



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal – The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK
LEGAL

EDITORIAL **TEAM**

Raju Narayana Swamy (IAS) Indian Administrative Service **officer**



a professional
Procurement from the World Bank.

Dr. Raju Narayana Swamy popularly known as Kerala's Anti-Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala. He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University. He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and diploma in Public

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



Senior Editor

Dr. Neha Mishra



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.



Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

PROTECTION OF HUMAN RIGHTS OF PRISONERS OF WAR DURING THE TIME OF ARMED CONFLICT.

AUTHORED BY - ¹DR. SATISH CHANDRA & ²ADUTIYA VEER

ABSTRACT

This paper investigates protection of human rights of POWs - Prisoners of War, during the time of armed conflicts, particularly focusing on international law and its application in the treatment of POWs. It examines the fundamental guarantees provided through Geneva Conventions, especially the third Convention of 1949, which outlines rights and protections afforded to prisoners during wartime. The paper highlights the importance of humane treatment for POWs, including access to food, medical care, and legal protection against torture and mistreatment. Despite the robust legal framework, the paper discusses the violations of POW rights by state and non-state actors, such as the inhumane treatment of prisoners in Guantanamo Bay, and the public executions carried out by militant groups like ISIS and Boko Haram. It calls for stronger enforcement mechanisms by international bodies like the UN to ensure that the specifications of the Geneva Conventions are respected and implemented globally, thereby protecting the dignity and rights of POWs during conflicts.

Keywords: Human rights, Geneva Convention, War, Prisoners of War, Militants, Additional Protocol.

INTRODUCTION

The world in the twenty-first century has been the "Ground Zero" for several terrorist attacks and other atrocities that violate fundamental human rights. For the simple reason that we are all human, we are endowed with certain inherent and indivisible rights—the rights that are fundamental to our capacity to live with honor and dignity. These provisions are collectively referred as human rights. There is a common belief that all humans, irrespective of religion, race, gender, country of origin, sexual orientation, mother tongue, or any other distinguishing feature, have the same fundamental human rights. The access to human rights shall not be discriminated

¹ Dr. Satish Chandra, Assistant Professor, School of Law, Justice and Governance, Gautam Buddha University.

² Adutiya Veer, LLM, School of Law, Justice and Governance, Gautam Buddha University.

against in any way. Each of these rights is dependent on the others and cannot be divided in any way.³ Human rights are standards that aim to shield all people from serious social, legal, and political injustices, regardless of where they live. A person has the right to practice their religion freely, to be equal before the law, to be free from physical and mental torture, to be tried fairly for criminal charges, to be free from arbitrary detention, and to participate freely in political life. Both the law and morals at the international and national levels attest to these rights. A person's basic human rights shall not be encroached upon from them regardless of their goodness or badness, their condition, or their location. From a cozy bed to a dark gallows, from worldly lords to prisoners of war, these rights are fundamental and indivisible. Protecting the rights of prisoners of war (henceforth regarded as "POWs") has been the primary target of international humanitarian law since its inception. From the United States military at Guantanamo Bay to Islamic State forces in Iraq and Syria to Boko Haram in Nigeria, the past decade has seen the most heinous and cruel handling of prisoners of war. Genocides, mass murders, and the massacre of civilians and prisoners of war are some of the reprehensible atrocities perpetrated by extremist groups such as IS and Boko Haram. As an example, it was claimed a few months ago that ISIS executed 250 captured soldiers after parading them over the desert.⁴

Meaning and concept of POW

To begin a thorough examination of the protections afforded to prisoners of war in Islamic and international law, it is necessary to have a basic understanding of a few key concepts.

