

Click on "CHAPTER BIBLIOGRAPHY" or "SPECIFIC BIBLIOGRAPHY" to see content

CHAPTER BIBLIOGRAPHY

Suggested reading:

- LEVIE Howard S. (ed.), "Documents on Prisoners of War", in *International Law Studies*, US Naval War College, Vol. 60, 1979, 853 pp.
- LEVIE Howard S. (ed.), "Prisoners of War in International Armed Conflict", in *International Law Studies*, US Naval War College, Vol. 59, 1978, 529 pp.
- MAIA Catherine, KOLB Robert & SCALIA Damien, *La protection des prisonniers de guerre en droit international humanitaire*, Brussels, Bruylant, 2015, 658 pp.
- ROSAS Allan, *The Legal Status of Prisoners of War: A Study of International Humanitarian Law Applicable in Armed Conflicts*, Helsinki, Suomalainen Tiedeakatemia, 1976, 523 pp.

Introductory text

In international armed conflicts (IAC), combatants are members of the armed forces of a party. The main feature of their status is that they have the right to directly participate in hostilities. Consequently, if they fall into enemy hands, they become prisoners of war who may not be punished for having directly participated in hostilities. In return, they may remain in captivity until the end of active hostilities. In non-international armed conflict (NIAC) the term, and therefore the status of, 'combatant' does not exist (see chapter relating to NIAC).

If, as exemplified below, there is a common feature regarding who is a combatant, some subtle distinctions have to be made between what is provided for by treaty law - and there again there are some subtle distinctions to be made within treaty law - and what is provided for by customary international law. Under Convention III of 1949, combatants include restrictively members of regular armed forces, participants in a levée en masse, and members of irregular forces belonging to a party to an IAC, including resistance movements. However, at least irregular forces must fulfil four conditions, namely being commanded by a person responsible for his subordinates, having a fixed distinctive sign recognizable at a distance, carrying arms openly, and conducting their operations in accordance with the laws and customs of war (Art. 4(A) of

GC III). Under Additional Protocol I, all organized armed groups under a command responsible to a party to an IAC and subject to an internal disciplinary system enforcing inter alia compliance with IHL fall under the unified concept of 'armed forces'. Members of those groups are combatants.

All combatants have to individually distinguish themselves from the civilian population during military operations. Otherwise they are not entitled to combatant status and – in case they fall into the power of the enemy without individually distinguish themselves – prisoner-of-war status. A nuance is introduced by Article 44(3) of that same Protocol by providing relaxed individual distinction requirements in some exceptional circumstances – such as in occupied territory or during wars of national liberation. As a result, in these circumstances, a member of an organized armed group party to an IAC who would not distinguish her/himself from the civilian population during an attack would still remain a combatant if he/she at least carries arms openly in certain circumstances stipulated in the provision. As per customary international law, one may safely state that all those who fulfil the conditions of Convention III are combatants under customary international law. It is equally true for those who meet the unified conditions of Protocol I and who respect the strict conditions of distinction, that is those who do not fall under the exceptions of Article 44(3) of Protocol I.

As a general rule, members of armed forces that fall under the definition of 'combatant' become prisoner-of-war as soon as they are in the power of the enemy and until their release and repatriation. Among their obligations under international humanitarian law (IHL), combatants have to distinguish themselves from the civilian population as discussed above. If they fail to do so, and if captured by the enemy, they are no more entitled to prisoner-of-war status. Here a precision has to be made between the collective obligation to distinguish themselves for combatants and the individual obligation to distinguish. First, members of armed forces that are party to an IAC must collectively respect a set of obligations, including the obligation to distinguish. Therefore, members of a group that fails to do so are not combatants and none of them are entitled to prisoner-of-war status if in the power of the enemy, even if those captured individually respect the obligation to distinguish themselves. This is explicitly stipulated for irregular armed forces, while it is controversial whether this also applies to regular armed forces. Second, additionally to this collective obligation, all combatants endorse an individual obligation to distinguish themselves. Consequently, even if they belong to a group that collectively distinguishes from the civilian population, members of that group who fail to distinguish themselves individually are not entitled to prisoner-of-war status if they fall into the power of the enemy.

Besides, in addition to excluded, special and controversial categories - such as mercenaries, spies, saboteurs, or members of private military and security companies - that are discussed below, there may be some confusion over whether all members of the regular armed forces of a State are combatants. That may be the case for cooks and other members of the armed forces whose primary activity does not involve combat. Contemporary terminology however does not make any distinction according to the primary role of the members of the armed forces, and consequently virtually all members are combatants. Only military medical and religious personnel are members of armed forces but not combatants and they do not become

prisoners-of-war if they fall into the power of the enemy. Similarly, which group may be considered as 'belonging' to a party to an IAC, as laid down at Article 4(A)2 of GC III, has been subject to different interpretations. We are of the opinion that the concept is wider than the one of control under the law of State responsibility, at least when resistance movements are concerned. A tacit agreement should be sufficient. In other words, it is sufficient if the government of a State does not reject an armed group's claim that it is fighting on the State's behalf, at the condition that the group is armed and actually fighting. Secret services or staff of private military and security companies do not have combatant status because they are not accepted by a party to an IAC as fighting for it. For the same reason, it may be considered that members of an armed group, acting on behalf of a State that intervenes indirectly in another State through overall control over such a group, are not prisoners-of-war in most cases, even though IHL of IACs applies. It has to be stressed that even members of armed forces who regularly violate IHL are combatants and prisoners-of-war, but individual members may and must be punished for violations they committed. They are not entitled to combatant and prisoner-of-war status only if they do not sufficiently distinguish themselves from the civilian population.

Persons who have lost combatant status or never had it, but nevertheless directly participate in hostilities, have in some occasions be referred to as "unprivileged combatants" – because they do not have the combatant's privilege to commit acts of hostility – or as "unlawful combatants" – because their acts of hostility are not permitted by IHL (but in our view IHL does not either prohibit them to do so. It simply allows their punishment for doing so under domestic law). The status of such persons has given rise to controversy. We argue that they must perforce be civilians. This argument is based on the letter of IHL treaties. On one hand, with regard to the rules of the conduct of hostilities, Art. 50(1) of Protocol I defines civilians as all those who are not "referred to in Article 4(A)(1), (2), (3) and (6) of the Third Convention and in Article 43 of this Protocol". On another hand, with regard to rules related to the protection persons in the power of a party, once they have fallen into enemy hands, Art. 4 of Convention IV defines as protected civilians all those who fulfil the nationality requirements and are not protected by Convention III. This would mean that any enemy who is not protected by Convention III falls under Convention IV. Those who oppose that view argue that a person who does not fulfil the requirements for combatant status is an "unlawful combatant" and belongs to a hypothetical third category. Like "lawful combatants", it is claimed, such "unlawful combatants" may be attacked until they surrender or are otherwise hors de combat and may be detained without judicial decision. The logic of this argument is that those who do not comply with the conditions set for a status should not be privileged compared to those who do.

