

**Civilians**

# Definition

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## **Article 50 - Definition of civilians and civilian population**

1. A civilian is any person who does not belong to one of the categories of persons referred to in Article 4A (1), (2), (3) and (6) of the Third Convention and in Article 43 of this Protocol. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian.
2. The civilian population comprises all persons who are civilians.
3. The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character.

# Article 4A, Third Geneva Convention

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## Article 4 - Prisoners of war

A. Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy:

- (1) Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces.
- (2) Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions:
  - (a) that of being commanded by a person responsible for his subordinates;
  - (b) that of having a fixed distinctive sign recognizable at a distance;
  - (c) that of carrying arms openly;
  - (d) that of conducting their operations in accordance with the laws and customs of war.
- (3) Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power.
- (6) 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.

# Article 43, Additional Protocol I

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## Article 43 — Armed forces

1. The armed forces of a Party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party. Such armed forces shall be subject to an internal disciplinary system which, *inter alia*, shall enforce compliance with the rules of international law applicable in armed conflict.
2. Members of the armed forces of a Party to a conflict (other than medical personnel and chaplains covered by Article 33 of the Third Convention) are combatants, that is to say, they have the right to participate directly in hostilities.
3. Whenever a Party to a conflict incorporates a paramilitary or armed law enforcement agency into its armed forces it shall so notify the other Parties to the conflict.

# Protection of civilians

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- Civilians = everyone who does not fall under Article 4A of the Third Geneva Convention and Article 43 Additional Protocol I.
- Key IHL Principles on the protection of civilians
  - Civilians cannot be made the object of an attack, which means that belligerent parties must constantly distinguish between civilians and combatants during the course of hostilities.
  - Excessive harm to civilians or civilian objects in relation to the anticipated military advantage of an attack must be avoided as far as possible.
  - Parties must provide sufficient precaution to civilians well in advance of a planned attack.
  - Such attacks must also ensure that they do not cause unnecessary and superfluous suffering to civilians.

# Fourth Geneva Convention Protections

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- Part II - General Protection of Populations Against Certain Consequences of war
  - Article 14 - hospital and safety zones and localities
  - Articles 16-22 - provisions for the wounded and sick
  - Article 23 - consignments of medical supplies, food and clothing
  - Article 24 - child welfare
- Part III Section I - Status of Respected Persons
  - Article 27 - respect for persons, honour, family rights, religious convictions and practices, and their manners and customs. Must be treated humanely at all times and protected against all threats/acts of violence.
  - Article 32 - prohibition of corporal punishment and torture
  - Article 33 - collective punishments, intimidation, terrorism, pillage and reprisals against protected persons or property prohibited.

# Protections in Occupied Territories

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- Part III Section III - occupied territories
  - Article 49 - prohibition of deportations, forcible transfers and evacuations
  - Article 51 - prohibition of enlistment of occupied population and labour rights.
  - Article 55 - food and medical supplies for the occupied population
  - Article 56 - hygiene and public health provisions.
  - Article 59-63 - relief provisions.
  - Articles 64-75 - penal provisions.

# Additional Protocols Protections

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## API

- Article 48 - Parties must distinguish between civilian population and combatants, and between civilian objects and military objectives.
- Article 51 - protection of the civilian population
  - (1) - civilians and civilian population enjoy general protection against dangers arising from military operations.
  - (2) - civilians and civilian population shall not be made the object of an attack
  - (3) - enjoy protections unless and for such time as they take a direct part in hostilities.
  - (4) - protection from indiscriminate attacks
  - (5) - inclusion of disproportionate attacks into definition of indiscriminate attacks



# Civilian Objects vs Military Objectives

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- Article 52 - general protection of civilian objects.
  - (1) - civilian objects are all objects which are not military objectives as defined in (2)
  - (2) - military objectives are those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralisation, in the circumstances ruling at the time, offers a definite military advantage.
  - (3) - where there is doubt, presume an object is a civilian object.
- Types of civilian objects protected
  - Article 53 - cultural objects and places of worship
  - Article 54 - objects indispensable to the survival of the civilian population
  - Article 55 - natural environment
  - Article 56 - works and installations containing dangerous forces

# Civilians Directly Participating in Hostilities

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- Article 51(3), API: Civilians shall enjoy the protection afforded by this Section, unless and for such time as they take a direct part in hostilities.
- ICRC Commentary
  - Specific acts that are likely to adversely affect the military operations or military capacity of a party to the conflict, or inflict, death, injury or destruction on persons or objects.
  - Direct causal link between the act and harm to the person or object, and must be designed to be to the detriment to the belligerent opponent.
  - Measures that are conducted in preparation to the execution of a particular act, as well as deployment to and the return from the location of its execution, constitute an integral part of that act.
- 'For such time' - civilians lose protection for the duration of each specific act amounting to DPIH, while members of organised armed groups lose protection against direct attack for the time they assume continuous combat function.

# Problems with DPIH

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- Qualitative assessment, differs on a case-by-case basis
  - E.g., a truck delivering food supplies to members of an organised armed group is facilitating that armed group's continuous combat capacity, but whether it is an act designed to the detriment to the belligerent opponent is questionable.
- 'Revolving door' phenomenon
  - Targetable when DPIH, but not targetable when not DPIH. Threshold for 'participation'?
  - Makes targeting and military assessments difficult as it requires constant assessment of targetability.