

The Updated Commentary on the Third Geneva Convention: A New Tool for Generating Respect for International Humanitarian Law

Theresa U. Akpoghome , Chukwudumebi O. Joseph-Asoh 

Department of Public Law, Faculty of Law, Benson Idahosa University, Benin, Nigeria

Email: teremajor@gmail.com

How to cite this paper: Akpoghome, T. U., & Joseph-Asoh, C. O. (2022). The Updated Commentary on the Third Geneva Convention: A New Tool for Generating Respect for International Humanitarian Law. *Beijing Law Review*, 13, 912-930. <https://doi.org/10.4236/blr.2022.134059>

Received: July 2, 2022

Accepted: December 23, 2022

Published: December 26, 2022

Copyright © 2022 by author(s) and Scientific Research Publishing Inc. This work is licensed under the Creative Commons Attribution International License (CC BY 4.0).

<http://creativecommons.org/licenses/by/4.0/>



Open Access

Abstract

Geneva Convention III relative to the treatment of prisoners of war was first adopted in 1929 but was updated in 1949. It defines the protection afforded to prisoners of war from the time of capture to final release or repatriation. The Convention has been in existence for over seven decades and some of its provisions are no longer in tune with current reality as seen in contemporary armed conflicts noting also that most of the conflicts today are internal in character. The ICRC in their wisdom began the updating of the GC III and in June of 2020 the updated commentary on GC III was launched. This paper therefore, examines the updated commentary on the Geneva Convention III as a new tool for generating respect for IHL. In this wise the paper examines some core provisions of the GC III in line with the updated commentary. The paper finds that the updated commentary provides contemporary meanings to the otherwise obsolete provisions of the GC III. The paper notes that the updated commentary is an indispensable tool for preserving the humane treatment guaranteed to POWs. It further finds that it is a resource and guide book for practitioners and a hand book for experts. The paper recommends that domestic frameworks must be updated in addition to training of the armed forces. It further recommends the dissemination of the provisions of the convention and updated commentary and concludes by urging members of the academia to help make known the updated commentaries as it will help generate respect for IHL.

Keywords

Geneva Convention, Commentary, Respect, Prisoners of War, Updated

1. Introduction

This paper examines the relevance of the updated commentary on the 3rd Geneva

Convention as a new tool for generating respect for international humanitarian law (IHL). Geneva Convention III relative to the protection of prisoners of war (POWs) covers a broad scope of issues relating to the treatment of POWs and their lives from the point of capture, arrest or surrender to their final release or repatriation from the hands of enemy power to his own country or any other place of his choice. Over the years, the Geneva Convention III appears not to be effective in the application of its provisions with respect to prisoners of war in the hands of the adverse party. Respect for the rights of POWs was based more on reciprocity rather than strict application of the rules. The provisions were first drafted in 1929 and amended in 1949. These provisions have become outdated and needs to be reviewed in order to be effective in their application.

Teaching these outdated rules to students became near impossible therefore; the principles were superficially addressed or taught in a bid to keep reminding ourselves that the GCIII is still part of the Geneva Conventions. Another challenge is the fact that most conflicts today are internal in nature and there is no prisoners of war status in such conflicts. Just recently on February 24, 2022, an international armed conflict broke out between Russia and Ukraine and this will be the litmus test for the updated commentary if any of the sides take prisoners. The core purpose of the updated commentary is to present an understanding of the law as it is today to enable the effective application of the rules in contemporary armed conflicts.

This becomes very necessary as it contributes to reaffirming the continued relevance of the convention, generating respect for it and strengthening protection for victims of armed conflict (Henckaerts, 2022). The third Geneva Convention contains 143 articles that provide incredible details and the protection of prisoners of war (ICRC Commentary, 2022) and the major aim of the updated commentary is to serve as a tool for interpreting and applying the convention to safeguard the humane treatment of Prisoners of War (POWs) in armed conflict today (ICRC, 2020).

In view of the foregoing, this paper is divided into seven parts in addition to the introduction. Part II gives a brief background on the updated commentary. Part III deals with the historical perspective of the Geneva Convention III. Part IV assesses the personal scope of application of the GC III while part V examines some basic provisions of the commentary that helps generate respect for international humanitarian law. Part VI discusses the implementation mechanisms and concludes the paper.

2. Brief Background of the Review of the Commentary on GC III

In 2011, the International Committee of the Red Cross (ICRC) with some experts set out on a major project which was to update the commentaries on the Geneva Conventions of 1949 and the Additional Protocols (Jean Pictet, 1952). This exercise dates back to 1950's and 1980 respectively (Jean Pictet, 1952). The review process of the updated commentary of the third Geneva Convention be-

gan in November/December 2017 and was completed in 2019 ([ICRC Guideline for Peer Reviewers 2017](#))⁴. Over 10,000 drafts of the articles of GC III were reviewed and the convention contains 143 articles and over a hundred emphasize humane treatment.

Geneva Conventions and Protocols have been put to test and the GC III provides the most comprehensive protection to prisoners and other categories of person who fall into the power of the enemy in times of international armed conflict ([Articles 13, 14, 16 GC III](#)). The Geneva Convention III is over 70 years having been in use since 1949 although it first came on board in 1929. GC III deals specifically with prisoners of war and the basic principle as noted earlier is humane treatment of persons that are detained as a result of armed conflict.

Having been in existence for so long, it became outdated and incomplete as some of the provisions were no longer practicable today ([Article 71 GC III](#)). It became imperative to include subsequent developments and improvement in law and practices. These improvements came after the GC III was adopted. There was also the need to include operational experiences in the last 70 years.

