



Published on *How does law protect in war? - Online casebook* (<https://casebook.icrc.org>)

Home > Release

---

The terms release, return <sup>[1]</sup>, repatriation <sup>[2]</sup> and re-establishment <sup>[3]</sup> are closely related and the acts they describe often take place simultaneously. Their main common significance is that the Geneva Conventions and Additional Protocol I extend their application until the release, repatriation or re-establishment of all **protected persons** <sup>[4]</sup> in the power of the adversary has been ensured (GC I, Art. 5 <sup>[5]</sup>; GC III, Art. 5 <sup>[6]</sup>; GC IV, Art. 6 <sup>[7]</sup>; P I, Art. 3 <sup>[8]</sup>). There are slight differences between each of the terms:

1) Release <sup>[9]</sup> refers to the ending of a person's detention <sup>[10]</sup>, and the corresponding return of their liberty. In other words, once released, a person is no longer confined to a geographically restricted area and can move about freely.

Release and repatriation of prisoners of war <sup>[11]</sup> must take place simultaneously and must be effectuated without delay after the cessation of active hostilities (GC III, Art. 118 <sup>[12]</sup>).

Prisoners of war may also be released on parole or promise (GC III, Art. 21 <sup>[13]</sup>).

Civilians <sup>[14]</sup> interned in connection to an armed conflict must be released as soon as the reasons which necessitated their internment <sup>[15]</sup> no longer exist (GC IV, Art. 132 <sup>[16]</sup>).

2) Return <sup>[1]</sup> refers to the act of sending individuals to the locations of their previous residence, service, or to their places of origin.

At the outset of, or during an armed conflict, alien civilians are entitled to leave the territory of a Party to the conflict and return to their countries of origin, unless their departure is contrary to the national interests of the former (GC IV, Art. 35-36 <sup>[17]</sup> and Art. 48 <sup>[18]</sup>). Upon the close of hostilities or occupation <sup>[19]</sup>, States are obliged to return interned civilians <sup>[20]</sup> to their last place of residence, or to facilitate their repatriation (GC IV, Art. 134 <sup>[21]</sup>).

Religious <sup>[22]</sup> or medical personnel <sup>[23]</sup> whose retention is not indispensable to care for prisoners of war, must be returned to the Party to whom they belong (GC I, Art. 30 <sup>[24]</sup>).

3) Repatriation <sup>[2]</sup> refers to returning individuals to their place of origin, citizenship or service. Outside of armed conflict, it involves movement across national frontiers, and the premise that the individual in question is located on foreign territory. In the context of armed conflict, this is not necessarily always the case.

In the case of prisoners of war, it takes place simultaneously with their release. Prisoners of war must be released and repatriated without delay after the cessation of active hostilities (GC III, Art. 118 <sup>[12]</sup>) or during the conflict because of serious wounds or illness (GC III, Art. 109-110 <sup>[25]</sup>), and may be released and repatriated on parole or promise (GC III, Art. 21 <sup>[13]</sup>). While it is explicitly stated that prisoners of war must not be repatriated against their will during hostilities (GC III, Art. 109-110 <sup>[25]</sup>), there is no similar provision which would allow prisoners of war not to be repatriated after the end of an armed conflict. However, state practice since World War II and the principle of non-refoulement <sup>[26]</sup> may grant them such a right.

At the outset of, or during an armed conflict, alien civilians are entitled to leave the territory and be repatriated, unless their departure is contrary to the national interests of the

state of their current residence (GC IV, Art. 35-36 <sup>[17]</sup> and Art. 48 <sup>[18]</sup>). Upon the close of hostilities or occupation, states are obliged to facilitate the repatriation of interned civilians (GC IV, Art. 134 <sup>[21]</sup>).

#### 4) **Re-establishment**

Re-establishment <sup>[3]</sup> refers to ensuring that the released person establishes him- or herself a new permanent residency, whether in the State of the former Detaining Power, in the country of origin or in a third country.