WAR

Authors and learned jurists have each offered their own explanation of the word. According to Professor Oppenheim, "a contention between two or more States through their armed forces in the process of trying to overpower each other and imposing such conditions of peace as the victor pleases" is what war is. More specifically, "the state or condition of Governments contending by force" is how the eminent American jurist Professor Westlake has described the phenomenon. War, according to Professor Schwarzenberger's third definition, is when "the Powers choose to apply against each other to the utmost military as well as political and

³ "What are Human Rights?" available at <http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx> (Visited on 02 March, 2025)

⁴ Available at <http://www.dailymail.co.uk/news/article-2736764/Marched-deaths-Sickening-ISIS-slaughter-continues-250-soldiers-captured-Syrian-airbase-stripped-led-desert-mass-execution.html> (Visited on 03 March, 2025)

economic power," with the exception of states that are neutral or at conflict with one another, within the bounds of international laws. The German's concept stands out because, in contrast to the others, he considers the stance of "third states," also known as "neutral states," whose involvement frequently has a major impact on the conflict's outcomes.⁵ All of these definitions of "war" have one thing in common: they focus on states and ignore the possibility that a group or organization may be involved if they lack the characteristics recognized by global law as necessary to be recognised as a state. A modern understanding of war must also include such entities because, after 9/11, most hostile groups fought with the name of the "fight against terrorism" involving at least one such organization. All of these wars will be defined and examined within the context of this academic endeavor as war.

Prisoners of War

During an international armed conflict, a combatant is considered a prisoner of war if he or she is arrested by the opposing side. Humanitarian law ensures the protection of civilians who become targets of hostile forces during times of war. The person is protected as a POW if they are a combatant. A person's status as a national determines the extent of their protection. The Red Cross International committee states that "nobody in enemy hands can be outside the law" in its understanding of the Geneva Conventions."⁶

1. Third Geneva Convention of 1949 governs the ministration of prisoners of war, whose definition is based on that of combatant (GCI-III). In international and non-international armed conflicts, there are treatment guarantees for civilians who participate in the hostilities. Members of non-state armed groups are not acknowledged as combatants in non-global armed engagements. However, there exists a particular system of protection for individuals who are detained due to reasons connected to the conflict in humanitarian law that applies to conflicts that do not involve international forces. Individuals fighting for non-state armed groups in conflicts that do not include international forces are subject to this detention status. ► Civilians ► Combatants ► Detention ► Non-state armed groups⁷

⁵ Aziz M. Kurtha, "AffairsPRISONERS OF WAR, WAR CRIMES AND THE GENEVA CONVENTIONS" 25PH at p. 99 (1972)

⁶ Available at <http://www.britannica.com/EBchecked/topic/477235/prisoner-of-war-POW> (Visited on 02 March, 2025)

⁷ Norfadhilah Mohd Ali, "WHEN CIVILIANS "CROSS THE LINE": THE INTERNATIONAL AND ISLAMIC LAW PERSPECTIVES", 1 IJHSS, at p.225 (2011)

Even if a detainee does not fulfill the requirements laid down by the Third Convention, the detaining state may nevertheless offer them the treatment that prisoners of war receive. When it comes to non-conflict situations, it can also be partially applied through Special Agreement.

1. The Additional Protocol to the Geneva Conventions Relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I), adopted in 1977, approaches the issue of prisoners of war from a new angle. It specifies which groups of people, if taken prisoner by an enemy force, are entitled to the safeguards accorded to prisoners of war. The objective is to prevent authorities from arbitrarily denying people this status based on an overly narrow reading of the Third Geneva Convention's definition. Furthermore, Additional Protocol I sets assurances to ensure that none who is eligible for the status will have it rejected. Under rule of law, a competent, independent, and impartial tribunal must ascertain the status of any individual who took part in the hostilities and which directly and fell into the enemy's hands before the individual could enjoy protection under the Third Convention during an armed conflict. (GC III Art. 5, API Art. 45).
2. Prisoners of war are governed by these documents on their housing, nutrition, medical treatment, religion, intellectual and physical pursuits, discipline, transfer, labor, correspondence, and finances while in captivity. When it comes to disciplinary and penal punishments, being a prisoner of war brings with it some basic protections.
3. This classification acknowledges that, up to their capture, combatants have a lawful right to employ violence. It seeks to guarantee that prisoners of war are not subjected to retaliation, mistreatment, or torture during their imprisonment to extract information. Though interrogation of prisoners of war is permissible, no insidious kind of coercion, including mental or physical torture, may be used to get any information from them. Additionally, captives cannot be tried or punished just for mere participation in a war when they are designated as prisoner-of-war status. In cases when soldiers have committed crimes that violate humanitarian law, such as terrorist actions, they can still be put on trial for their crimes in accordance with the rule of law and the legal rights recognized by humanitarian law, even if they will still be considered prisoners of war. The death penalty is reserved for a small number of crimes.