Updating the commentaries on each of the 143 articles of GC III required consideration of a wide range of historical, legal, military, ethical, socio-cultural and technological issues ([Jemma Arman et al., 2000](#)). There was a collaborative effort in the development of the updated commentary on GC III with contribution from the ICRC and non ICRC lawyers, specialists with subject matter expertise ([Jemma Arman et al., 2000](#)). The records of ICRC were quite useful in this development particularly the old records on ICRC's visitation of POWs in the past seven decades. This work has made it possible for the ICRC to note measures taken by States to comply with GC III and also the challenges with implementation ([Jemma Arman et al., 2000](#)).

One fundamental area that stood out is the possibility of the application of GC III to contemporary armed conflicts that are not international in character. It is important to remember that GC III was the first treaty to laydown standards of treatment in internment ([Article 22 GC III 1949](#)). GC III contains detailed principles with regard to respect for the life and dignity ([Articles 13 and 14 GC III](#)) of the individual which is still very relevant in the context of internal armed conflicts. Common article 3 is equally a key provision of the convention applicable to situation of internal armed conflict and the new commentary provides a detailed interpretation of all the aspects of the articles which is commonly referred to as a "mini convention". The interpretation covers the scope of application, the requirement of humane treatment, the case for the wounded and sick, humanitarian activities, and criminal aspects and compliance ([ICRC Commentary, 2020](#)) such as sexual violence and non-refoulement.

Over seven decades ago when the Geneva Conventions were adopted, some other areas of international human right law and refugee law had not fully developed. These areas of international law complements international humanitarian law and they all have the same ideal-protecting persons in need of the laws. IHL is not complete in and of itself therefore it synergizes with other areas of in-

ternational law. The current interpretation provided in the updated commentary took note of these developments in the other areas of law (ICRC Commentary 2020).

The methodology adopted in the interpretation was based on the rules of Vienna Convention on law of treaties 1969 (Articles 31-33)². Based on the Vienna Convention rules as stipulated in articles 31-33, the contributors began from the ordinary meaning of the terms of GC III in their context and in the light of the object and purpose of the treaty. Developments in law were considered, specifically the laws of domestic and international courts and tribunals. State responsibility, human rights (ICRC Commentary GC III, Article 100), medical ethics were also considered in addition to private international law.

The essence of the review was to produce a document that would be known and understood by all noting that the first commentary was done in 1960. Again, the updated commentary will give to all an understanding of the law as it is interpreted today so as to have it effectively applied in contemporary armed conflicts. This reiterates the fact that the updated commentary on GC III reaffirms the continued relevance of the convention, generating respect and strengthening protection for victims in armed conflict situations.

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 (Arman et al., 2000). It was difficult to find recent practice in relation to some topics for instance financial resource for POW's (Arman et al., 2000). Having noted the background that led to the update of GC III, the next section of the paper will trace the history of the GC III this will help the readers appreciate the utility of the update of the GC III.

3. Historical Perspective of Geneva Convention III (GC III)

Geneva Convention III relative to the treatment of prisoners of war is one of the four treaties of the Geneva Conventions. It was first adopted in 1929, but revised significantly at the 1949 conference. It defines humanitarian protection for prisoner of war (ICRC, 2020). Customary rules and codes regulating the capture and detention of enemy soldiers have existed for thousands of years and drew from a number of cultural, religious and ethical standards (Arman et al., 2000) which includes humanity principles (Sparrow, 2017) and dictates of public conscience. The Brussels Draft Declaration of 1874 was adopted after the conference of fifteen European states held (ICRC, Geneva Conventions Preliminary Remarks 2010). This draft contained twelve articles that addressed that protection of POWs. The declarations made at the Brussels conference were not binding but most of the definitions contained therein were adopted without modifications at the 1899 Hague Peace Conference (The Hague Regulations, 1907). The Hague Regulations of 1907 annexed to The Hague Convention of 1899 became the first binding multilateral treaty that dealt with POWs as stated by Allan Rosas (Rosas, 1978). He further posited that the development of international treaty

began in earnest in the eighteenth century and also the ninetieth. It was at this time that many states started establishing professional armed troops to enter bilateral agreement with respect to conditions of warfare (Gillespie, 2011) and to include protection for prisoners of war in their military codes of conduct (Rosas, 1978). The ICRC commentary on GC III noted that seventeen articles of the regulations dealt with prisoners of war addressing among other issues, 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 cessation of hostilities (ICRC, Commentary on GC III, 2020). The regulations also took note of the role for relief societies in distributing relief items and in the process of repatriation of prisoners (ICRC, Commentary on GC III).

These provisions for protection were not changed in the 1907 Hague Convention. The provisions in the Hague Regulations proved not to be sufficient in detail but the belligerents instead concluded temporary agreement among themselves to clarify the grey areas during the World War I (ICRC, Commentary on GC III). Again, the changing pattern of warfare, advancement in technology, the increased size of armies and wars resulted in significantly larger number of persons being captured during the conduct of hostilities at that time particularly during World War I (Gillespie, 2011).

Subsequently, the 1929 Geneva Conventions on Prisoners of War was adopted. It did not replace the Hague Regulations rather it supplemented it to a large extent. It contained eighty substantive articles which included provisions on the prohibition of reprisals against prisoners of war and collective penalties; the organisation 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 International Committee of the Red Cross (ICRC), generally and particularly with regard to the organisation of a central information agency (ICRC, Commentary on GC III). Forty-seven high contracting states had become parties to the 1929 Convention at the commencement of World War II (ICRC, Commentary on GC III).