Those who insist on the complementarity and exclusivity of combatant and civilian status reply that lawful combatants can be easily identified, based on objective criteria, which they will normally not deny (i.e. membership in the armed forces of a party to an IAC), while the membership and past behaviour of unprivileged combatants and the future threat they represent can only be determined individually. As "civilians", unprivileged combatants may be attacked while they unlawfully directly participate in hostilities. If they fall into the power of the enemy, Convention IV does not bar their punishment for unlawful participation in hostilities. In addition, it permits administrative detention for imperative security reasons. From a

teleological perspective, it is feared that the concept of "unlawful combatants", denied the protection of Convention IV, could constitute an easy escape category for detaining powers, as the Geneva Conventions contain no rule about the treatment of someone who is neither a combatant nor a civilian (see, however, Art. 75 P I).

^ CASES AND DOCUMENTS

- ICRC, Interpretative Guidance on the Notion of Direct Participation in Hostilities

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- HINGORANI Rup C., *Prisoners of War*, New York, Oceana Publications, 2nd ed., 1982, 315 pp.
- VAN GERVEN Guy, "La notion de "guerre" et de "combattant" dans les conflits modernes", in *Recueil de la société internationale de droit penal militaire et de droit de la guerre*, Strasbourg, 1972.

I. Who is a combatant ?

Introductory text

A combatant is either:

- a member of the armed forces *stricto sensu* of a party to an international armed conflict: [1]
- respecting the obligation to distinguish himself/herself from the civilian population

or

- a member of another armed group: [2]
- belonging to a party to the international armed conflict,
- fulfilling, as a group, the following conditions:
 - operating under responsible command
 - wearing a fixed distinctive sign
 - carrying arms openly
 - respecting IHL

and

- individually respecting the obligation to distinguish himself/herself from the civilian population

or

- a member of another armed group [3] who is:

- under a command responsible to a party to the international armed conflict and
- subject to an internal disciplinary system,
- on condition that he/she respects, individually, at the time of his/her capture [4] the obligation to distinguish himself/herself from the civilian population: [5]
- usually, while engaged in an attack or a military operation preparatory to an attack, by a clearly visible item of clothing;
- in exceptional situations (e.g. occupied territories, national liberation wars) by carrying his/her arms openly
- during each military engagement, and
- as long as he/she is visible to the enemy while engaged in a military deployment preceding the launching of an attack in which he/she is to participate.

^ CASES AND DOCUMENTS

- Colombia, Constitutionality of IHL Implementing Legislation [Paras D.3.3.1.-5.4.3., Para. E.1]
- Afghanistan, Code of Conduct of the Mujahideen [Arts 7-9]
- Georgia/Russia, Human Rights Watch's Report on the Conflict in South Ossetia [Paras 52-56]
- Germany, Aerial Drone Attack in Mir Ali/Pakistan
- Syria, Syrian rebels treat captured Filipino soldiers as 'guests'

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- CRAWFORD Emily, "Combatants", in LIVOJA Rain & McCORMACK Tim, *Routledge Handbook of the Law of Armed Conflict*, London/New-York, Routledge, 2016, pp. 123-138.
- GARRAWAY Charles H.B., "Combatants – Substance or Semantics? ", in SCHMITT Michael & PEJIC Jelena (eds), *International Law and Armed Conflict: Exploring the Faultlines, Essays in Honour of Yoram Dinstein*, M. Nijhoff, Leiden/Boston, 2007, pp. 317-335.
- ODUDU Keseme Philip & ALLISON Ebitari Joshua, "International Humanitarian Law: The Status of Unlawful Combatants", in *Nnamdi Azikiwe university Journal of International Law & Juris.*, Vol. 38, 2017, pp. 38-47.
- SASSÒLI Marco, "Combattants Et Combattants Illégaux", in CHETAIL Vincent, *Permanence et mutation du droit des conflits armés*, Bruxelles, Bruylant, 2013, pp. 151-184.

Further reading:

- ALDRICH George H., "Prospects for United States Ratification of Additional Protocol I to the 1949 Geneva Conventions", in *AJIL*, Vol. 85/1, 1991, pp. 1-20.
- CRAWFORD Emily, *The Treatment of Combatants and Insurgents under the Law of Armed Conflict*, Oxford, Oxford University Press, 2010, 250 pp.
- EMANUELLI Claude (ed.), *Les casques bleus : policiers ou combattants?*, Montréal, Wilson &

Lafleur, 1997, 130 pp.

- DEL MAR Katherine, "The Requirement of "Belonging" under International Humanitarian Law", in *EJIL*, Vol. 21, No. 1, February 2010, pp. 105-124.
- MALLISON W. Thomas & MALLISON Sally V., "The Juridical Status of Irregular Combatant Under the International Humanitarian Law of Armed Conflict", in *Case Western Reserve Journal of International Law*, Vol. 9, No. 1, 1977, pp. 38-78.
- MELZER Nils, *Targeted Killing in International Law*, Oxford, OUP, 2008, 468 pp.
- NAHLIK Stanislaw E., "L'extension du statut de combattant à la lumière du Protocole I de Genève de 1977", in *Collected Courses*, Vol. 164, 1979, pp. 171-249.
- SASSÒLI Marco, "La 'guerre contre le terrorisme', le droit international humanitaire et le statut de prisonnier de guerre", in *CYIL*, Vol. 39, 2001, pp. 211-252.
- SCHMITT Michael N., "Wound, Capture, or Kill: A Reply to Ryan Goodman's 'The Power to Kill or Capture Enemy Combatants'", in *European Journal of International Law*, Vol. 24, No. 3, 2013, pp. 855-861.