The original 1949 definition of a prisoner of war was revised in 1977 to account for the changing concept of "combatants" associated with modern military tactics. A person's status as a prisoner of war can now be extended to include not just members of the armed forces but also citizens who are involved in resistance groups or popular uprisings, according to the

revised definition. Certain nations' usage of the term "unlawful combatants" is based on nothing in humanitarian law and denies prisoners of war the safeguards that are typically accorded to them.⁸

The safeguards afforded by prisoner-of-war status should not be revoked, even in cases where a combatant has committed serious breaches of humanitarian law. The criteria and procedures established by humanitarian law must be followed for determining the status of a combatant or prisoner of war. In most cases, domestic armed conflicts do not fit the criteria of a prisoner of war. Nevertheless, individuals who are held due to conflict-related reasons are guaranteed special provisions and treatment under the Additional Protocol to the Geneva Conventions relating to the Protection of Victims of Non-international Armed Conflicts (APII Art. 5).⁹

Definition of Prisoners of War (Third 1949 Geneva Convention)

The rights of certain individuals to be considered prisoners of war are outlined in the Third Geneva Convention.:

- Prisoners of war . . . are persons belonging to one of the following categories, who have fallen into the power of the enemy:

—Individuals serving in the military forces of a warring party or in the militias or voluntary corps that make up that side.¹⁰

—Anyone who meets the following requirements may serve in or operate outside of their own region, regardless of occupation, as long as they are members of another militia or volunteer corps, including organized resistance groups, and are affiliated with a Party to the conflict.:

4. commanding someone who is accountable for their subordinates;
5. property of possessing a stationary, distinguishable sign that may be seen from a distance;
6. to publicly display one's arms;
7. their activities must be carried out in conformity with the rules and traditions of war..

—Regular military personnel who claim loyalty to a power that the Detaining Power does not recognize.¹¹

⁸ Borelli, Sylvia. "Casting Light on the Legal Black Hole: International Law and Detentions Abroad in the 'War on Terror.'" *International Review of the Red Cross* 857 (March 2005): 39–68.

⁹ British Medical Association. *The Medical Profession and Human Rights: Handbook for a Changing Agenda*. London: Zed in association with BMA, 2001, chap. 5.

¹⁰ Dinstein, Yoram. *The Conduct of Hostilities under the Law of International Armed Conflict*. Cambridge: Cambridge University Press, 2004.

¹¹ Goldman, Robert K. *Unprivileged Combatants and the Hostilities in Afghanistan: Their Status and Rights under*

—Individuals who are not officially part of the armed forces but who accompany them in various capacities, such as civilians serving on military aircraft crews, journalists covering conflicts, businesses providing supplies, members of labor units, or organizations responsible for the welfare of the forces, are required to have a valid identification card issued by the armed forces they are accompanying.

—Members of crews, including masters, pilots and apprentices, of the merchant marine and the crews of civil aircraft of the Parties to the conflict, who do not profit by more favourable treatment under any other provisions of international law.