While the protection conferred by the 1929 Convention has a significant impact in several theatres of the Second World War, in others it did not. This was attributed to the fact that it was partly interpreted as not being applicable (ICRC, Commentary on GC III). A typical instance was the narrow interpretation of the definition of POW which was used to deny POW status to soldiers of several countries who surrendered upon the capture of or fall of their states (ICRC, Commentary on GC III). In order to close the gaps that had been observed with the 1929 Convention, two alternatives were presented, the first was to either develop more detailed rules covering all possible eventuality or secondly to formulate general principles that were sufficiently flexible to enable their implementation to be adapted to the context. Consequently, the Diplomatic Conference Meeting held in Geneva in 1949, arrived at a compromise that embodied de-

tailed provisions, in addition to the general and inviolable principles. These principles have given the Third Convention its specific legal characteristics (ICRC, Commentary on GC III). The protection under the GCIII is absolute and its reach extends beyond interstate levels to the ultimate beneficiaries, who cannot renounce the rights secured to them by the Convention ([Common Article 7 to GC I-III](#)). Geneva Convention III of 1949 is more detailed than the 1929 Convention as it clarified and expanded the scope of persons to whom it applies (ICRC, Commentary on GC III).

Shortly after the Second World War, several expert conferences were convened in Geneva, where preparatory materials gathered by the ICRC and first drafts for the new conventions were discussed (ICRC, Commentary on GC III). The most important of these conference and meetings were the Preliminary Conferences of National Red Cross Societies in 1946 and the Conference of Government Experts in 1947. The drafts prepared by the several conferences were presented to the Seventeenth International Conference of the Red Cross and Red Crescent at Stockholm in 1948, where further amendments were adopted (ICRC, Commentary on GC III). The Stockholm drafts served as the basis for negotiation at the Diplomatic Conference that met in Geneva from 21 April to 12 August 1949 ([ICRC, Commentary on GC III, Para. 14](#)). Fifty-nine states were officially represented by delegations with full powers to discuss the texts; four states sent observers (ICRC, Commentary on GC III).

Generally, the Geneva Convention III of 1949 is considerably more robust than the 1929 Convention. It clarifies and expands the scope of persons to whom it applies. It provides stricter regulation on the use of POW's labour; it elaborates on the guarantees POW's are entitled to in cases of disciplinary or penal sanctions, it provides clearer rules on how to keep prisoners in good health; it clarifies the obligation to repatriate prisoners at the end of active hostilities. The GC III like the other three Conventions, also provides for a system for the suppression of breaches of the Convention, by defining the concept of "grave breaches" against POW's ([Article 130 GC III](#)), by creating obligations on states to pass legislation criminalizing grave breaches, and by mandating states to search for and try or extradite those who are suspected of having committed such breaches ([Article 129\(1\)\(2\) GC III](#)).

It provides for a greater role for relief societies and acknowledges the "special position" of the ICRC in this respect ([Article 125\(2\) GC III](#)). Finally, the Third Convention allows for the ICRC to visit prisoners of war and this forms the basis for its central tracing agency ([Articles 123 and 126 GC III](#)). Like the other three Geneva Conventions, GC III contains Article 3 which governs non-international armed conflict. The rights guaranteed by Article 3 remains essential particularly as contemporary armed conflicts are non-international in nature. Common Article 3 is supplemented by Additional Protocol II of 1977 and customary international humanitarian law which apply in internal armed conflicts (ICRC, Commentary on GC III).

4. Scope of Persons Covered by Geneva Convention III

The scope of persons covered by the GC III is captured in Article 4 of the Convention. Article 4 defines who qualifies to be a POW's and this is crucial to understanding the personal scope of the GC III. It defines a prisoner of war thus: "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." It provides for six categories of persons qualifying as POWs at the time "they fall into the power of the enemy" (Article 4(A) GC III). Article 4(A) presents a list of protected persons as contained in Article 13 (GC II Art. 16), GC I (Common Article 13 to GC I and GC II)⁸ and GC II (Articles 14 and 16 GC I and GC II)⁹, and it provides protection for the wounded, sick, shipwrecked military personnel. The GC III also protects the wounded, sick and shipwrecked members of the armed forces covered by GC I and GC II who fall into the power of the enemy (Article 43(1) Additional Protocol I).

The persons directly protected by the GC III include:

1) Members of the armed forces of a party to the conflict as well as members of militia or volunteer corps forming part of such armed forces

Members of the armed forces is the first to be mentioned under Article 4A(1). This appears to be the most important category as it points to all military personnel of a state under a command responsible to that party for the conduct of its subordinates in an armed conflict (ICRC, Commentary on GC III). In terms of numbers, this is the largest group. The ICRC commentary observes that the requirement for membership into the armed force of a state is within the domestic regulation competence (ICRC, Commentary on GC III, Para 979). It is further observed that "members of the armed forces" includes members of militia or volunteer corps, if they have been formally incorporated into the armed forces and are subject to the command structure (Article 44(3) Additional Protocol I).

The important rule for the members of the armed forces is the requirement to distinguish themselves from the civilian population while they are engaged in an attack or while preparing for an attack (Rule 106 Customary International Humanitarian Law Rule (CIHL) 2005). Failure by the members of the armed forces to distinguish themselves will result in the denial of POW status upon capture (ICRC, Commentary on GC III Paras. 92 and 95; Article 31(3) Vienna Convention on the Law of Treaties). The Commentary of 2020 made use of the customary IHL rule for the interpretation where it was considered necessary and the principle of distinction is one of such rules where customary rule became relevant for interpretation (Article 4(A)(2) GC III).