1. Members of armed forces lato sensu

GC III, Art. 4(A)(1)-(3); P I, Art. 43 [CIHL, Rules 3 and 4]

^ CASES AND DOCUMENTS

- Convention on the Safety of UN Personnel
- France, Accession to Protocol I [Part B., para. 7]
- United States, President Rejects Protocol I
- United States, Ex Parte Quirin et al.
- United States, Johnson v. Eisentrager
- Malaysia, Osman v. Prosecutor
- United States, Screening of Detainees in Vietnam
- Israel/Gaza, Operation Cast Lead [Part I, paras 237-248; Part II, paras 393-437]
- Israel, Military Prosecutor v. Kassem and Others
- ICRC/South Lebanon, Closure of Insar Camp
- Sudan, Report of the UN Commission of Enquiry on Darfur [Para. 422]
- South Africa, Sagarius and Others
- United States, The Schlesinger Report
- Armed Conflicts in the former Yugoslavia [Para. 19]
- Germany, Government Reply on the Kurdistan Conflict [Para. 8]
- United States, Status and Treatment of Detainees Held in Guantanamo Naval Base
- United States, United States v. Marilyn Buck
- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2015 [para. 117]

- ICTY, *The Prosecutor v. Prlić et al.*
- The Netherlands/Ukraine, *Classification of the Situation and Combatant Status* (2014)

2. Levée en masse

GC III, Art. 4(A)(6)

^ CASES AND DOCUMENTS

- International Law Commission, *Articles on State Responsibility* [Part A., Art. 9 and Commentary]
- German Invasion of Crete
- Israel, *Military Prosecutor v. Kassem and Others*
- Georgia/Russia, Human Rights Watch's *Report on the Conflict in South Ossetia* [Para. 95]

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- CRAWFORD Emily : “Levée en masse: a nineteenth century concept in a twenty-first century world”, in *Sydney law school legal studies research paper*, No. 11/31, 2011, 18 pp.

Further reading:

- WALLACE David & REEVES Shane R., “The Law of Armed Conflict’s “Wicked” Problem : Levée en masse in Cyber Warfare”, in *International Law studies US Naval War College*, Vol. 89, 2013, pp. 645-667.

3. Particular cases

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- BAXTER Richard R., “So-Called 'Unprivileged Belligerency': Spies, Guerrillas and Saboteurs”, in *BYIL*, Vol. 28, 1951, pp. 323-345.
- KASTENBERG Josh, “The Customary International Law of War and Combatant Status: Does the Current Executive Branch Policy Determination on Unlawful Combatant Status for Terrorists Run Afoul of International Law, or Is It Just Poor Public Relations?”, in *Gonzaga Law Review*, Vol. 39, 2003-2004, pp. 495-537.
- REEVES Shane R. & WALLACE David, “The combatant status of the “little green men” and other participants in the Ukraine conflict”, In *International law studies*, Vol. 91, 2015, pp. 361-401.

- WATTS Sean, "Combatant Status and Computer Network Attack", in *Virginia Journal of International Law*, Vol. 50, No. 2, 2010, pp. 391-447.

a) spies

HR, Arts 29-31; P I, Art. 46 [CIHL, Rule 107]

▸ CASES AND DOCUMENTS

- United States, Ex Parte Quirin et al.
- Afghanistan, Code of Conduct of the Mujahideen [Arts 12-18]
- ECCC, Detention Sites in Cambodia

▸ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- FERRELL William H., "No Shirt, No Shoes, No Status: Uniforms, Distinction and Special Operations in International Armed Conflict", in *Military Law Review*, Vol. 178, Winter 2003, pp. 94-140.
- LAFOUASSE Fabien, "L'espionnage en droit international", in *AFDI*, Vol. 47, 2001, pp. 63-136.

Further reading:

- CHADWICK Elizabeth, "The Legal Position of Prisoners, Spies and Deserters during World War I", in *RDMDG*, Vol. 36, No. 3-4, 1997, pp. 73-113.

b) saboteurs

▸ CASES AND DOCUMENTS

- United States, Ex Parte Quirin et al.
- Malaysia, Osman v. Prosecutor
- Nigeria, Pius Nwaoga v. The State

▸ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- MEYROWITZ Henri, "Le statut des saboteurs dans le droit de la guerre", in *RDMDG*, Vol. 5/1, 1966,

pp. 121-174.

Further reading:

- BUTTARO Andrew, "Ex Parte Quirin: The Nazi Saboteur Case and The Tribunal Precedent", in *National Security Law Brief*, Vol. 6, 2016, pp. 37-65.
- KENT Andrew, "Juridical Review for Enemy Fighters: The Court's Fateful Turn in Ex parte Quirin, The Nazi Saboteur Case", in *Vanderbilt Law Review*, Vol. 66, 2013, pp. 154-253.

c) mercenaries

P I, Art. 47 [CIHL, Rule 108]

^ CASES AND DOCUMENTS

- The Issue of Mercenaries
- Nigeria, Operational Code of Conduct
- Armed Conflicts in Sierra Leone, Liberia and Guinea [Part 1.B. (1).]

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- DAVID Éric, *Mercenaires et volontaires internationaux en droit des gens*, Bruxelles, Éditions de l'Université de Bruxelles, 1978, 460 pp.
- ETTINGER Aaron, "The mercenary moniker: condemnations, contradictions and the politics of definition", in *Security dialogue*, Vol. 45, No. 2, April 2014, pp. 174-191.
- FALLAH Katherine, "Corporate Actors: the Legal Status of Mercenaries in Armed Conflict", in *IRRC*, Vol. 88, No. 863, September 2006, pp. 599-611.

Further reading:

- BOUMEDRA Tahar, "International Regulation of the Use of Mercenaries in Armed Conflicts", in *RDMDG*, Vol. 20, No. 1-2, 1981, pp. 35-87.
- GÓMEZ DEL PRADO José L., "Whether the Criteria Contained in the 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries Notably Motivation Apply to Today's Foreign Fighters?", in *International Community Law Review*, Vol. 18, No 5, 2016, pp. 400-417.
- LIEBLICH Eliav, "The Status of Mercenaries in International Armed Conflict as a Case of

Politicization of International Humanitarian Law”, in *Bucerius Law Journal*, No. 3, December 2009, pp. 115-123.

- NWOGUGU Edwin I., “Recent Developments in the Law Relating to Mercenaries”, in *RDMDG*, Vol. 20, No. 1-2, 1981, pp. 9-34.
- SCOVILLE Ryan M., “Toward an Accountability-Based Definition of Mercenary”, in *Georgetown Journal of International Law*, Vol. 37, 2006, pp. 541-581.
- SHEARER David, *Private Armies and Military Intervention*, London, International Institute for Strategic Studies, 1998, 88 pp.

d) terrorists?

(See *supra* Fundamentals, B. International Humanitarian Law as a Branch of Public International Law, III.

International Humanitarian Law: a branch of international law governing the conduct of States and individuals

,1 Situations of application, C. Other situations, d) Acts of terrorism?)

