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Home > Internment

Internment is a specific kind of deprivation of liberty. In situations of armed conflict, it refers to the deprivation of liberty initiated or ordered by the executive branch – not the judiciary – without criminal charges being brought against the internee ^[1]. Internment is an exceptional, non-punitive measure of control that may be ordered for security reasons.

In IAC ^[2]S, IHL permits the internment of prisoners of war (POWs) ^[3] and, under certain conditions, of civilians ^[4]. While combatants may be subject to internment on account of their membership in the armed forces of the enemy, the internment of civilians must be undertaken on an individual basis. As the *lex specialis* ^[5] crafted specifically for situations of armed conflict, IHL applicable in IACs contains, in most instances, more precise rules, which are more adapted to the situation, as compared to the pertinent rules of human rights law.

IHL of NIACs ^[6] is not explicit about the grounds or procedure for internment, although detention ^[7] is explicitly mentioned as one of the “causes” that will give rise to the application of the protections of Common Article 3. These protections are meant to apply to any form of detention related to the armed conflict, and will therefore also apply to detention for serious security reasons, i.e. internment.

Additional Protocol II to the Geneva Conventions, adopted in 1977 - most provisions of which are widely considered to also reflect customary IHL - likewise governs deprivation

of liberty in NIAC. Article 4(1) of the Protocol lists fundamental guarantees for all persons who do not or have ceased to take a direct part in hostilities “whether or not their liberty has been restricted”. Article 5 is entitled: “Persons whose liberty has been restricted”, and specifies that its provisions (additional to those of Article 4), apply whether persons are “interned or detained” in relation to the armed conflict. The relationship between IHL and human rights law concerning internment in NIACs, in particular its admissibility and procedural guarantees is more controversial than for IACs.

See Prisoners of war ^[3]; Civilian internees ^[8]; Detention ^[7]; Internees ^[1];

OUTLINE

Chapter 8, II. The protection of civilians against arbitrary treatment, gg) if interned: civilian internees ^[9]

CASES

ECHR, Hassan v. UK ^[10]

United Kingdom, The Case of Serdar Mohammed (High Court Judgment) ^[11]

ECHR, Al-Jedda v. UK ^[12]

Israel, Cheikh Obeid et al. v. Ministry of Security ^[13]

Israel, Detention of Unlawful Combatants (Part A., Para. 17) ^[14]

Eritrea/Ethiopia, Award on Civilian Internees and Civilian Property ^[15]

ICRC, Iran/Iraq Memoranda ^[16]

United States, The Schlesinger Report ^[17]

Georgia/Russia, Human Rights Watch's Report on the Conflict in South Ossetia (Paras. 52-56 ^[18], 90-98) ^[19]

Georgia/Russia, Independent International Fact-Finding Mission on the Conflict in South Ossetia (Paras. 90-93) ^[20]

United Kingdom, The Case of Serdar Mohammed (Court of Appeal and Supreme Court Judgments) ^[21]

USA, Guantánamo, End of "Active Hostilities" in Afghanistan ^[22]

USA, Jawad v. Gates ^[23]

ICC, Confirmation of Charges against LRA Leaders ^[24]

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Links

- [1] <https://casebook.icrc.org/glossary/internees>
- [2] <https://casebook.icrc.org/glossary/international-armed-conflict>
- [3] <https://casebook.icrc.org/glossary/prisoners-war>
- [4] <https://casebook.icrc.org/glossary/civilians>
- [5] <https://casebook.icrc.org/glossary/lex-specialis>
- [6] <https://casebook.icrc.org/glossary/non-international-armed-conflict>
- [7] <https://casebook.icrc.org/glossary/detention>
- [8] <https://casebook.icrc.org/glossary/civilian-internees>
- [9] https://casebook.icrc.org/law/civilian-population#ii_3_b_gg
- [10] <https://casebook.icrc.org/case-study/echr-hassan-v-uk>
- [11] <https://casebook.icrc.org/case-study/united-kingdom-case-serdar-mohammed-high-court-judgment>
- [12] <https://casebook.icrc.org/case-study/echr-al-jedda-v-uk>
- [13] <https://casebook.icrc.org/case-study/israel-cheikh-obeid-et-al-v-ministry-security>
- [14] https://casebook.icrc.org/case-study/israel-detention-unlawful-combatants#part_a_para_17
- [15] <https://casebook.icrc.org/case-study/eritreaethiopia-award-civilian-internees-and-civilian-property>
- [16] <https://casebook.icrc.org/case-study/icrc-iraniraq-memoranda>
- [17] <https://casebook.icrc.org/case-study/us-schlesinger-report>

- [18] https://casebook.icrc.org/case-study/georgiarussia-human-rights-watches-report-conflict-south-ossetia#para_52
- [19] https://casebook.icrc.org/case-study/georgiarussia-human-rights-watches-report-conflict-south-ossetia#para_90
- [20] https://casebook.icrc.org/case-study/georgiarussia-independent-international-fact-finding-mission-conflict-south-ossetia#para_90
- [21] <https://casebook.icrc.org/case-study/united-kingdom-case-serdar-mohammed-court-appeal-and-supreme-court-judgments>
- [22] <https://casebook.icrc.org/case-study/usa-guantanamo-end-active-hostilities-afghanistan>
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- [24] <https://casebook.icrc.org/case-study/icc-confirmation-charges-against-lra-leader>