In the Fourth Geneva Convention it is used to indicate that civilians (who benefit e.g. from the non-refoulement principle) remain protected by the Convention until they are re-established (GC IV, Art. 6 (4) <sup>[27]</sup>)

See Repatriation <sup>[2]</sup>; Re-establishment <sup>[3]</sup>; Return <sup>[1]</sup>;

## LEGAL SOURCE

### of POWs

GCIII, 118 <sup>[12]</sup>-119 <sup>[28]</sup>

CIHL, 128/A <sup>[29]</sup>

### on parole or promise

GCIII, 21/2-3 <sup>[13]</sup>

**when fallen into the power of the enemy under unusual conditions of combat which prevented their evacuation**

GCIII, 41/3 <sup>[30]</sup>

**of protected persons**

GCIV, 132 <sup>[16]</sup>-135 <sup>[31]</sup>

CIHL, 128/B <sup>[29]</sup>

**of interned persons during hostilities or occupation**

GCIV, 132 <sup>[16]</sup>

PI, 75/3 <sup>[32]</sup>

**in NIAC**

CIHL, 128/C <sup>[29]</sup>

## CASES

Bosnia and Herzegovina, Release of Prisoners of War and Tracing Missing Persons After the End of Hostilities <sup>[33]</sup>

US/Afghanistan, Transfer of Control over Bagram Prison <sup>[34]</sup>

United Kingdom, The Case of Serdar Mohammed (Court of Appeal and Supreme Court Judgments) <sup>[35]</sup>

USA, Guantánamo, End of "Active Hostilities" in Afghanistan <sup>[36]</sup>

## BIBLIOGRAPHIC RESOURCES

### Suggested readings:

DINSTEIN Yoram, "The Release of Prisoners of War", in *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.

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

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.

---

**Source URL:** <https://casebook.icrc.org/glossary/release>

### Links

[1] <https://casebook.icrc.org/glossary/return>

[2] <https://casebook.icrc.org/glossary/repatriation>

[3] <https://casebook.icrc.org/glossary/re-establishment>

[4] <https://casebook.icrc.org/casebook/doc/glossary/protected-persons-glossary.htm>

[5]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=3B040E24484650ECC12563CD00>

[6]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=B243E5B9DC2F3C13C12563CD00>

[7]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=46C5654579157937C12563CD00>

[8]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=873D39EE7960A2AEC12563CD00>

[9] <https://casebook.icrc.org/glossary/release>

[10] <https://casebook.icrc.org/glossary/detention>

[11] <https://casebook.icrc.org/glossary/prisoners-war>

[12]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=1F24D0C949FE1B83C12563CD00>

[13]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=D92AB7AC378C4E61C12563CD00>

[14] <https://casebook.icrc.org/glossary/civilians>

[15] <https://casebook.icrc.org/glossary/internment>

[16]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=E38B4DDC5409DC9FC12563CD00>

[17]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=3ED6299567787851C12563CD00>

[18]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=A9CC9555B17BBF7CC12563CD00>

[19] <https://casebook.icrc.org/glossary/occupation>

[20] <https://casebook.icrc.org/glossary/civilian-internees>

[21]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=9763E9D07BC6B876C12563CD00>

[22] <https://casebook.icrc.org/glossary/religious-personnel>

[23] <https://casebook.icrc.org/glossary/medical-personnel>

[24] <https://www.icrc.org/applic/ihl/ihl.nsf/ART/365-570036?OpenDocument>

[25]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=634B1B4A45B67C30C12563CD00>

[26] <https://casebook.icrc.org/glossary/non-refoulement>

[27] [https://ihl-](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=46C5654579157937C12563CD0051)

[databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=46C5654579157937C12563CD0051](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=46C5654579157937C12563CD0051)

[28] <https://www.icrc.org/applic/ihl/ihl.nsf/ART/375-590142?OpenDocument>

[29] [https://www.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule128](https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule128)

[30]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=26FD66FE89DAD871C12563CD>

[31] <https://www.icrc.org/applic/ihl/ihl.nsf/ART/380-600155?OpenDocument>

[32]

<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=086F4BB140C53655C12563CD0>

[33] <https://casebook.icrc.org/case-study/bosnia-and-herzegovina-release-prisoners-war-and-tracing-missing-persons-after-end>

[34] <https://casebook.icrc.org/case-study/usafghanistan-transfer-control-over-bagram-prison>

[35] <https://casebook.icrc.org/case-study/united-kingdom-case-serdar-mohammed-court-appeal-and-supreme-court-judgments>

[36] <https://casebook.icrc.org/case-study/usa-guantanamo-end-active-hostilities-afghanistan>