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Home > Unlawful combatants

The term “unlawful combatant” is used to refer to an individual who belongs to an armed group ^[1], in a context where either the individual or the group do not fulfil the conditions for combatant status ^[2]. The term was employed by the administration of President George W. Bush of the United States in its ‘global war on terror ^[3]’ to describe persons who are, in its view, neither combatants ^[4] nor civilians ^[5] but belong to a third category of persons who can be attacked at any time and can be detained indefinitely ^[6] without trial. It is also sometimes used as a synonym for “unprivileged belligerent ^[7]”.

See Unprivileged belligerent ^[7]; War on terror ^[3]; Combatants ^[4]; Civilians ^[5]; Detention ^[8]; Internment ^[6]; Terrorism and terrorists ^[9];

OUTLINE

Chapter 2, III. 1. e) The global war on terror ? ^[10]

Chapter 5, VII. 5. Terrorism, the "war on terror", and in particular the status of "unlawful combatants" ^[11]

DOCUMENT

United States, Closure of Guantanamo Detention Facilities ^[12]

United States, Treatment and Interrogation in Detention ^[13]

CASES

ICRC, The Challenges of Contemporary Armed Conflicts (Part B.) ^[14]

Israel, The Targeted Killings Case (Paras. 24-40) ^[15]

Israel, Detention of Unlawful Combatants ^[16]

United States, Status and Treatment of Detainees Held in Guantanamo Naval Base ^[17]

United States, President's Military Order ^[18]

United States, Hamdan v. Rumsfeld ^[19]

United States, Military Commissions ^[20]

United States, Habeas Corpus for Guantanamo Detainees ^[21]

United States, The Obama Administration's Internment Standards ^[22]

General Assembly, The use of drones in counter-terrorism operations ^[23]

U.S., Lethal Operations against Al-Qa'ida Leaders ^[24]

United States, Jurisprudence Related to the Bombing of the U.S.S. Cole ^[25]

USA, Guantánamo, End of "Active Hostilities" in Afghanistan ^[26]

USA, Jawad v. Gates ^[27]

BIBLIOGRAPHIC RESOURCES

Suggested readings:

BELLAMY Alex J., "No Pain, No Gain? Torture and Ethics in the War on Terror", in *International Affairs*, Vol. 82, No. 1, January 2006, pp. 121-146.

BOGAR Thomas, "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.

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.

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.

BYERS Michael, "Terrorism, the Use of Force and International Law after 11 September", in *ICLQ*, Vol. 51/2, 2002, pp. 401-414.

CASSESE Antonio, "Terrorism is also Disrupting Crucial Legal Categories of International Law", in *EJIL*, Vol. 12-5, 2001, pp. 993-1001.

CONDORELLI Luigi & NAQVI Yasmin, "The War against Terrorism and *Jus in Bello*: Are the Geneva Conventions Out of Date?", in BIANCHI Andrea (ed.), *Enforcing International Law Norms against Terrorism*, Oxford, Hart, 2004, pp. 25-37.

CRAWFORD Emily, *The Treatment of Combatants and Insurgents under the Law of Armed Conflict*, Oxford, OUP, 2010, 213 pp.

DÖRMANN Knut, "The Legal Situation of 'Unlawful/Unprivileged Combatants'", in *IRRC*, No. 849, March 2003, pp. 45-74.

DUFFY Helen, "Human Rights Litigation and the 'War on Terror'", in *IRRC*, Vol. 90, No. 871, September 2008, pp. 573-597.

FERNANDO-SANCHEZ Pablo Antonio (ed.), *International Legal Dimension of Terrorism* (See in particular Part IV, 'Terrorism and Armed Conflicts'), Leiden, M. Nijhoff, 2009, 512 pp.

FINAUD Marc, "L'abus de la notion de "combattant illégal" : une atteinte au droit international humanitaire", in *RGDIP*, Tome 110, No. 4, 2006, pp. 861-890.

FORSYTHE David P., "United States Policy Toward Enemy Detainees in the "War on Terrorism"", in *Human Rights Quarterly*, Vol. 28, No. 2, May 2006, pp. 465-491.

GASSER Hans-Peter, "International Humanitarian Law, the Prohibition of Terrorist Acts and the Fight against Terrorism", in *YIHL*, Vol. 4, 2004, pp. 329-347.

GREENWOOD Christopher, "International Law and the 'War against Terrorism'", in *International Affairs*, Vol. 78/2, 2002, pp. 301-317.

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.

JACKSON Jami Melissa, "The Legality of Assassination of Independent Terrorist Leaders: an Examination of National and International Implications", in *North Carolina Journal of International Law and Commercial Regulation*, Vol. 24/3, 1999, pp. 669-697.

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.

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.

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

LIETZAU William, “Combating Terrorism: The Consequences of Moving from Law Enforcement to War”, in WIPPMAN David & EVANGELISTA Matthew (eds), *New Wars, New Laws? Applying the Laws of War in 21st Century Conflicts*, New York, Transnational Publishers, 2005, pp. 31-51.

LINNAN David K., *Enemy Combatants, Terrorism and Armed Conflict Law: a Guide to the Issues*, Westport, London, Praeger Security International, 2008, 400 pp.

NEUMAN Gerald L., “Humanitarian Law and Counterterrorist Force”, in *EJIL*, Vol. 14/2, April 2003, pp. 283-298.

