

Who is a combatant under IHL and what does their 'privilege' consist of? Who is a prisoner of war ("POW") and how should they be treated? Do 'terrorists' belong to a different category? Do such categories equally apply in international and non-international armed conflicts?

In a generic sense, combatants are members of the fighting forces of the belligerent parties to an international armed conflict. The main feature of their status is that they have the right to directly participate in hostilities ('combatant privilege'). Nevertheless, they must respect IHL and thus be punished, should they commit violations.

In addition to having the right to participate in hostilities, combatants are entitled to POW status, if they fall into enemy hands during an international armed conflict. Among other measures aimed at ensuring they are well treated, this protective status entails that they may not be prosecuted for their mere participation in hostilities. If, however, they did not distinguish themselves from the civilian population when captured, they can lose POW status and also be tried for acts of war. POWs can be held by the enemy until the cessation of active hostilities without any particular procedure, the purpose of their internment being to prevent their further participation in the conflict in support of the enemy.

During their internment, POWs must be treated humanely and must be protected against intimidation, insults and public curiosity. The 1949 Third Geneva Convention relative to the treatment of POWs ("GCIII") also details conditions of internment covering issues such as accommodation, food, clothing, hygiene and medical care. The ICRC's updated Commentary on GCIII (2020) bring fresh insights on the continued relevance of such essential protections (e.g. humane treatment of POWs, protection of their persons and honor, obligation to release and repatriate them), reflecting changes in the interpretation of concepts like the respect granted to women, mental health and disability, as well as developments relating to medical ethics and data-protection standards.

In the context of fighting international terrorism, persons who never had combatant status or lost their POW status, but nevertheless directly participated in hostilities, are sometimes labelled as 'terrorists', 'foreign fighters', 'unprivileged combatants' or as 'unlawful combatants'. While such terms do not exist in IHL, and hence do not bear any legal meaning or consequence, the status and treatment of persons designated as such has given rise to considerable controversy. What is certain, however, is that any person detained in relation to an armed conflict, be it a POW or a civilian having taken a direct part in hostilities, be it someone labelled as 'terrorist' or any other non-legal term, is entitled to be treated humanely and benefits from related

fundamental guarantees under both treaty and customary IHL.

VERSION FRANCAISE (PDF) => CLIQUEZ SUR LE LIEN SUIVANT: Coup de projecteur sur les combattants et les PGs disponible sur le site du blog *Quid Justitiae* de la Clinique de droit pénal et humanitaire (traduction de l'Université Laval).

The Law

More detailed developments and explanations about combatants and POWs, their rights and obligations and treatment under IHL can be found in the “The Law”, “Combatants and POWs” chapter.

A to Z

Relevant definitions can be found in the “A to Z” section: Combatants, Uniform, Levée en masse, Direct participation in hostilities, Spies, Deserter, Prisoners of war, War on terror, Terrorism and terrorists, Unlawful combatants, Unprivileged belligerent, Status, Classification of persons, Presumptions, Internment, Detainees, Detaining power, Adverse distinction, Public curiosity, Access, Central Tracing Agency, Conditions of detention, Humane treatment, Judicial guarantees, Tribunal, Accommodation, Labour, Disciplinary sanctions, Collective punishments, Transfer, Release, Repatriation, Escape.

The practice

The following selection of case studies further illustrates:

- Who is a combatant: ICTY, *The Prosecutor v. Prlić et al.*; Georgia/Russia, Human Rights Watch's Report on the Conflict in South Ossetia [Paras 52-56] and [Para. 95]; Malaysia, *Osman v. Prosecutor*; Nigeria, *Pius Nwaoga v. The State*
- The notions of ‘combatant immunity’ and of ‘unlawful combatant’: US, *Combatant Immunity and Recognition of belligerency*; Israel, *Detention of Unlawful Combatants*; United States, *Status and Treatment of Detainees Held in Guantanamo Naval Base*
- Who is a POW and how they should be treated: United States, *United States v. Noriega*; Eastern Ukraine: *Disputed POW Status*, Afghanistan/Canada, *Agreements on the Transfer of Detainees*; ECCC, *Detention Sites in Cambodia*; Eritrea/Ethiopia, *Partial Award on POWs*, Bangladesh/India/Pakistan, 1974 Agreement, ICRC, *Iran/Iraq Memoranda*

To go further

- The ICRC’s updated Commentary on the Third Geneva Convention, particularly:
- Article 13 on human treatment of POWs
- Article 14 on respect for the persons and honor of POWs

- Article 16 on equality of treatment and non-adverse distinction
 - Article 17 on questioning of POWs
 - Article 29 on hygiene and 30 on medical attention
 - Article 71 on correspondence, 72 on relief shipments and 123 on the role of the Central Tracing Agency
 - Article 126 on POWs' right to be visited by the ICRC
 - Articles 99 and 102 on the right to a fair trial
 - Article 38 on educational and recreational activities
 - Article 118 on POWs' release and repatriation
- Launch of the ICRC's updated Commentary on the Third Geneva Convention
 - Humanitarian Law & Policy blog series dedicated to the updated Commentary on the Third Geneva Convention, in collaboration with *EJIL! Talk and Just Security*

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