^ CASES AND DOCUMENTS

- Israel, Detention of Unlawful Combatants
- United States, Status and Treatment of Detainees Held in Guantanamo Naval Base
- US, Military Commissions
- United States, Jurisprudence Related to the Bombing of the U.S.S Cole
- USA, Guantánamo, End of "Active Hostilities" in Afghanistan
- USA, Jawad v. Gates
- US, Combatant Immunity and Recognition of belligerency

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- BENBEKHTI Nabil, “Les actions entreprises à l’égard des ressortissants français détenus à Guantánamo Bay”, in *Actualité et Droit International*, March 2004.
- BORELLI Silvia, “The Treatment of Terrorist Suspects Captured Abroad: Human Rights and Humanitarian Law”, in BIANCHI Andrea (ed.), *Enforcing International Law Norms against Terrorism*, Oxford, Hart, 2004, pp. 39-61.
- GARRAWAY Charles, “Armed Conflict and Terrorist Organizations”, in VAN DEN HERIK Larissa & SCHRIJVER Nico (eds.), *Counter-terrorism strategies in a fragmented international legal order, Meeting the challenges*, Cambridge University Press, 2013, pp. 425-453.
- HOFFMANN Michael H., “State Practice, the Customary Law of War and Terrorism: Adapting Old Rules to Meet New Threats”, in *IYHR*, Vol. 34, 2004, pp. 231-249.
- KING Faiza Patel & SWAAK-GOLDMAN Olivia, “The Applicability of International Humanitarian Law to the 'War on Terrorism'”, in *Hague Yearbook of International Law*, 2003, Vol. 15, 2002, pp. 39-49.

- KLABBERS Jan, "Rebel with a Cause? Terrorists and Humanitarian Law", in *EJIL*, Vol. 14/2, April 2003, pp. 299-312.
- LAVOYER Jean-Philippe, "International Humanitarian Law and Terrorism", in LIJNZAAD Liesbeth, VAN SAMBEEK Johanna & TAHZIB-LIE Bahia (eds), *Making the Voice of Humanity Heard*, Leiden/Boston, M. Nijhoff, 2004, pp. 255-270.
- MCDONALD Neil & SULLIVAN Scott, "Rational Interpretation in Irrational Times: The Third Geneva Convention and War on Terror", in *Harvard International Law Journal*, Vol. 44/1, 2003, pp. 301-316.
- SASSÒLI Marco, "La 'guerre contre le terrorisme', le droit international humanitaire et le statut de prisonnier de guerre", in *CYIL*, Vol. 39, 2001, pp. 211-252.
- SASSÒLI Marco & ISSAR Yvette, "Guantánamo, Detainees", in *Max Planck Encyclopedia of Public International Law*, 2015, pp. 1-20.
- SAYAPIN Sergey, "The Application of the Fair Trial Guarantees to Alleged Terrorists in Non-International Armed Conflicts", in *Humanitäres Völkerrecht*, Vol. 3, 2004, pp. 152-159.
- SPEROTTO Federico, "Targeted Killings in response to Security Threats: Warfare and Humanitarian Issues", in *Global Jurist*, Vol. 8, Issue 3, 2008, pp. 1-32.
- SHLOMY Zachary, "Between the Geneva Conventions, Where Does the Unlawful Combatant Belong ?", in *Israel Law review*, Vol. 38, No. 1-2, 2005, pp. 378-417.
- WAXMAN Matthew C., "Detention as Targeting: Standards of Certainty and Detention of Suspected Terrorists", in *Columbia Law Review*, 2008, Vol. 108, pp. 1365-1430.

Further reading:

- ALÌ Antonio, "The relevance of international humanitarian law in national case law on terrorism", in POCAR Fausto, PEDRAZZI Marco & FRULLI Micaela (eds.), *War crimes and the conduct of hostilities: Challenges to adjudication and investigation*, Edward Elgar Publishing, 2013, pp. 293-310.
- DAVIS Morris, "Eroding the foundations of international humanitarian law : the United States Post-9/11", in *Case Western Reserve journal of international law*, Vol. 46, No. 3, 2014, pp. 499-524.
- GROSS Emanuel, "The Third Player-Illegal Combatant", in *San Diego International Law Journal*, 2016, pp. 199-238.
- GUILLOT Philippe, "Le "terroriste" et le droit international humanitaire", in TAVERNIER Paul & BIAD Abdelwahab, *Le droit international humanitaire face aux défis du XXIème siècle*, Bruylant, Bruxelles, 2012, pp. 267-289.
- LIETZAU William K., "U.S. detention of terrorists in the 21st century", in ROSE Gregory & OSWLAD Bruce, *Detention of non-state actors engaged in hostilities: The future law*, Brill, Nijhoff, 2016, pp. 268-295.
- ROBERTS Adam, "The Laws of War in the War on Terror", in *IYHR*, Vol. 32, 2002, pp. 193-245.
- SASSÒLI Marco, "Terrorism and War", in *Journal of International Criminal Justice*, Vol. 4, 2006, pp. 959-981.
- WEBER Diane, *Preventive Detention of Terror Suspect: A New Legal Framework*, Routledge, 2018, 296 pp.
- ZWANENBURG Marten, "Foreign terrorist fighters in Syria: Challenges of the "sending" state", in *International law studies*, Vol. 92, 2016, pp. 204-234.

e) members of private military and security companies?

(See *supra*)

^ CASES AND DOCUMENTS

- The Issue of Mercenaries [Part D.]
- Montreux Document on Private Military and Security Companies
- ICRC, International humanitarian law and the challenges of contemporary armed conflicts in 2015 [para. 121] SPECIFIC BIBLIOGRAPHY

II. Who is a prisoner of war?

GC III, Art. 4; P I, Art. 44 [CIHL, Rule 106]

^ CASES AND DOCUMENTS

- USSR, Poland, Hungary and the Democratic People's Republic of Korea, Reservations to Article 85 of Convention III
- France, Accession to Protocol I [Part B., para. 8]
- United States, Johnson v. Eisentrager
- Netherlands, In re Pilz
- Cuba, Status of Captured "Guerrillas"
- Malaysia, Public Prosecutor v. Oie Hee Koi
- Malaysia, Osman v. Prosecutor
- United States, Screening of Detainees in Vietnam
- Israel, Operation Cast Lead [Part II, paras 1336-1344]
- Israel, The Targeted Killings Case
- Inter-American Commission on Human Rights, Coard v. United States [Paras 30-32 and 48-50]
- United States, United States v. Noriega [Part B. II. A.]
- South Africa, Sagarius and Others
- Armed Conflicts in the former Yugoslavia [Para. 29]
- Afghanistan, Soviet Prisoners Transferred to Switzerland
- United States, Status and Treatment of Detainees Held in Guantanamo Naval Base
- United States, Trial of John Phillip Walker Lindh
- Georgia/Russia, Human Rights Watch's Report on the Conflict in South Ossetia [Paras 99-101]
- Georgia/Russia, Independent International Fact-Finding Mission on the Conflict in South Ossetia [Paras 83-89]
- Syria, Syrian rebels treat captured Filipino soldiers as 'guests'