O’CONNELL Mary Ellen, “Combatants and the Combat Zone”, in *University of Richmond Law Review*, Vol. 43, Issue 3, March 2009, pp. 845-863.

OLSON Laura, “Guantanamo Habeas Review: Are the D.C. District Court’s Decisions Consistent with IHL Internment Standards?”, in *Case Western Reserve Journal of International Law*, Vol. 42, No. 1 & 2, 2009, pp. 197-243

PARKER Tom, “The Proportionality Principle in the War on Terror”, in *Hague Yearbook of International Law*

, Vol. 15, 2002, pp. 3-15.

PAUST Jordan J., "War and Enemy Status After 9/11: Attacks on the Laws of War", in *The Yale Journal of International Law*, Vol. 28, 2003, pp. 325-335.

PEJIC Jelena, "'Unlawful/Enemy Combatants:' Interpretations and Consequences", 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. 335-357.

PFANNER Toni, "Asymmetrical Warfare from the Perspective of Humanitarian Law and Humanitarian Action", in *IRRC*, No. 857, March 2005, pp. 149-174.

PLAW Avery, *Targeting Terrorists: A License to Kill?*, Aldershot, Ashgate, 2008, 294 pp.

RATNER Steven R., "Predator and Prey: Seizing and Killing Suspected Terrorists Abroad", in *Journal of Political Philosophy*, September 2007, Vol. 15, Issue 3, pp. 251-275.

ROBERTS Adam, "The Laws of War in the War on Terror", in *IYHR*, Vol. 32, 2002, pp. 193-245.

ROBERTS Adam, "Counter-terrorism, Armed Force and the Laws of War", in *Survival*, Vol. 44/1, 2002, pp. 7-32.

RONA Gabor, "An Appraisal of US Practice Relating to 'Enemy Combatants'",

in *YIHL*, Vol. 10 (2007), 2009, pp. 232-250.

RUBIN Alfred P., “Applying the Geneva Conventions: Military Commissions, Armed Conflict, and Al-Qaeda”, in *The Fletcher Forum of World Affairs*, Vol. 26/1, 2002, pp. 79-81.

SASSÒLI Marco, “La définition du terrorisme et le droit international humanitaire”, in *Revue québécoise de droit international*, Vol. 19, hors-série, 2007, pp. 29-48.

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, “Terrorism and War”, in *Journal of International Criminal Justice*, Vol. 4, Issue 5, 2006, pp. 969-981.

SASSÒLI Marco, “Query: Is There a Status of “Unlawful Combatant”?”, in JACQUES Richard B. (ed.), “Issues in International Law and Military Operations”, in *International Law Studies*, Vol. 80, 2006, pp. 57-69.

SCHMITT Michael N., “Asymmetrical Warfare and International Humanitarian Law”, *The Air Force Law Review*, Vol. 62, 2008, pp. 1-42.

SPEROTTO Federico, “Targeted Killings in response to Security Threats: Warfare and Humanitarian Issues”, in *Global Jurist*, Vol. 8, Issue 3, 2008, pp. 1-32.

TIGROUDJA H  l  ne, "Quel(s) droit(s) applicable(s)   la 'guerre au terrorisme' ?", in *AFDI*, Vol. 48, 2002, pp. 81-102.

VEUTHEY Michel, "Le droit international humanitaire face   la guerre contre le terrorisme", in DOUCET Ghislaine (ed.), *Terrorisme, victimes et responsabilit  p nale internationale*, Paris, Calmann-L vy, 2003, pp. 516-529.

VIERUCCI Luisa, "Prisoners of War or Protected Persons qua Unlawful Combatants? The Judicial Safeguards to which Guant namo Bay Detainees are Entitled", in *Journal of International Criminal Justice*, Vol. 1/2, 2003, pp. 284-314.

WATKIN Kenneth, "Humans in the Cross-Hairs: Targeting, Assassination and Extra-Legal Killing in Contemporary Armed Conflict", in WIPPMAN David & EVANGELISTA Matthew (eds), *New Wars, New Laws? Applying the Laws of War in 21st Century Conflicts*, New York, Transnational Publishers, 2005, pp. 137-179.

WAXMAN Matthew C., "Detention as Targeting: Standards of Certainty and Detention of Suspected Terrorists", in *Columbia Law Review*, 2008, Vol. 108, pp. 1365-1430

WEDGWOOD Ruth, "Responding to Terrorism: the Strikes against Bin Laden", in *The Yale Journal of International Law*, Vol. 24/2, 1999, pp. 559-576.

YOO John C. & HO James C., "The Status of Terrorists", in *Virginia Journal of International Law*

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- [3] <https://casebook.icrc.org/glossary/war-terror>
- [4] <https://casebook.icrc.org/glossary/combatants>
- [5] <https://casebook.icrc.org/glossary/civilians>
- [6] <https://casebook.icrc.org/glossary/internment>
- [7] <https://casebook.icrc.org/glossary/unprivileged-belligerent>
- [8] <https://casebook.icrc.org/glossary/detention>
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- [10] https://casebook.icrc.org/law/fundamentals-ihl#b_iii_1_C_e
- [11] https://casebook.icrc.org/law/principle-distinction#vii_5
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- [15] https://casebook.icrc.org/case-study/israel-targeted-killings-case#para_24
- [16] <https://casebook.icrc.org/case-study/israel-detention-unlawful-combatants>
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- [27] <https://casebook.icrc.org/case-study/usa-jawad-v-gates>