—It is permissible for citizens of a non-occupied territory to openly carry weapons and adhere to the rules and customs of war if they spontaneously rise up in resistance to an invasion force's approach without prior preparation. (GCIV Art. 4.A)

- In accordance with this Convention, the following individuals shall also be considered prisoners of war::

—Members of the occupying country's armed forces who are deemed necessary to be interned by the occupying power due to their allegiance, regardless of whether they were originally liberated while hostilities were outside the occupied territory. This includes cases where individuals have failed to comply with a summons meant to intern them or have attempted and failed to rejoin the armed forces that are currently engaged in combat.¹²

—The individuals who fell into one of the categories listed in this Article and have been hosted by powers that are not involved in the conflict and are obligated to intern them according to international law, regardless of any preferential treatment that these powers may offer. . (GCIII Art. 4.B)

The concept of a prisoner of war was broadened in 1977 by Additional Protocol I to account for the changing idea of "combatants" associated with new military tactics. The revised definition expands the scope of who may be considered a prisoner of war to include civilians and members of armed groups who are not officially part of regular armed forces (API Arts. 43, 44).¹³ Armed forces and combatant are defined more broadly to encompass:

- Even if One side is represented by a government or authority that the other side does not acknowledge, any organized military forces, groups, and units that report to that

International Humanitarian and Human Rights Law . Washington, DC: American Society of International Law, Task Force Paper, 2002.

¹² Henckaerts, Jean-Marie, and Louise Doswald-Beck, eds. *Customary International Law* . Vol. 1, *The Rules* . Cambridge: Cambridge University Press, 2005, part 5, chap. 37.

¹³ Hingorani, R. C. *Prisoners of War*. New Delhi: Oxford & IBH, 1982.

side and are responsible for the actions of its subordinates are considered part of that side's armed forces.

- The standards of international law that apply during armed conflicts must be strictly enforced by an internal disciplinary system that these armed forces must undergo.
- Anyone serving in the military forces of a warring party (with the exception of chaplains and medical staff protected by Article 33 of the Third Convention) is considered a combatant and has the right to take part in direct hostilities. (API Art. 43)

According to the 1977 Additional Protocol I, Rather than being classified as a prisoner of war according to legal standards based on official military affiliation, the status is associated with objective criteria based on direct involvement in the battle. Thus, anyone directly involved in a fight, whether a combatant or a civilian, can claim prisoner-of-war status and the protections that come with it.

It is considered that a person is a prisoner of war if they participate in hostilities and are captured by an opposing group. If the person asserts his position as a prisoner of war, seems to have a right to such status, or if the party he is dependent on asserts it on his behalf by informing the detaining Power or the Protecting Power [ICRC], then the individual will be protected under the Third Convention. If there is any uncertainty regarding whether a person is a prisoner of war, they will remain so and will be safeguarded by the Third Convention and this Protocol until a competent tribunal decides otherwise.. (API Art. 45.1)

Since the Additional Protocols of 1977, there has been no legitimate foundation in human law for classification of certain soldiers as "unlawful combatants" that prevents them from enjoying the status or protections granted to prisoners. Regarding determination of a person's status as a national, combatant, or prisoner of war, humanitarian law establishes a framework that provides procedural rights.¹⁴

Granting PrisonerofWar Status (Additional Protocol I)

In order to control who can be considered a prisoner of war, several safeguards are put in place for both civilians and soldiers. This eliminates the detaining power's discretionary control over the prisoner's status. Even if they don't technically qualify as prisoners of war, further assurances ensure that all prisoners of war will get the same level of protection.

¹⁴ Murphy, Ray. "Prisoners of War and Contemporary Conflicts: The Case of the Taliban and Al Qaeda Detainees." *Military Law and the Law of War Review* (2002): 141–67.

Presumption and Control by a Competent Tribunal

The presumption of prisoner of war status applies to any individual who comes into the control of an opposing party. Additional Protocol I broadens the scope of this principle's applicability to eliminate any possibility of challenges to a combatant's military affiliation. Any individual or organization involved in the fighting is automatically designated as a prisoner of war status. A competent tribunal, not the detaining power, has to decide whether someone is entitled to the status of prisoner of war when question arises, according to the Third Geneva Convention and Additional Protocol I.