- ICTY, *The Prosecutor v. Prlić et al.*
- ECCC, *Detention Sites in Cambodia*

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- JALABET Laurent, *les prisonniers de guerre (XVe-XIXe siècle) : entre marginalisation et reconnaissance*, Rennes, presses universitaires de Rennes, collections « Hors série », 2018, 298 pp.
- JINKS Derek, "The Declining Significance of POW Status", in *Harvard International Law Journal*, Vol. 45, No. 2, Summer 2004, pp. 367-442.
- LAPIDOTH Ruth, "Qui a droit au statut de prisonnier de guerre ? ", in *RGDIP*, Vol. 82/1, 1978, pp. 170-210.
- NAERT Frederik, "Detention in Peace Operations: the Legal Framework and Main Categories of Detainees", in *Revue de droit militaire et de droit de la guerre*, Vol. 1-2, No. 45, 2006, pp. 51-78.
- NAQVI Yasmin, "Doubtful Prisoner-of-War Status", in *IRRC*, No. 847, September 2002, pp. 571-596.
- ROSAS Allan, *The Legal Status of Prisoners of War: A Study of International Humanitarian Law Applicable in Armed Conflicts*, Helsinki, Suomalainen Tiedeakatemia, 1976, 523 pp.
- TOUGAS Marie-Louise, "Determination of Prisoner of War Status", in CLAPHAM Andrew, GAETA Paola & SASSOLI Marco (eds), *Commentary on the Geneva Conventions*, Oxford, Oxford University Press, 2015, pp. 939-956.

Further reading:

- BOGAR Thomas J., "Unlawful Combatant or Innocent Civilian? A Call to Change the Current Means for Determining Status of Prisoners in the Global War on Terror", in *Florida Journal of International Law*, Vol. 21, No. 1, April 2009, pp. 29-91.
- CARVIN Stéphanie, "Caught in the Cold: International Humanitarian Law and Prisoners of War during the Cold War", in *Journal of Conflict & Security Law*, Vol. 11, No. 1, 2006, pp. 67-92.
- MURPHY Ray & EL ZEIDY Mohammed, "Prisoners of War: a Comparative Study of the Principles of International Humanitarian Law and the Islamic Law of War", in *International Criminal Law Review*, Vol. 9, No. 4, 2009, pp. 623-649.
- SAHAR Francis, "Status of Palestinian Prisoners in International Humanitarian Law", in *Journal of Palestine Studies*, Vol. 43, No. 4, 2014, pp. 39-48.
- SASSOLI Marco, "La "guerre contre le terrorisme", le droit international humanitaire et le statut de prisonnier de guerre", in *CYIL*, Vol. 39, 2001, pp. 211-252.
- TSE Ka Ho, "The Relevancy of Nationality to the Right to Prisoner of War Status", in *Chinese Journal of International Law*, Vol. 8, No. 2, pp. 395-421.
- WECKEL Philippe, "Le statut incertain des détenus sur la base américaine de Guantánamo", in *RGDIP*, Vol. 106/2, 2002, pp. 357-369.
- WILHELM René-Jean, "Peut-on modifier le statut des prisonniers de guerre ?", in *IRRC*, No. 415 &

1. Presumption of combatant and prisoner-of-war status

GC III, Art. 5; P I, Art. 45(1)-(2)

^ CASES AND DOCUMENTS

- Malaysia, Public Prosecutor v. Oie Hee Koi
- Malaysia, Osman v. Prosecutor
- United States, Screening of Detainees in Vietnam
- United States, The Schlesinger Report
- ICTY, The Prosecutor v. Mrksic and Sljivancanin [Part A., para. 207]
- United States, Status and Treatment of Detainees Held in Guantanamo Naval Base
- United States, Hamdan v. Rumsfeld
- United States, United States v. Marilyn Buck [Part IV.5]

2. The status of "unlawful combatants"

(See *supra* Distinction, VII.Relativity of the distinction in modern conflicts, 5.Terrorism, the “war on terror”, and in particular the status of “unlawful combatants”, b) once in enemy hands)

^ CASES AND DOCUMENTS

- ICRC, The Challenges of Contemporary Armed Conflicts [Part B.]
- Israel, The Targeted Killings Case [Paras 24-40]
- Israel, Detention of Unlawful Combatants [Part A., paras 11-14]
- United States, Status and Treatment of Detainees Held in Guantanamo Naval Base
- United States, Military Commissions
- United States, Public curiosity
- Georgia/Russia, Human Rights Watch's Report on the Conflict in South Ossetia [Para. 56]
- United States, Jurisprudence Related to the Bombing of the U.S.S Cole
- USA, Guantánamo, End of "Active Hostilities" in Afghanistan
- USA, Jawad v. Gates

III. Treatment of prisoners of war

Introductory text

Those who have prisoner-of-war status (and the persons mentioned in GC III, Art. 4(B); GC I, Art. 28(2); P I,

Art. 44(5)) enjoy prisoner-of-war treatment. Prisoners of war may be interned without any particular procedure or for no individual reason. The purpose of this internment is not to punish them, but only to hinder their direct participation in hostilities and/or to protect them. Any restriction imposed on them under the very detailed regulations of Convention III serves only this purpose. The protection afforded by those regulations constitutes a compromise between the interests of the detaining power, the interests of the power on which the prisoner depends, and the prisoner's own interests. Under the growing influence of human rights standards, the latter consideration is gaining in importance, but IHL continues to see prisoners of war as soldiers of their country. Due to this inter-State aspect and in their own interest, they cannot renounce their rights or status.[6]