2) Members of other militias and members of other volunteer corps, including those of organised resistance movements, belonging to a party to the conflict and fulfilling four listed obligations. (ICRC, Commentary on GC III 2020, Para 1001-1009)

This second set of persons is not incorporated into the armed forces but they

“belong” to a party to the conflict. Where a party fights on behalf of another party and that other party accepts the fighting role the Article 4(A)(2) is fulfilled for the second category. The acceptance of the purpose of Article 4(A)(2) can either be express or implied. It is express where the state gives a formal authorization to the group or acknowledges that the group is fighting on its behalf (principal/agent) relationship. The acceptance on the other hand can be implied where the group fights alongside a state and claims to be fighting for the state and the state does not expressly deny this relationship with the group when it has the opportunity to do so. The acceptance of a “belonging to” relationship can also be inferred from the overall control that the state exercises over the group (Arman et al., 2000). Members of the militia or volunteer corps who fulfill the conditions earlier listed will be granted POW status when they fall into the power of the enemy.

3) Members of regular armed forces who profess allegiance to a government or an authority not recognised by the detaining power.

Ordinarily, members of the regular armed forces of a party to an international armed conflict are accorded POW status within the definition of POW's under the Article 4(A)(1) category but it was observed that during the Second World War, some members of the armed force of a state were denied POW status because the government or authority they pledged allegiance to was not recognised by the detaining power (Arman et al., 2000).

The definition of POWs in Geneva Convention III includes all members of the regular armed forces, irrespective of whether the enemy recognised the legitimacy of their government or authority (Arman et al., 2000). This is to avoid the repetition of the abusive interpretation experienced during WWII.

4) Persons who accompany the armed forces without actually being members therefore.

Under this category, it is observed that these persons will be granted POW status even though they were not combatants and not entitled to immunity and privileges of combatants. These persons are authorized to accompany and do in-fact accompany the armed forces without being members thereof (ICRC, Commentary on GC III, Art. 4, Para 1047-1050). It is noted that the close relationship between these persons and members of the armed forces could warrant their internment with members of the armed forces. Persons in this group include civilians, contractors providing services such as war correspondents, member of labour unit, transportation and other supplies. They must have been authorized to accompany the armed forces and must be provided with an identity and or a similar model as contained in GCIII in Annex IV (A) (ICRC, Commentary on GC III, Para. 1050).

5) Members of crews including masters, pilots and apprentices of merchant marine and the crews of civil aircraft of the parties to the conflict, who do not benefit by more favourable treatment under any other provisions of international law.

The addition of this category seeks to remedy the uncertainty as to their status

and inconsistencies in the protection accorded to such persons during the Second World War. Civilian members of aircraft crews were also added due to the increasing role of aircrafts in providing services and deliveries to combat zones (ICRC, *Commentary on GC III, Para 1052-1060*). There is no distinction made between POWs who are combatants and those who are civilians in relation to their treatment under GCIII although some rules in the convention assume the existence of membership in the armed force and therefore are silent as to the application in relation to the other persons who become POWs. For instance, some provisions in relation to the use of POWs labour such as the rate of payment are framed around the rank of POWs (Arman et al., 2000; GC III Article 60). The 2020 commentary notes that if the Detaining Power interns POWs who are civilian, it must apply these provisions in good faith and in line with the rationale behind the provisions in question (ICRC, *Commentary on GC III Article 4, Para 1046*).

6) Inhabitants of a non-occupied territory who on the approach of the enemy, spontaneously take up arms to resist the invading forces – *levee en masse*

This is the final category of prisoners of war and it is made up of persons commonly referred to as *levee en masse*. This group is made up of 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 their arms openly and respect the laws and customs of war (Article 4(A)(6) GC III). This group of POWs is the only one that is purely autonomous from the state. The persons in this group do not “belong to” the state and do not require any level of organisation, command structure or a fixed distinctive emblem (ICRC, *Commentary on GCIII Article 4, Para. 1062*). The situation for *levee en masse* applies if the people took up arms during an invasion and the territory is not yet occupied and where the persons in question took up arms, spontaneously in response to an invading army (Article 4(A)(6) GC III). It is important to note that these persons must also carry their arms openly and must respect the laws and customs of warfare.

Added to the six categories discussed above, Article 4 further provides for two further categories of persons who are not prisoners of the war but are to be treated as such (Article 4(B)(1)-(2) GC III). The Article 4 definition is supplemented by Additional Protocol I (AP I) and Customary IHL, and spies saboteurs and mercenaries were excluded from prisoner of war status (Article 46 and 47 AP I).

The GC III provided robust definitions to the categories of persons that will become prisoners of war and greatly reduced the ambiguities that existed within the previous definition in The Hague Regulations and 1929 convention. Despite this, there may still be doubt about the status of a person and in this regard the GC III made provision for the resolution of such doubts. The Convention provides:

...should any doubt arises as to whether persons having committed a belligerent act and having fallen into the hands of the enemy belong to any of the categories enumerated in Article 4 such persons shall enjoy the protection of the present convention until such a time as their status has been determined by a competent tribunal (Article 5(2) GC III).

