylvain Vité</i>	449
Chapter II.	Wounded and sick	469
Article 12:	Protection and care of the wounded and sick <i>Robin Geiss, with contributions by Helen Durham</i>	471
Article 13:	Protected persons <i>Lindsey Cameron</i>	515
Article 14:	Status of the wounded and sick who have fallen into enemy hands <i>Lindsey Cameron</i>	525
Article 15:	Search for casualties. Evacuation <i>Robin Geiss</i>	530
Article 16:	Recording and forwarding of information <i>Sandesh Sivakumaran</i>	550
Article 17:	Prescriptions regarding the dead. Graves Registration Service <i>Sandesh Sivakumaran</i>	582
Article 18:	Role of the population <i>Lindsey Cameron</i>	609
Chapter III.	Medical units and establishments	627
Article 19:	Protection of medical units and establishments <i>Alexander Breitegger</i>	629
Article 20:	Protection of hospital ships <i>Bruno Demeyere</i>	646
Article 21:	Discontinuance of protection of medical units and establishments <i>Alexander Breitegger</i>	650
Article 22:	Conditions not depriving medical units and establishments of protection <i>Alexander Breitegger</i>	660

<i>Contents</i>	vii
Article 23: Hospital zones and localities <i>Iris Müller</i>	672
Chapter IV. Personnel	689
Article 24: Protection of permanent personnel <i>Bruno Demeyere</i>	692
Article 25: Protection of auxiliary personnel <i>Bruno Demeyere</i>	714
Article 26: Personnel of aid societies <i>Bruno Demeyere</i>	725
Article 27: Societies of neutral countries <i>Bruno Demeyere</i>	749
Article 28: Retained personnel <i>Jann K. Kleffner</i>	764
Article 29: Status of auxiliary personnel who have fallen into enemy hands <i>Bruno Demeyere</i>	786
Article 30: Return of medical and religious personnel <i>Bruno Demeyere</i>	793
Article 31: Selection of personnel for return <i>Bruno Demeyere</i>	804
Article 32: Return of personnel belonging to neutral countries <i>Bruno Demeyere</i>	813
Chapter V. Buildings and material	823
Article 33: Buildings and material of medical units and establishments <i>Eve La Haye</i>	824
Article 34: Property of aid societies <i>Eve La Haye</i>	830
Chapter VI. Medical transports	835
Article 35: Protection of medical transports <i>Geoffrey S. Corn</i>	836
Article 36: Medical aircraft <i>Geoffrey S. Corn</i>	855

viii	<i>Contents</i>	
Article 37:	Flight over neutral countries. Landing of the wounded and sick <i>Geoffrey S. Corn</i>	876
Chapter VII.	The distinctive emblem	891
Article 38:	Emblem of the Convention <i>Michael Meyer</i>	893
Article 39:	Use of the emblem <i>Michael Meyer</i>	905
Article 40:	Identification of medical and religious personnel <i>Lindsey Cameron</i>	911
Article 41:	Identification of auxiliary personnel <i>Lindsey Cameron</i>	923
Article 42:	Marking of medical units and establishments <i>Alexander Breitegger</i>	928
Article 43:	Marking of units of neutral countries <i>Lindsey Cameron</i>	939
Article 44:	Restrictions in the use of the emblem. Exceptions <i>Michael Meyer</i>	942
Chapter VIII.	Execution of the Convention	961
Article 45:	Detailed execution. Unforeseen cases <i>Jean-Marie Henckaerts and Dana Constantin</i>	962
Article 46:	Prohibition of reprisals <i>Eve La Haye</i>	973
Article 47:	Dissemination of the Convention <i>Iris Müller</i>	980
Article 48:	Translations. Implementing laws and regulations <i>Iris Müller</i>	991
Chapter IX.	Repression of abuses and infractions	997
Article 49:	Penal sanctions <i>Eve La Haye</i>	999
Article 50:	Grave breaches <i>Knut Dörmann and Eve La Haye</i>	1043

<i>Contents</i>	ix
Article 51: Responsibilities of the Contracting Parties <i>Eve La Haye</i>	1081
Article 52: Enquiry procedure <i>Sylvain Vité</i>	1087
Article 53: Misuse of the emblem <i>Michael Meyer</i>	1103
Article 54: Prevention of misuse of the emblem <i>Michael Meyer</i>	1119
Final provisions	1129
Article 55: Languages <i>Stephan Michel and Claude Schenker</i>	1131
Article 56: Signature <i>Stephan Michel and Claude Schenker</i>	1137
Article 57: Ratification <i>Stephan Michel and Claude Schenker</i>	1142
Article 58: Coming into force <i>Stephan Michel and Claude Schenker</i>	1149
Article 59: Relation to previous Conventions <i>Iris Müller</i>	1154
Article 60: Accession <i>Stephan Michel and Claude Schenker</i>	1158
Article 61: Notification of accessions <i>Stephan Michel and Claude Schenker</i>	1167
Article 62: Immediate effect <i>Stephan Michel and Claude Schenker</i>	1171
Article 63: Denunciation <i>Stephan Michel and Claude Schenker, with contributions by Iris Müller</i>	1177
Article 64: Registration with the United Nations <i>Stephan Michel and Claude Schenker</i>	1192
Testimonium and signature clause <i>Stephan Michel and Claude Schenker</i>	1197
<i>Sources</i>	1200
<i>Index</i>	1280