^ CASES AND DOCUMENTS

- United States Military Tribunal at Nuremberg, United States v. Wilhelm von Leeb et al.
- United States, Trial of Lieutenant General Harukei Isayama and Others
- United States, United States v. Batchelor
- United States, Former Prisoner of War on a Mission to Hanoi
- Eritrea/Ethiopia, Partial Award on POWs
- ICRC, Iran/Iraq, Memoranda
- United States, The Taguba Report
- Afghanistan/Canada, Agreements on the Transfer of Detainees
- Afghanistan, Code of Conduct of the Mujahideen [Arts 7-9 and 10]
- United States, Status and Treatment of Detainees Held in Guantanamo Naval Base
- United States, The Obama Administration's Internment Standards
- United States, Closure of Guantanamo Detention Facilities
- United States, Treatment and Interrogation in Detention
- Georgia/Russia, Human Rights Watch's Report on the Conflict in South Ossetia [Paras 98-101]
- USA, Jawad v. Gates
- Syria, Syrian rebels treat captured Filipino soldiers as 'guests'

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- CRAWFORD Emily, "combatant status and prisoner of war protections", in CRAWFORD Emily, *The Treatment of Combatants and Insurgents under the Law of Armed Conflict*, Oxford, OUP, 2010, pp 48-77.
- ESGAIN Albert J. & SOLF Waldemar A., "The 1949 Geneva Conventions Relating to the Treatment of Prisoners of War: Its Principles, Innovations and Deficiencies", in *North Carolina Law Review*, Vol. 41, No. 3, 1963, pp. 537-596.
- FISCHER Horst, "Protection of Prisoners of War", in FLECK Dieter (ed.), *Handbook of Humanitarian*

Law, Oxford, OUP, 1995, pp. 321-367.

- LEVIE Howard S. (ed.), "Documents on Prisoners of War", in *International Law Studies*, US Naval War College, Vol. 60, 1979, 853 pp.
- LEVIE Howard S. (ed.), "Prisoners of War in International Armed Conflict", in *International Law Studies*, US Naval War College, Vol. 59, 1978, 529 pp.
- RODLEY Nigel S., *The treatment of prisoners under International Law*, New York, Oxford, 2009, 663 pp.

Further reading:

- BORELLI Silvia, "Casting Light on the Legal Black Hole: International Law and Detentions Abroad in the 'War on Terror'", in *IRRC*, No. 857, March 2005, pp. 39-68.
- CRYER Robert, "The Fine Art of Friendship: jus in bello in Afghanistan", in *Journal of Conflict and Security Law*, Vol. 7, No. 1, 2002, pp. 37-83.
- LEVIE Howard S., "Legal Aspects of the Continued Detention of the Pakistani Prisoners of War by India", in *AJIL*, Vol. 67 (3), 1973, pp. 512-516.
- LEVIE Howard S., "The Employment of Prisoners of War", in *AJIL*, Vol. 57/2, 1963, pp. 318-353.
- Ministry of Foreign Affairs of Denmark, "The Copenhagen Process on the Handling of Detainees in International Military Operations", in *Revue de droit militaire et de droit de la guerre*, Vol. 3-4, No. 46, 2007, pp. 363-392.
- POCAR Fausto, "Violence on Civilians and Prisoners of War in the Jurisprudence of International Criminal Tribunals", in *Anuário brasileiro de direito internacional = Brazilian Yearbook of International Law*, Vol. 2, No. 4, 2009, pp. 11-30.
- PREUX Jean de, "L'homme de confiance des prisonniers de guerre", in *IRRC*, No. 414, 1953, pp. 449-475.
- SADAT Leila Nadya, "International Legal Issues Surrounding the Mistreatment of Iraqi Detainees by American Forces", in *ASIL Insight Newsletter*, Vol. 8, No. 10, May-July 2004.
- TURNS David, "The Treatment of Detainees and the 'Global War on Terror': Selected Legal Issues", in *IYHR*, Vol. 38, 2008, pp. 145-167.
- YIN Tung, *Distinguishing Soldiers and Non-State Actors: Clarifying the Geneva Convention's Regulation of Interrogation of Captured Combatants through Positive Inducements*, University of Iowa Legal Studies Research Paper, No. 08-42, September 2008, 55 pp.

a) protected as prisoners of war as soon as they fall into the power of the adverse party

GC III, Art. 5

- CASES AND DOCUMENTS

- The Tokyo War Crimes Trial

- Eritrea/Ethiopia, Partial Award on POWs [Part A., paras 68-80]

b) including in exceptional circumstances

P I, Art. 41(3)

^ CASES AND DOCUMENTS

- Germany/United Kingdom, Shackling of Prisoners of War

c) no transfer to a power which is unwilling or unable to respect Convention III

GC III, Art. 12

^ CASES AND DOCUMENTS

- United States, Screening of Detainees in Vietnam
- ICTY, The Prosecutor v. Mrksic and Sljivancanin [Part A., paras 672-674; Part B., paras 71-75]
- Afghanistan/Canada, Agreements on the Transfer of Detainees

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- CICR, Collège d'Europe, "Session 4 : Transfers from one authority to another", in *Detention in armed conflicts : proceedings of the 15th Bruges Colloquium, 16-17 October 2014*, Collegium, No. 45, automne 2015, pp 204.
- DROEGE Cordula, "Transfer of Detainees: Legal Framework, Non-Refoulement and Contemporary Challenges", in *IRRC*, Vol. 90, No. 871, September 2008, pp. 669-701.
- GILLARD Emanuela-Chiara, "There's No Place Like Home: States' Obligations in Relation to Transfers of Persons", in *IRRC*, Vol. 90, No. 871, September 2008, pp. 703-750.

d) respect for their allegiance towards the power on which they depend

^ CASES AND DOCUMENTS

- United States, United States v. Batchelor
- Cuba, Status of Captured "Guerrillas"

- Eritrea/Ethiopia, Partial Award on POWs [Part B., paras 84-86]
- ICRC, Iran/Iraq, Memoranda

e) no punishment for participation in hostilities

^ CASES AND DOCUMENTS

- Convention on the Safety of UN Personnel
- Malaysia, Osman v. Prosecutor
- Nigeria, Pius Nwaoga v. The State
- Israel, Military Prosecutor v. Kassem and Others
- South Africa, Sagarius and Others
- United States, Military Commissions
- US, Combatant Immunity and Recognition of belligerency

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- HOJFELDT Helene, "Prohibiting Participation in Armed Conflict", in *Military Law and Law of War Review*, Vol. 54, No. 1, 2015-2016, pp. 13-38.

f) rules on treatment during internment

GC III, Arts 12-81 [CIHL, Rules 118-123 and 127]

^ CASES AND DOCUMENTS

- Switzerland Acting as Protecting Power in World War II
- Germany/United Kingdom, Shackling of Prisoners of War
- United States Military Tribunal at Nuremberg, United States v. Wilhelm von Leeb et al.
- Cuba, Status of Captured "Guerrillas"
- ICRC/South Lebanon, Closure of Insar Camp
- United States, United States v. Noriega [Parts A. III. and B. III.]
- Eritrea/Ethiopia, Partial Award on POWs [Part A., paras 75-150 and Part B., paras 59-142]
- United States, The Taguba Report
- United States, The Schlesinger Report
- ICTY, The Prosecutor v. Mrksic and Sljivancanin [Part A., paras 201-252]
- The Conflict in Western Sahara [Part A.]