Competent tribunal was used so as to include review from a court or military tribunal and to avoid arbitrary decisions by a local commander, who may be of a very low rank (Arman et al., 2000). The status of individuals has been decided by civil courts, boards of inquiry or military tribunals or courts (ICRC, Commentary on GC III, Article 5, Para 1126). The determination of status must be made timeously, in good faith and on a case by case basis. The determination must not be arbitrary or on the spot decision and that is the reason for allowing a competent tribunal to give the decision. The procedural guarantee is a matter of domestic law and not within the regulatory framework of IHL (ICRC, Commentary on GC III, Para 1127). Where a person is determined by the competent tribunal to be a prisoner of war, the person will continue to enjoy the protections of Geneva Convention III but where the person is determined not to be a POW; such a person will be considered a civilian and is protected by Geneva Convention IV (Articles 43 and 78 and Article 25 AP I).

To summarize, the above listed and discussed categories represent the personal scope of Article 4 GC III. These categories will be qualified as POWs and be treated humanely when they fall into the hands of the adverse party. In case of doubt about their status, the detaining power is under an obligation to treat them humanely as prisoners of war until their status is determined by a competent tribunal to be set up by the detaining power. Even where the detainee fails the status test he is protected as a civilian by the provisions of GC IV.

5. Basic Protection Guaranteed to Prisoners of War

5.1. Humane Treatment of Prisoners of War

The most important protection for a prisoner of war is humane treatment. The Geneva Convention III contains a balance between humane treatment and military necessity. The main objective of the GC III is to ensure that prisoners of war are humanely treated at all times while allowing the Detaining Power to intern them in order to prevent them from returning to the battlefield (ICRC, Commentary on GC III Para. 89). The authority to intern is derived from Article 21 GC III and gives expression to military necessity. The aim of internment during the pendency of active hostilities is to prevent captured enemy armed force members from participating again in the hostilities which will pose a military threat to the Detaining Power (ICRC, Commentary on GC III, Article 21, Para. 1932). The convention provides a set of general protection to POWs, setting the threshold below which the treatment given to and conditions enjoyed by such prisoners must not fall. The core protections include the obligation of humane and equal treatment (Article 13 GC III), the prohibition of adverse distinction

(Article 16 GC III), and respect for the prisoners' person and honour (Article 14 GC III). These provisions provide the minimum threshold of treatment. They are connected to other rules and forms the basis of all protection owed to POWs.

The principle of assimilation is hinged the minimum standard set out in articles 13 - 14, 16 of the convention and this principle shows that in certain issues POWs are to be treated in the same or similar manner as members of the detaining power own forces (Article 20 GC III).

5.2. Questioning Prisoners of War

During questioning, POWs are bound only to give their name, rank, date of birth and military service number (Article 17(1) GC III). On the receipt of such information, the Detaining Power will be able to establish their identity, status, rank as members of the enemy armed forces. This is an essential measure this enables the detaining power to properly identify prisoners of war and prevents them from going missing, as well as accords them the treatment they deserve (Article 17(2) GC III). POWs must not be subjected to any physical or mental torture, or to any other form of coercion to obtain information of any kind (Article 17(4) GC III).

5.3. Internment in a Camp

Where POWs are interned, they should not be held in a penitentiary except it is in their best interest (Article 22(1) GC III). POWs will not be held in close confinement unless they are subjected to penal or disciplinary sanctions, or when it is necessary to safeguard their health (Article 21(1) GC III). It is important to observe that it is not an obligation for the Detaining Power to intern prisoners of war, but where they choose to do so GC III has provided detailed conditions for such internment. Once the detaining authority decides to intern POWs, the points discussed below must be observed. These points are not all inclusive but represent some of the fundamental improvements in the updated commentary which captures the essence of humane treatment of POWs. The points include but not limited to:

1) Quarters

The Convention provides that prisoners of war shall be "quartered under conditions as favourable as those for the forces of the Detaining Power who are also billeted in the same area" (Article 25 GC III). This underscores the point that the internment of POWs is not intended to be a punitive measure and it is a part of the fundamental protection guaranteed to them. The Detaining Power should ensure that the accommodation shall make allowance for the habits and customs of the prisoners and shall in no case be prejudicial to their health (Article 25(1) GC III). The accommodation must be protected against adverse weather conditions that will prejudice the health of the prisoners (Article 25(3) GC III) and (Article 108(3) GC III) and women must be provided for with separate accommodation conducive for the female prisoners of war (Article 25(4)

GC III).

2) Food

The Convention provides that the daily food ration provided to POWs by the Detaining Power shall be “sufficient in quantity, quality and variety”, and sufficient drinking water should be made available. This is to keep the prisoners in good health and avoid nutritional deficiencies ((Article 26(1) GC III) and ICRC Commentary on GC III Article 26, Para 2128-2130). Rations for prisoners with health conditions must be adapted to their condition. Children, older persons and pregnant or lactating women must similarly be provided with rations that keep them in good health (ICRC Commentary on GC III Article 26, Para 2113), and habitual diet of prisoners must be taken account of (Article 26 GC III). To ensure that the requirement is met, the POWs as far as practicable shall be involved in preparing their own meals (Article 26(4) GC III, Art.26, Para 2134). Where prisoners of war carry out physical work, they are to be provided with additional rations to permit them to remain in good health. The determining factor is the type of work done by the prisoner and not the output. The effect of the work on the physiological needs of the prisoner is a relevant determining factor in deciding whether the POWs are entitled to additional rations (ICRC Commentary on GC III Article 26 Para. 2126).