The present Convention shall protect individuals until a competent tribunal determines their status, in the event that there is any uncertainty as to whether they are combatants (as listed in GCIII Art. 4) after they have committed a belligerent act and fallen into enemy hands.(GCIII Art. 5).

When a person becomes a prisoner of war during hostilities, the ICRC states that it is presumed to be true if the person claims the status, deems to be entitled to it, or the party on whose behalf he is dependent notifies the detaining authority or the protecting power that he is a prisoner of war. The Third Convention and Additional Protocol I will continue to protect such a person until a competent tribunal determines their status as a prisoner of war, even if there is any doubt as to whether they are entitled to that status (API Art. 45.1). In such cases, an individual's protection is enhanced; in accordance with Additional Protocol I, a competent tribunal decides when a detained person claims such status, and the procedures can be overseen, especially by the ICRC. Crucial as it is, this safeguard prevents detaining powers from unjustly prosecuting citizens for their direct involvement in the fighting.¹⁵

In the event that an individual captured by one side of the disagreement is not recognized as a prisoner of war and is to face trial by that side for a crime related to the disagreement, that individual has the right to seek judicial resolution of the issue by asserting his right to be recognized as a prisoner of war. This adjudication must take place prior to the trial for the offense whenever feasible under the relevant procedure. The ICRC's representatives are permitted to attend the hearings to decide that matter.(API Art. 45.2).

¹⁵ Pilloud, Claude. "Prisoners of War." In *International Dimensions of Humanitarian Law* , 167–86. Geneva: Henry Dunand Institute, 1988.

Humanitarian law often provides protection to civilians, but it does not apply to civilians who take part in the fighting or remain in the area during fighting. (API Art. 51, APII Art. 13.3). As noted previously, they may be granted prisoner-of-war status under certain circumstances (API Art. 45.1–3).

What this implies is that the authority holding someone must show to a reasonable tribunal that they are not eligible to benefit from this status. Everyone who isn't officially a soldier or a prisoner of war will be considered a civilian. In the event of their detention, they will be guaranteed basic rights, and in the event that they are to face charges for breaches of humanitarian law, they will be subject to due process.¹⁶

Whether they are prisoners of war or not, children nonetheless enjoy the particular protections guaranteed to them by humanitarian law, regardless of whether they are combatants. (API Art. 77).

Non application of the Prisoner of War Status

There is a misconception that armed groups should lose their combatant or prisoner-of-war status if they break humanitarian law. Responsible command capable of complying with humanitarian law duties is required of armed forces personnel according to the Geneva Conventions. The status of individuals who have participated in hostilities as prisoners of war is unaffected by this, nevertheless. Extra Protocol I was very explicit about this.

It is not possible to remove a combatant from prisoner of war status just because they did not follow the standards of international law that apply to wars. (API Art. 44.2). While retaining their rights as a prisoner of war, including judicial protections, a detainee can face charges for breaches of humanitarian law.¹⁷

The fundamental aspect of the protections accorded to civilians under humanitarian law is the differentiation between combatants and civilians. As a result, the Geneva Conventions provide

¹⁶ United Nations Office of the High Commissioner for Human Rights (OHCHR). (n.d.). *Geneva Convention relative to the Treatment of Prisoners of War*. <https://www.ohchr.org/en/instruments-mechanisms/instruments/geneva-convention-relative-treatment-prisoners-war>

¹⁷ International Committee of the Red Cross (ICRC). (n.d.). *Geneva Convention relative to the Treatment of Prisoners of War*. https://www.redcross.org/content/dam/redcross/atg/PDF_s/International_Services/International_Humanitarian_Law/IHL_SummaryGenevaConv.pdf

categorically that soldiers must openly display their weapons and separate themselves from civilians.

