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The term “unprivileged belligerent” is used to refer to an individual who directly participates ^[1] in an international armed conflict ^[2] but who either does not have or has lost their combatant status ^[3]. As a result, they are not entitled to combatant privilege (i.e. immunity ^[4] from prosecution for lawful acts of war) and do not benefit from prisoner of war ^[5] status if they fall into enemy hands. Sometimes the term is equally used to designate (fighting) members of a non-state armed group ^[6] in a non-international armed conflict ^[7].

The specifics of how IHL applies to such persons is controversial. Some consider that unprivileged belligerents are civilians ^[8] who may only be targeted if and for as long as they directly participate in hostilities. If they fall into enemy hands, they are protected, as civilians, by international humanitarian law. Others consider that unprivileged belligerents are neither civilians nor combatants ^[9] but belong to a third category of persons who may be attacked at any time (like combatants). If falling into enemy hands, they may be interned ^[10] but do not benefit from the protective regimes that are designed for either prisoners of war or civilian internees ^[11]. The problem with this reasoning is that it introduces an unacceptable protection gap into the protective framework of international humanitarian law.

See Direct participation in hostilities ^[1]; Combatants ^[9]; Status ^[3]; Immunities ^[4]; Prisoners of war ^[5], Internment ^[10]; Civilians ^[8]; Civilians taking part in hostilities ^[12]; Unlawful combatants ^[13]; Spies ^[14]; Saboteur ^[15]; Terrorism and terrorists ^[16];

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Israel, Detention of Unlawful Combatants ^[18]

United States, Status and Treatment of Detainees Held in Guantanamo Naval Base ^[19]

US, Military Commissions (Part II.) ^[20]

U.S., Lethal Operations against Al-Qa'ida Leaders ^[21]

United States, Jurisprudence Related to the Bombing of the U.S.S. Cole ^[22]

USA, Guantánamo, End of "Active Hostilities" in Afghanistan ^[23]

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Suggested readings:

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- [20] <https://casebook.icrc.org/case-study/united-states-military-commissions#part2>
- [21] <https://casebook.icrc.org/case-study/us-lethal-operations-against-al-qaida-leaders>
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- [23] <https://casebook.icrc.org/case-study/usa-guantanamo-end-active-hostilities-afghanistan>