The Convention in Article 26(3) allowed the use of tobacco. The hazards of such use are commonly known today as against the time the convention was drafted. Therefore, the detaining power may impose restrictions on the use of tobacco in POWs camps in order to ensure that the environment is healthy for all internees (ICRC Commentary on GC III Article 26, Para 2131). Article 28 of the Convention mandates parties to an armed conflict to provide canteens where foodstuffs, soap and tobacco and ordinary articles in daily use must be made available to prisoners for purchase at an affordable rate (Article 28(1) GC III). The establishment of canteens must be weighed against the length of time or duration the detaining powers intends to keep the prisoners. It may not be necessary to set up a canteen where the prisoners will be transferred to another camp or to another party to the conflict (ICRC Commentary on GC III Article 28, Para 2164).

3) Clothing

The detaining power is mandated by the convention to supply clothing, underwear and footwear to the prisoners (Article 27 GC III). To ensure that the health of the captives is not compromised, the Detaining Power shall supply clothing’s suitable to the climate where the POWs are interned. They should be provided with sweaters, hats and gloves in cold weathers (ICRC Commentary on GC III Article 28, Para. 2149). The prisoners are expected to have two sets of clothing and sleepwear. This is to enable a change when a set is washed or being repaired (ICRC Commentary on GC III Article 28, Para 2148). The clothing of the POWs must be appropriate to the prisoners work, age, and gender, religious and cultural background (ICRC Commentary on GC III Article 28, Para. 2151). In addition, the prisoners should not be compelled to wear the uniform of their

enemies or other clothing not acceptable to them as this may affect their sense of honor and allegiance (ICRC Commentary on GC III Article 28, Para. 2151).

4) Sanitation and Medical Care

Article 15 of the Convention provides that POWs are entitled to receive medical attention free of charge. In addition every POWs camp should have an infirmary where prisoners of war healthcare needs will be attended to (Article 30(1) GC III). Where the POW requires specialized treatment, he must be transferred to and admitted to any military or civilian medical unit where such treatment can be given (Article 30(2) GC III). The commentary notes that every medical care must comply with the applicable standards of medical ethics. It includes the provision of medical care impartially and without adverse distinction. The acceptable ethical standards also include the principle of voluntary and informed consent (ICRC Commentary on GC III Article 30, Para 2232 and 2245). Isolation wards should be used for contagious or mental disease (Article 30(1) GC III).

Article 29 makes it obligatory for the Detaining Power to take all necessary sanitary measures to ensure cleanliness and “healthfulness” of camps, and to prevent epidemics (Article 29 GC III). The Detaining Power must maintain hygienic standards by reducing the risk of transmission of diseases within the camps as this will also reduce the rate of transmission to the officers of the Detaining Power such as the guards and the nearby communities (ICRC Commentary on GC III Article 29, Para 2185).

5) Religious Practices and Recreation

Religious and recreational activities are covered in the Convention (Article 34 and 38 GC III). It provides that “POWs” shall enjoy complete latitude in the exercise of their religious duties, including attendance at the service of their faith on condition that they comply with disciplinary routine prescribed by the military authorities (Article 34(1) GC III, Para 2367 and 2369). The Detaining Powers permission to allow prisoners practice their religions is very important since persons deprived of their liberty may seek strength in their religious practice as it enables them to cope with their situation and the hardship that comes with it (ICRC Commentary on GC III Article 34, Para 2359). This is also in line with the duty of the Detaining Power to treat prisoners humanely and to respect their persons and honor. The detaining power must take into account religious practices in many aspects of camp life (ICRC Commentary on GC III Article 34, Para 2365). This includes setting up of places of internment (ICRC Commentary on GC III Article 34), food preparation (ICRC Commentary on GC III Article 34); work schedules (ICRC Commentary on GC III Article 34).

There’s need by armed forces to employ staff that are well versed in cultural practices to serve as advisers to help them better understand and appreciate the human and cultural environment where they operate (ICRC Commentary on GC III Article 34, Para. 2365). Adequate premises shall be provided by the Detaining Power (ICRC Commentary on GC III Article 34, Para. 2365). The premises need not be established only for the purpose of holding religious services

as far as adjustments can be made allowing religious services to take place in such facility or premises (ICRC Commentary on GC III Article 34(2) Para 2373).

With regard to recreational purposes, Article 38 provides that the individual preferences of each prisoner must be respected to ensure that the provision is not used as a pretext to allow prisoners to take part in ideological or political propaganda in the coloration of “recreation” (ICRC Commentary on GC III Article 34(2) Para 2373). The Detaining Power shall encourage the practicing of intellectual, educational and recreational pursuits, sport and games and they must provide the prisoners with adequate premises and the necessary equipment (ICRC Commentary on GC III Article 14, Para 1671). POWs shall have opportunities to take physical exercises, including sports and games and for being outdoors, the Detaining Power is obliged to provide sufficient open spaces for this purpose in all internment camps (Article 38(1) GC III).

The ICRC has been permitted to supply writing materials, notebooks, textbooks and other books in some international armed conflict subject to the approval of the Detaining Power, in addition to sporting facilities (Article 38(1) GC III).

6) Communication with the Families and Relatives

In order to maintain connection with the outside world, the Convention guarantees the POWs the right to keep in touch with their families. They are allowed to send and receive letters and cards. The prisoners capture, sickness, hospitalization and transfer should be communicated to his family and also to the Central Training Agency. This is made possible by allowing POWs to write capture cards which are forwarded as quickly as possible and should not be delayed in any manner to the Central Training Agency and the family (Commentary on GC III Article 38, Para. 2461).