- United States, Public curiosity
- United States, Jurisprudence Related to the Bombing of the U.S.S Cole
- USA, Al-Shimari v. CACI Premier Technology, Inc.
- USA, Jawad v. Gates
- ECCC, Detention Sites in Cambodia

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- RISIUS Gordon & MEYER Michael A., "The Protection of Prisoners of War against Insults and Public Curiosity", in *IRRC*, No. 295, October 1993, pp. 288-299.

g) rules on penal and disciplinary proceedings

GC III, Art. 82-108 [CIHL, Rules 100-102]

^ CASES AND DOCUMENTS

- United States, Trial of Lieutenant General Harukei Isayama and Others
- Cuba, Status of Captured "Guerrillas"
- Malaysia, Osman v. Prosecutor
- United States, United States v. Noriega [Part A. III.]
- South Africa, S. v. Petane
- ICRC, Iran/Iraq, Memoranda
- United States, President's Military Order
- United States, Hamdan v. Rumsfeld
- United States, Military Commissions
- United States, Habeas Corpus for Guantanamo Detainees
- United States, Closure of Guantanamo Detention Facilities
- United States, Jurisprudence Related to the Bombing of the U.S.S Cole
- USA, Jawad v. Gates
- ECCC, Detention Sites in Cambodia

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- FARRELL Norman, "International Humanitarian Law and Fundamental Judicial Guarantees", in

Annual Conference/The African Society of International and Comparative Law, Vol. 10, 1998, pp. 130-141.

- SASSÒLI Marco, “La peine de mort en droit international humanitaire et dans l'action du Comité international de la Croix-Rouge”, in *Revue internationale de droit pénal*, No. 58, 1987, pp. 583-592.

h) punishment for acts committed prior to capture

GC III, Art. 85

^ CASES AND DOCUMENTS

- USSR, Poland, Hungary and the Democratic People's Republic of Korea, Reservations to Article 85 of Convention III
- United States, Ex Parte Quirin et al.
- United States, Johnson v. Eisentrager
- United States, Trial of Lieutenant General Harukei Isayama and Others
- United States, United States v. Noriega [Part A. III.]
- South Africa, Sagarius and Others
- United States, Status and Treatment of Detainees Held in Guantanamo Naval Base
- United States, Trial of John Phillip Walker Lindh
- United States, Military Commissions
- ECCC, Detention Sites in Cambodia

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- MEYER Michael A., “Liability of POWs for Offences Committed Prior to Capture – The Astiz Affair”, in *ICLQ*, Vol. 32, 1983.

i) limits to punishment for escape

GC III, Arts 91-94

^ CASES AND DOCUMENTS

- United States Military Tribunal at Nuremberg, The Ministries Case

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- WILSON Robert R., "Escaped Prisoners of War in Neutral Jurisdiction", in *AJIL*, Vol. 35, 1941, pp. 519-530.

IV. Transmission of information

^ CASES AND DOCUMENTS

- ICRC, Tracing Service [Para. 4]

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- DJUROVIC Gradimir, *The Central Tracing Agency of the International Committee of the Red Cross*, Geneva, Henry-Dunant Institute, 1986, 259 pp.
- SASSOLI Marco, "The National Information Bureau in Aid of the Victims of Armed Conflicts", in *IRRC*, No. 256, January 1987, pp. 6-24.
- SPIEKER Heike, "Maintenance and Re-Establishment of Family Links and Transmission of Information", in CLAPHAM Andrew, GAETA Paola & SASSOLI Marco (eds.), *The 1949 Geneva Conventions. A Commentary*, Oxford, Oxford University Press, 2015, pp. 1089-1121.

a) capture cards (to be sent to the family and the Central Tracing Agency)

GC III, Art. 70 and Annex IV B.

^ CASES AND DOCUMENTS

- ICRC, Iran/Iraq, Memoranda

b) notification (to the power of origin through the Central Tracing Agency)

GC III, Arts 69, 94, 104, 107, 120 and 122

^ CASES AND DOCUMENTS

- United States Military Tribunal at Nuremberg, The Ministries Case
- Iran/Iraq, 70,000 Prisoners of War Repatriated
- Eritrea/Djibouti: Repatriation of POWs

c) correspondence

GC III, Arts 71, 76 and Annex IV C. [CIHL, Rule 125]

^ CASES AND DOCUMENTS

- ICRC, Iran/Iraq, Memoranda

V. Monitoring by outside mechanisms

1. Protecting Powers

(See *infra* Implementation Mechanisms IV. Scrutiny by Protecting Powers and the ICRC)

GC III, Arts 8 and 126; P I, Art. 5

^ CASES AND DOCUMENTS

- South Africa, S. v. Petane

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- LEVIE Howard S., "Prisoners of War and the Protecting Power", in AJIL, Vol. 55, 1961, pp. 374-397.
- WYLIE Neville, "Protecting Powers in a Changing World", in Politorbis, revue de politique étrangère, No. 40, 2006, pp. 6-14.

2. ICRC

(See *infra* The International Committee of the Red Cross and the Law)

GC III, Arts 9 and 126(4); P I, Art. 5(3)-(4) [CIHL, Rule 124]

^ CASES AND DOCUMENTS

- ICRC, Tracing Service [Para. 4]
- Ethiopia/Somalia, Prisoners of War of the Ogaden Conflict
- Eritrea/Ethiopia, Partial Award on POWs [Part A., paras 55-62]
- ICRC, Iran/Iraq, Memoranda
- Afghanistan/Canada, Agreements on the Transfer of Detainees [Part A., paras 4, 7, 10; Part B., para. 10]

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- GASSER Hans-Peter, "Respect for Fundamental Judicial Guarantees in Time of Armed Conflict: the Part Played by ICRC Delegates", in *IRRC*, No. 287, March-April 1992, pp. 121-142.