FOREWORD BY PETER MAURER

President of the International Committee of the Red Cross

When the original Commentary on the First Geneva Convention was written in 1952, the horrors of the Second World War were still fresh in people's memory, but so was the humanitarian spirit that prevailed at the 1949 Diplomatic Conference and that made the adoption of the Geneva Conventions possible. More than 60 years later, we find ourselves confronted with a similar contradiction.

On the one hand, we are witnessing an increasing fragmentation and complexity in today's armed conflicts, which are often characterized by disregard for the law. The misery they engender – the suffering of children, the despair of families trapped in sieges or forced from their homes, the abuse of the wounded and sick – is brought daily to our attention through different media channels. On the other hand, the community of States has agreed on a stronger and more comprehensive normative legal framework than ever before. We know that the values that found expression in the Geneva Conventions have become an essential part of our common heritage of humanity, as growing numbers of people around the world share a moral and legal conviction in them.

These contradicting realities challenge us to act: to react to the suffering and violations of the law, and to prevent them from occurring in the first place.

In these efforts, it is part of the ICRC's role and mandate to work towards a common understanding of international humanitarian law through engagement with all stakeholders, including political and religious leaders, key opinion and policymakers, academic circles, the judiciary and, last but not least, weapon bearers.

With this updated Commentary on the First Geneva Convention, the ICRC presents a new tool for practitioners and scholars, as part of our joint endeavour to close the gap between the law as it stands and the law as it is applied on the ground.

We know that the first editions of the Commentaries on the four Geneva Conventions have been useful for military and civilian practitioners as well as for judges and academics. A lot of time has passed since the first editions were published, and we have gained a great deal of experience in applying and interpreting the Conventions in contexts very different from those that led to their adoption. This is why, five years ago, the ICRC committed itself to the monumental task of updating all the existing Commentaries and of preparing

xii *Foreword by Peter Maurer*

new guidance on the basis of a variety of sources, including interpretations by States and courts over the past decades. With the publication of the first instalment, the Commentary on the First Convention, we have reached the first milestone.

The ICRC is in a unique position to oversee the updating of the Commentaries. The organization combines the perspectives of law and operations, and the updated Commentaries benefit from the input of colleagues representing these aspects of our work. Equally importantly, the updated Commentary was opened to unprecedented external input from a global network of scholars and practitioners, who drafted commentaries on specific articles of the Convention, reviewed all the drafts and gave advice. The final text is thus the result of a collaborative process.

The new Commentary provides guidance on and contextualization of the Convention's rules. It presents the ICRC's interpretation of the law, but it also indicates the main diverging views and issues requiring further discussion and clarification. The ICRC will duly take this updated Commentary into account in its daily work, while being aware that practice and interpretations may evolve over time.

The ICRC expresses its gratitude to the experts who gave freely of their time and expertise, in particular the external contributors and peer reviewers. It also thanks the members of the Editorial Committee, the project team and other staff members who brought the updated Commentary to fruition.

In presenting this volume to the States party to the Geneva Conventions, to National Red Cross and Red Crescent Societies and other humanitarian organizations, to judges and scholars and to other interested parties, the ICRC sincerely hopes that this Commentary, along with others to come in the years ahead, will clarify the meaning and significance of the Geneva Conventions and help to ensure greater protection for war victims.

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ABBREVIATIONS

AU	African Union
DRC	Democratic Republic of the Congo
ECCC	Extraordinary Chambers in the Courts of Cambodia
EU	European Union
ICC	International Criminal Court
ICJ	International Court of Justice
ICJ Reports	International Court of Justice, Reports of Judgments, Advisory Opinions and Orders
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IHL	International humanitarian law
IHFFC	International Humanitarian Fact-Finding Commission
ILA	International Law Association
ILC	International Law Commission
IMT	International Military Tribunal
LOAC	Law of armed conflict
NATO	North Atlantic Treaty Organisation
OAS	Organization of American States
OAU	Organization of African Unity (now African Union)
PCIJ	Permanent Court of International Justice
UN	United Nations
UNESCO	United Nations Education, Scientific and Cultural Organization
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Emergency Fund
UDFR	Union des forces démocratiques pour le rassemblement
USSR	Union of Soviet Socialist Republics
UK	United Kingdom of Great Britain and Northern Ireland
US	United States of America