Article 71 of GC III made provision for the right of prisoners of war to send and receive letters and cards and if the Detaining Power deems it fit to limit the number, it should not be less than two letters and four cards monthly. Where these correspondences are sent through post, there shall be no postal dues (Article 70 GC III). In the absence of a functional postal service, the ICRC on a regular basis will facilitate correspondence through the Red Cross message service. This way, families are free to connect and share information of a strictly private and familial nature (Article 74(1)(2) GC III).

The Convention further provides that where POWs have been without news for a long period; or unable to receive news from their next of kin or to receive news from the ordinary postal service, POWs shall be allowed to send telegrams (ICRC Commentary on GC III Article 71, Para. 3215). One would observe that the use of telegrams was prevalent as at the time the GC III was concluded but such means of communication has become obsolete today (Article 71(1) GC III). POWs in such condition as discussed earlier should be allowed today to make use of e-mails, telephone calls or video calls or any other form of communication that exists today (ICRC, Commentary on GC III, Article 7, Para. 3218). The fundamental principle here is to ensure that the POWs do not stay for a long pe-

riod without being able to reach out to families.

POWs may receive relief shipment and the Detaining Power is not permitted to charge “import”, custom or other dues “on such shipments or postal dues” (Article 74 GC III). This is another type of protection enjoyed by the prisoners of war.

7) Labour of Prisoners of War

It is important to observe that prisoners of war that are physically fit maybe utilized by the Detaining Power for labour purposes (Article 49 GC III). While this is beneficial to the Detaining Power it helps to keep POWs in a good state of physical and mental health and also supports their general wellbeing as the absence of activities in addition to isolation can lead to freedom and affect the POWs mental and physical wellbeing (ICRC, *Commentary on GC III Article 49, Para. 2675*).

The types of work that POWs will be engaged in have been carefully articulated to include agriculture, extractive or production industries (Article 49 GC III); public works and building which have no military character or purpose; transport and handling of stores that are not military in character; commercial business; arts and crafts, domestic service, public utility services having no military character or purpose (Article 50(a) GC III).

For the duration of labour, three important points have been noted, the duration of the labour of the POWs shall not be excessive; the maximum duration of work is fixed as the maximum allowed under the domestic law of the Detaining Power for the civilians in the same job; and the time taken to travel to and from the place of work shall be counted within the working hours (Article 53(1) GC III). The POWs are entitled to a minimum of one hour rest in the middle of the day, a day of rest per week and a period of eight consecutive days of rest in a year (Article 53(2) GC III).

Prisoners of war shall be paid a ‘fair working rate of pay by the Detaining Power direct and the rate shall be fixed by the authorities but shall not be less than one fourth of one Swiss franc for a full working day’ (Article 62 GC III). The amount stipulated by the Convention as at 1949 does not represent the current reality and as such the Detaining Power must consider in good faith an adequate increase (ICRC, *Commentary on GC III Article 62, Paras 2952-2955*).

8) The Function of the ICRC

Article 126 GC III is to the affect that the representatives or delegates of the Protecting Powers will be permitted to go to all places where prisoners of war may be especially the places of internment and they must have access to all premises occupied by POWs (Article 126(1) GC III) and in addition, they shall be at liberty to choose the places they wish to visit and the duration or frequency of such visits must not be restricted (Article 126(2) GC III). Prisoners of war have the right to “make known” to the prison authorities their requests about the conditions of captivity. This is an act they should not be punished for.

Complaints are usually communicated to the ICRC, through channels that includes confidential interviews with the ICRC delegates by virtue of Article 126.

ICRC's role here is very crucial bearing in mind the absence of protecting powers in most international armed conflict since 1949 ([Article 78 GC III, Para 3433, Paras 49-51](#)).

9) Fundamental Guarantee of the right to Fair Trial

It should be noted that the object of internment of POWs is not to punish them, but to prevent them from further participating in active hostilities against the enemy forces. POWs may not be prosecuted for taking part in hostilities if they are accused of an offence or a crime, they must be tried before an independent and impartial court ([Article 84\(2\) GC III](#)) in a fair trial affording all judicial guarantees ([Article 75 AP I and Article 105 GC III](#)). No sentence will be valid unless it is issued by the courts and according to the same procedures as in the case of the members of the Detaining Power's armed force ([Article 84\(1\) GC III](#)).

10) Final Release and Repatriation

[Article 118 GC III](#) provides that POWs shall be released and repatriated without delay after the cessation of hostilities. GC III provides that the obligation to releases and repatriate prisoners of war does not depend on reciprocity and applies even where a peace treaty does not exist or has not been concluded ([Article 118\(2\) GC III](#)).

6. Implementation of the GC III Commentary and Conclusion

As can be gleaned from the preceding analysis of the convention on some fundamental issues dealt with by the GC III, the commentary observes that planning and preparation are very crucial to the implementation of these provisions in order to generate respect for IHL. The planning and preparation include ensuring the domestic legal framework is updated as it is an indispensable tool for implementation ([ICRC, Commentary on GC III, Para 55](#)). Article 2(1) refers to provisions to the implemented in peace time.

In order to implement the obligations to respect and ensure respect for the Geneva Conventions found in Common Article 1 (the due diligence provision) a number of provisions require an advanced measures to be taken before the commencement of hostilities ([Henckaerts, 2020](#)) or preparations to prevent violations from taking place. In addition to updating the domestic legal framework, there must be rules and regulations put in place to ensure compliance with the Convention. *Henckaert* noted that, by providing additional measures on timely preparation, the commentary is quite relevant for national authorities who are in a position to execute the necessary preparation and planning such as training the armed forces and government ministry and agencies that deal with detention ([Henckaerts, 2020](#)).