VI. Repatriation of prisoners of war

Introductory text

As prisoners of war are only detained to stop them from taking part in hostilities, they have to be released and repatriated when they are unable to participate, i.e. during the conflict for health reasons and of course as soon as active hostilities have ended. Under the influence of human rights law and refugee law it is today admitted that those fearing persecution may not be forcibly repatriated. As this exception offers the Detaining Power room for abuse and risks rekindling mutual distrust, it is suggested that the prisoner's wishes are the determining factor, but it can be difficult to ascertain those wishes and what will happen to the prisoner if the Detaining Power is unwilling to grant him/her asylum. On the latter point, many argue that a prisoner of war who freely expresses his/her will not to be repatriated loses prisoner-of-war status and becomes a civilian who remains protected under Convention IV until resettlement.[7]

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- DINSTEIN Yoram, "The Release of Prisoners of War", in SWINARSKI Christophe (ed.), *Studies and Essays on International Humanitarian Law and Red Cross Principles in Honour of Jean Pictet*, Geneva/The Hague, ICRC/M. Nijhoff, 1984, pp. 37-45.
- SASSOLI Marco, "Release, Accommodation in Neutral Countries and Repatriation of Prisoners of War", in CLAPHAM Andrew, GAETA Paola & SASSOLI Marco (eds.), *Commentary on the Geneva Conventions*, Oxford, Oxford University Press, 2015, pp. 1039-1066.
- SHIELDS DELESSERT Christiane, *Release and Repatriation of Prisoners of War at the End of Active Hostilities: A Study of Article 118, paragraph 1, of the Third Geneva Convention Relative to*

the Treatment of Prisoners of War, Zurich, Schulthess, *Études suisses de Droit international*, Vol. 5, 1977, 225 pp.

Further reading:

- MURPHY Sean D., "Evolving Geneva Convention Paradigms in the "War on Terrorism": Applying the Core Rules to the Release of Persons Deemed "Unprivileged Combatants"", in *The George Washington Law Review*, Vol. 75, No. 5/6, August 2007, pp. 1105-1164.
- NIEBERGALL-LACKNER Heike, "Chapter 3 the Deserter and the Enemy party, part A. 1. Prisoners of war", in NIEBERGALL-LACKNER Heike, *Status and treatment of deserters in international armed conflicts*, Leiden Boston, Brill Nijhoff, 2016, pp.126-133.
- SASSÒLI Marco, "The Status, Treatment and Repatriation of Deserters under International Humanitarian Law", in *Yearbook of the International Institute of Humanitarian Law*, 1985, pp. 9-36.
- SCHAPIRO L. B., "Repatriation of Deserters", in *BYIL*, Vol. 29, 1952, pp. 310-324.
- SCHOLDEN Bettina, "The End of Active Hostilities: The Obligation to Release Conflict Internees under International Law", in *Houston Journal of International Law*, Vol. 38, No. 1, Winter 2016, pp. 99-214.

1. During hostilities

GC III, Art. 109-117

^ CASES AND DOCUMENTS

- Cuba, Status of Captured "Guerrillas"

a) medical cases

GC III, Annexes I and II

^ CASES AND DOCUMENTS

- ICRC, Iran/Iraq, Memoranda

b) agreements between the parties

^ CASES AND DOCUMENTS

- Case Study, Armed Conflicts in the former Yugoslavia [Para. 18]

2. At the end of active hostilities

GC III, Arts 118-119 [CIHL, Rule 128 A.]

^ CASES AND DOCUMENTS

- Bangladesh/India/Pakistan, 1974 Agreement [Arts 3-11 and 13-15]
- Ethiopia/Somalia, Prisoners of War of the Ogaden Conflict
- Eritrea/Ethiopia, Partial Award on POWs [Part B., paras 143-163]
- Iran/Iraq, 70,000 Prisoners of War Repatriated [Parts B., C. and D.]
- Case Study, Armed Conflicts in the former Yugoslavia [Paras 8 and 21]
- Bosnia and Herzegovina, Release of Prisoners of War and Tracing Missing Persons After the End of Hostilities
- The Conflict in Western Sahara [Parts A. and C.]
- Eritrea/Djibouti: Repatriation of POWs

a) when do active hostilities end?

^ CASES AND DOCUMENTS

- Eritrea/Ethiopia, Partial Award on POWs [Part B., paras 144-163]
- USA, Guantánamo, End of "Active Hostilities" in Afghanistan

b) no reciprocity

^ CASES AND DOCUMENTS

- Eritrea/Ethiopia, Partial Award on POWs [Part B., paras 148-163]

c) fate of POWs who refuse repatriation

^ CASES AND DOCUMENTS

- Iran/Iraq, 70,000 Prisoners of War Repatriated [Part D.]
- Bosnia and Herzegovina, Release of Prisoners of War and Tracing Missing Persons After the End of Hostilities [Part A.]
- Eritrea/Djibouti: Repatriation of POWs

3. Internment in neutral countries

GC III, Arts 110(2)-(3), 111 and Annex I

^ CASES AND DOCUMENTS

- Afghanistan, Soviet Prisoners Transferred to Switzerland

^ SPECIFIC BIBLIOGRAPHY

Suggested reading:

- OZERDEN Kemal, *Le sort des militaires belligérants, victimes de la guerre, débarqués dans un port neutre, d'après la Convention de Genève*, Paris, Pedone, 1971, 237 pp.

Further reading:

- FAVRE E., *L'internement en Suisse des prisonniers de guerre*, Geneva, Bâle, Lyon, Georg & Cie, Libraires-Editeurs, 1917-1919.
- HOFFER Henri-P., "L'internement des malades et blessés dans les pays neutres", in *IRRC*, No. 2, 1919, pp. 159-171.
- KELLY Bernard, *Military Internees, Prisoners of War and the Irish State during the Second World War*, Edinburgh, Palgrave Macmillan, 2015, 215 pp.
- REICHEL Daniel, "L'internement et le rapatriement des militaires soviétiques réfugiés en Suisse pendant le Seconde Guerre Mondiale", in *Actes du symposium 1982*, Lausanne, Éditions du Centre d'Histoire, 1982, pp. 77-90.
- STEINER M., *Die Internierung von Armeee Angehörigen kriegsführender Mächte in neutralen Staaten, insbesondere in der Schweiz während des Weltkrieges 1939/45*, Ernst Lang, Zurich, 1947, 103 pp.

Footnotes

- [1] See GC III, Art. 4(A)(1) a
- [2] See GC III, Art. 4(A)(2)
- [3] See P I, Art. 43
- [4] See P I, Art. 44(5)
- [5] See P I, Art. 44(3)
- [6] See GC III, Art. 7
- [7] See GC IV, Art. 6(4)