

Provisions of Geneva IV proscribing relevant conduct:

ARTICLE 147: GRAVE BREACHES

“Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, *unlawful deportation or transfer, or unlawful confinement of a protected person*, compelling a protected person to serve in the forces of a hostile power, or willfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly (emphasis added).”

Pictet: “Unlawful deportation or transfer-This refers to breaches of the provisions of Articles 45 and 49. . . transfers are forbidden except in cases where the safety of the protected persons may make them absolutely necessary.”

ARTICLE 45 (of Part III, “Status and Treatment of Protected Persons”, § II, dealing with “Aliens in the Territory of a Party to the Conflict”) permits transfer of protected persons who are aliens under certain circumstances: “Protected persons shall not be transferred to a Power which is not a party to the Convention. . . .”

“Protected persons may be transferred by the Detaining Power only to a Power which is a party to the present Convention and after the Detaining Power has satisfied itself of the willingness and ability of such transferee Power to apply the present Convention. . . .”

Pictet’s commentary on Art. 45: “any movement of protected persons to another state, carried out by the Detaining Power on an individual or collective basis, is considered as a transfer for the purposes of art. 45. “Transfer” may mean internment in the territory of another Power, repatriation, the returning of protected persons to their country of residence, or their extradition. . . .In the absence of any clause stating that deportation is to be regarded as a form of transfer, this Article would not appear to raise any obstacle to the right of Parties to the conflict to deport aliens individual cases when State security demands such action.”

ARTICLE 49: DEPORTATIONS, TRANSFERS, EVACUATIONS

“Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.

Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand.

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Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.”

Pictet: “The prohibition is absolute and allows of no exceptions, except for those stipulated in para. 2.”

(comments on para. 2) – “evacuation may only be ordered in two cases, which are defined in great detail, namely when the safety of the population or imperative military reasons so demand. It is stipulated that evacuation must not involve the movement of protected persons outside the occupied territory, unless it is physically impossible to do otherwise. Thus, as a rule evacuation must be to reception centers inside the territory.”

ARTICLE 5: DEROGATIONS. “Where in the territory of a Party to the conflict, the latter is satisfied that an individual protected person is definitely suspected of or engaged in activities hostile to the security of the State, such individual shall not be entitled to claim such rights and privileges under the present Convention as would, if exercised in the favour of such individual person, be prejudicial to the security of such State.

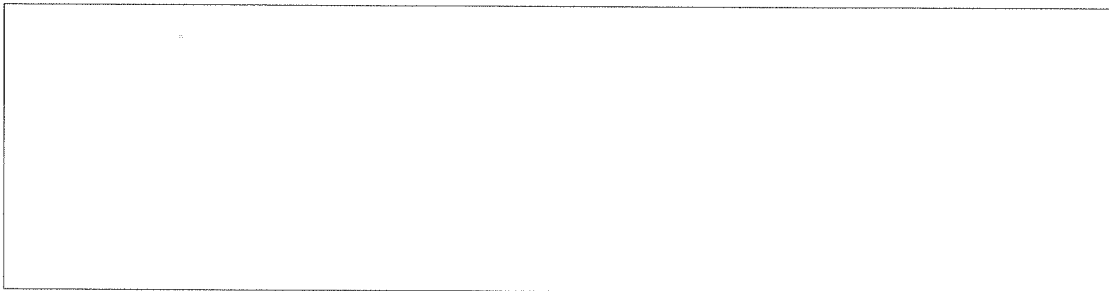
Where in occupied territory an individual protected person is detained as a spy or saboteur, or as a person under definite suspicion of activity hostile to the security of the Occupying Power, such person shall, in those cases where absolute military security so requires, be regarded as having forfeited rights of communication under the present Convention.

In such case, such persons shall nevertheless be treated with humanity and, in case of trial, shall not be deprived of the rights of fair and regular trial prescribed by the present Convention. They shall also be granted the full rights and privileges of a protected person under the Convention at the earliest date consistent with the security of the Occupying Power, as the case may be.”

Pictet: “The idea of activities prejudicial or hostile to the security of the State, is very hard to define. That is one of the Article’s weak points. What is meant is probably above all espionage, sabotage and intelligence with the enemy Government or enemy nationals. The clause cannot refer to a political attitude towards the State, so long as that attitude is not translated into action.

The Article, as it stands, is involved- one might even say, open to question. . What is most to be feared is that widespread application of the Article may eventually lead to the existence of a category of civilian internees who do not receive the normal treatment laid down by the Convention but are detained under conditions which are almost impossible to check. It must be emphasized most strongly, therefore, that Article 5 can only be applied in individual cases of an exceptional nature, when the existence of

specific charges makes it almost certain that penal proceedings will follow. This Article should never be applied as a result of mere suspicion.”



ARTICLE 68 – PENAL LEGISLATION

“Protected persons who commit an offense which is solely intended to harm the Occupying Power, but which does not constitute an attempt on the life or limb of members of the occupying forces or administration, nor a grave collective danger, nor seriously damage the property of the occupying forces or administration or the installation used by them, shall be liable to internment or simple imprisonment, provided the duration of such internment or imprisonment is proportionate to the offence committed.”

ARTICLE 78 – SECURITY MEASURES, INTERNMENT, AND ASSIGNED RESIDENCE.

“If the Occupying Power considers it necessary, for imperative reasons of security, to take safety measures concerning protected persons, it may, at the most, subject them to assigned residence or internment.

Decisions regarding such assigned residence or internment shall be made according to a regular procedure to be prescribed by the Occupying Power in accordance with the provisions of the present Convention. . . . “

Pictet: “In occupied territories the internment of protected persons should be even more exceptional than it is inside the territory of the Parties to the conflict; for in the former case the question of nationality does not arise. That is why Art. 78 speaks of imperative reasons of security; there can be no questions of taking collective measures: each case must be decided separately.

“It will suffice to mention here that as we are dealing with occupied territory, the protected persons concerned will benefit by the provisions of Art. 49 and cannot be deported; they can *therefore only be interned, or placed in assigned residence, within the frontiers of the occupied country itself*. In any case, such measures can only be ordered for real and imperative reasons of security; their exceptional character must be preserved (emphasis added).”

ARTICLE 41: ASSIGNED RESIDENCE. INTERNMENT

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"Should the Power in whose hands protected persons may be consider the measure of control mentioned in the present Convention to be inadequate, it may not have recourse to any other measure of control more sever that that of assigned residence or internment, in accordance with the provisions of Articles 42 and 43."

ARTICLE 42: GROUNDS FOR INTERNMENT OR ASSIGNED RESIDENCE.
VOLUNTARY INTERNMENT

"The internment or placing in assigned residence of protected persons may be ordered only if the security of the Detaining Power makes it absolutely necessary."

Pictet: "It is thus left very largely to Governments to decide the measure of activity prejudicial to the internal or external security of the State which justifies internment or assigned residence.

Subversive activity carried on inside the territory of a Party to the conflict or actions which are of direct assistance to an enemy Power both threaten the security of the country; a belligerent may intern people or place them in assigned residence if it has serious and legitimate reason to think that they are members of organizations whose object is to cause disturbances, or that they may seriously prejudice its security by other means, such as sabotage or espionage; the provisions of Article 5 of the present Convention may also be applied in such cases.

. . . To justify recourse to such measures the State must have reason to think that the person concerned, by his activities, knowledge, or qualifications, represents a real threat to its present or future security."