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“Prisoners of war” are combatants <sup>[1]</sup> who have fallen into the hands of the enemy, or specific non-combatants to whom the status of prisoner of war is granted by international humanitarian law.

The following categories of persons are prisoners of war:

- a. members of the armed forces of a party to the conflict, including members of militias or volunteer corps forming part of such **armed forces** <sup>[2]</sup> (this includes members of regular armed forces who profess allegiance to a government or authority not recognized by the Detaining Power);
- b. members of other militias or other volunteer corps that belong to a party to the conflict, provided that such groups:
  - are under responsible command;
  - have a fixed distinctive sign recognizable at a distance;
  - carry arms openly; and
  - conduct operations according to the law of armed conflict;
- c. civilians who accompany the armed forces provided they are authorized by the armed force they accompany;
- d. members of crews of merchant marine and civilian aircraft of a party to the conflict who do not benefit from more favourable treatment under international law;
- e. participants in a levée en masse <sup>[3]</sup>; and

f. the military wounded, sick <sup>[4]</sup> and shipwrecked <sup>[5]</sup> who fall into the hands of an enemy.

Combatants are required to distinguish themselves from the civilian population while they are engaged in an attack or in a military operation preparatory to an attack.

A combatant who fails to distinguish himself while he is engaged in an attack or in a military operation preparatory to an attack loses his combatant status if he is captured, which means he does not have prisoner of war status and can be tried for an act of war. However, he is to be given protections equivalent in all respects to those provided to prisoners of war under the third Geneva Convention.

Notably, in international armed conflicts governed by Additional Protocol I, a combatant distinguishes himself sufficiently if he carries his arms openly:

- a. during each military engagement; and
- b. during such time as he is visible to the adversary while engaged in a military deployment preceding the launching of an attack in which he is to participate.

#### Persons excluded from prisoner of war status:

The following persons are explicitly excluded from prisoner of war status in the law of armed conflict:

- a. members of the armed forces <sup>[2]</sup> of a party who fall into the power of the adverse party while engaging in espionage <sup>[6]</sup>; and
- b. mercenaries <sup>[7]</sup>.

See also [Combatants](#) <sup>[1]</sup>

Chapter 6, II. Who is a Prisoner of War? <sup>[8]</sup>

Chapter 6, III. Treatment of Prisoners of War <sup>[9]</sup>

## DOCUMENT

France, Accession to Protocol I (Part B., para. 8) <sup>[10]</sup>

## CASES

USSR, Poland, Hungary and the Democratic People's Republic of Korea,  
Reservations to Article 85 of Convention III <sup>[11]</sup>

United States, Johnson v. Eisentrager <sup>[12]</sup>

Netherlands, *In re Pilz* <sup>[13]</sup>

Cuba, Status of Captured "Guerrillas" <sup>[14]</sup>

Malaysia, Public Prosecutor v. Oie Hee Koi <sup>[15]</sup>

Malaysia, Osman v. Prosecutor <sup>[16]</sup>

United States, Screening of Detainees in Vietnam <sup>[17]</sup>

Israel, Operation Cast Lead (Part II, Paras. 1336-1344) <sup>[18]</sup>

Israel, The Targeted Killings Case <sup>[19]</sup>

Inter-American Commission on Human Rights, *Coard v. United States* <sup>[20]</sup>  
(Paras. 30-32 <sup>[21]</sup> and 48-50 <sup>[22]</sup>)

United States, *United States v. Noriega (Part B. II. A.)* <sup>[23]</sup>

South Africa, *Sagarius and Others* <sup>[24]</sup>

Case Study, *Armed Conflicts in the former Yugoslavia (Para. 29)* <sup>[25]</sup>

Afghanistan, *Soviet Prisoners Transferred to Switzerland* <sup>[26]</sup>

United States, *Status and Treatment of Detainees Held in Guantanamo Naval Base* <sup>[27]</sup>

United States, *Trial of John Phillip Walker Lindh* <sup>[28]</sup>

Georgia/Russia, *Human Rights Watch's Report on the Conflict in South Ossetia (Paras. 99-101)* <sup>[29]</sup>

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USA, *Al-Shimari v. CACI Premier Technology, Inc.* <sup>[31]</sup>

USA, *Guantánamo, End of "Active Hostilities" in Afghanistan* <sup>[32]</sup>

Syria, Syrian rebels treat captured Filipino soldiers as 'guests' <sup>[33]</sup>

Eritrea/Djibouti: Repatriation of POWs <sup>[34]</sup>

Eastern Ukraine: Disputed POW Status <sup>[35]</sup>

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