Obviously battle field realities will never remain the same or constant but training of the armed forces in time of peace will help ensure the implementation of GC III. States should review their laws of armed conflict and update their military manuals to fit into modern realities in military context. Complex ideas

and theories should be interpreted in simpler forms for soldiers and other military forces or personnel (Henckaerts, 2020). The updated commentary has and continues to serve as a key fountain of authority for keeping these tailored training up-to-date.

On issue of compliance, it is observed that the lack of respect for IHL is always widely debated. It is trite to note that parties to an armed conflict often respect and comply with their obligations thereby respecting the law but these hardly make headlines. The commentary capture instances of compliance as well as instances of challenges to implementation and solutions discovered to ensure the Convention can be complied with even in the face of obvious challenges. The updated commentary shows that the Geneva Conventions remain a relevant body of law. They help to save lives and respect the dignity of persons in situations armed conflict.

Finally, if the updated commentary on GC III will become a tool to generate respect for IHL, its provisions must be disseminated to all. The rules must be made known and their contemporary meanings understood and appreciated.

The updated commentary on GC III was launched on 16 June 2020. Borrowing the words of *Jean-Marie Henckaerts* 'the Commentary may not be perfect because we are not perfect' but a working and updated document has been produced. For over seven decades the GC III remains the most important international treaty protecting prisoner's war. It sets the pace on the progressive thinking on the interpretation of humane treatment of POWs and respect for their person and honour. The entire 143 articles of the Convention III provides a robust framework that is realistic containing essential protections beginning from the moment a POW is captured until he is finally released or repatriated.

It is noted that some of the provisions referred to outdated technologies and that is one of the areas where the updated commentary becomes an indispensable tool. When the GC III is read together with the contemporary interpretations contained in the updated commentary, it becomes a practical and invaluable source for preserving the humane treatment guaranteed to prisoners of war in times of hostilities. It is also a resource and guidebook for practitioners and a handbook by experts and it is hoped that it will become an invaluable source for interpreting and applying the Geneva Convention III.

Finally, as academics, we must ensure the dissemination of the content of the GC III and the updated commentaries to students and members of the armed forces in a clinical manner so that those who have the responsibility of making policies and enforcement of rules will easily understand the provisions of the law they are to implement as one can only practice what he knows or have learnt. Armed conflict by nature is catastrophic and usually senses take flight but if conscious efforts are made in peace time in disseminating the provisions of the Convention and the updated commentary, then those who conduct hostilities and the Detaining Powers will act and respond better in line with established rules of conduct.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

References

Additional Protocol I (API).

Arman, J. et al. (2000). The Updated ICRC Commentary on the Third Geneva Convention: A New Tool to Protect Prisoner of War in the Twenty First Century. *International Review of the Red Cross (IRRC)*, 102, 389-416.

<https://doi.org/10.1017/S1816383121000035>

Articles 31-33, Vienna Convention on the Law of Treaties, 115 UNTS 18232, 23 May 1969.

Cordula, D. (2020, July 23). *GC III Commentary: Ten Essential Protection for Prisoners of War.*

<https://www.blogs.icrc.org/law-and-policy/2020/07/23/gciii-commentary-prisoners-of-war>

Geneva Convention (GC) III (GCIII).

Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, 75 UNIS 85 (Entered into Force on 21 October 1950) (GC II), Art. 16.

Gillespie, A. (2011). *A History of the Laws of War, Vol. 1: The Customs and Laws of War with Regards to Combatants and Captives* (p. 149). Hart Publishing.

Henckaerts, J.-M. (2020, June). *GC III Commentary: ICRC Unveils First Update in Sixty Years* (p. 5).

<https://www.blogs.icrc.org/law-and-policy/2020/06/18/gcIII-commentary-update>

Henckaerts, J.-M. (2022). *Updated Commentary Brings Fresh Insights on Continued Relevance of Geneva Conventions for Treatment of Prisoner of War.*

<https://www.icrc.org/en/document/updated-commentary-third-geneva-convention?amp>

ICRC (2017). *Guideline for Peer Reviewers GC III.*

ICRC (2020, July 10). *Updated Commentary Brings Fresh Insight on Continued Relevance of Geneva Convention for Treatment of Prisoner of War.*

<https://www.icrc.org/en/document/updated-commentary-third-geneva-convention?amp>

ICRC (2022). *Updated Commentary on the Third Geneva Convention—Video and Book Available.*

<https://www.icrc.org/en/document/updated-commentary-third-geneva-convention-video-book-available>

ICRC Commentary on GC III.

Pictet, J. (1952). *Commentary on the Geneva Convention of 12 August 1948* (Vols. 1-6, p. 60). ICRC.

Rosas, A. (1978). The Legal Status of Prisoners of War: A Study in International Humanitarian Law. *American Journal of International Law (AJIL)*, 72, 176-178.

<https://doi.org/10.2307/2199727>

Rule 106 Customary International Humanitarian Law Rule (CIHL) 2005. See Also Art. 4, Para. 983-987, ICRC Commentary on GC III.

Sparrow, R. (2017). Ethics as Source of Law: The Martens Clause and Autonomous Weapons. *Humanitarian Law and Policy*, 14, 1-5.
<https://blogs.icrc.org/law-and-policy/2017/11/14/ethics-source-law-martens-clause-autonomous-weapons/>