In order to no longer be considered a prisoner of war, a soldier must demonstrate that he is distinct from civilians and must not be subject to the control of an opposing party. (API Art. 44.4). Extra Protocol is followed because it is understood that there are times when armed combatants can't properly differentiate themselves due to the nature of the fighting, I watered down the requirement that they do so. Consequently, being visibly armed during a military operation may suffice; the requirement to wear a uniform and distinguishing insignias is not included in this responsibility. The protections accorded to prisoners of war under Geneva Convention III and Additional Protocol I remain in effect, as stated in this article, even when their status as prisoners of war is rejected. It is not the responsibility of the detaining power to evaluate the circumstances and determine the status; rather, it is the responsibility of a competent tribunal.

Because of the distinction between being officially a prisoner of war and just being treated as one, a person who has used force covertly as a combatant may face prosecution under the domestic law of the power holding them. But the rights accorded to prisoners of war under the Third Geneva Convention, especially those pertaining to judicial assurances, will apply to this individual as well.

Mercenaries enjoy neither combatant nor prisoner-of-war status (API Art. 47). The Additional Protocol I of 1977 provides a clear definition of mercenaries. People from other countries who willingly join the fighting or form militias affiliated with one side of the conflict do not fall under this category. No matter their country of origin, these international volunteers should be treated as prisoners of war and be able to have their status determined by a tribunal.

As long as they aren't dressed like soldiers, spies might not be eligible for prisoner-of-war status.(API Art. 46).

Mercenaries and spies alike deserve humane treatment and basic protections.

The Status of Prisoner of War (Third Geneva Convention)

Enemy captives are easy targets for retaliation, coercion, and degradation the moment they fall into enemy hands. The Third Geneva Convention, which governs the treatment of prisoners

of war and the circumstances of their custody, specifies the status of prisoners of war in great detail over its 143 provisions.

The confirmation of specific rights and duties in the Convention and the monitoring mechanism included in the mandate of the safeguarding authority are the foundations upon which this protection is built. Regarding detainees on both sides of a conflict, the ICRC will act as a protecting power if the parties involved fail to do so. (GCIII Arts. 8–10). This principle of reciprocity is critical in getting the warring parties to recognize and uphold the rights guaranteed by the Third Convention. But the advantages of reciprocity aren't always enough to stop bad treatment in some cases—like in non-international armed combats. In situations like these, the ICRC's involvement becomes even more crucial.

Here are the main points of the Third Geneva Convention's rights and responsibilities::

- Humane treatment of prisoners of war is of the utmost importance. A grave violation of humanitarian law would occur if the detaining authority committed any illegal act or failed to do anything that could cause the death or serious harm of a prisoner of war in its care.(GC III Art. 13)¹⁸.
- Respect for the person is an absolute right for prisoners of war. When dealing with women, it is important to remember their unique demands and provide them with the same favorable treatment as males. (GC III Art. 14)¹⁹.
- In accordance with their health conditions, the detaining power must ensure that prisoners of war get free maintenance and medical treatment. (GC III Art. 15)²⁰.
- All prisoners of war must be treated alike by the detaining power (GC III Art. 16)²¹.
- Inmates are only required to divulge their rank, name, date of birth, serial number, and last and first names. Each side in a war must provide an identification card to all prisoners of war under its control. It is not illegal to question prisoners of war, but the Third Convention forbids the use of psychological or physical torture, as well as any other type of force, to get information from them. When interrogated, prisoners of war must not be subjected to threats, insults, or any other form of unfavorable treatment

¹⁸ Article 13 GC III

¹⁹ Article 14 GC III

²⁰ Article 15 GC III

²¹ Article 16 GC III

because they choose not to answer. Interrogation of detainees must be conducted in a language that they are fluent in. (GC III Art. 17)²².

- No one has the right to take the possessions of a prisoner of war²³. (GC III Art. 18).
- Immediately upon arrest, prisoners of war must be sent to facilities located outside of battle zones. Humane and in an environment comparable to that experienced by the detaining power's military during station changes, such an evacuation must be conducted out. All prisoners of war have a right to adequate nutrition, hydration, clothes, and medical care. (GCIII Arts. 19, 20)²⁴.
- The burial grounds must be as sanitary and healthy as possible, taking into consideration the local environment. (GC III Art. 22)²⁵.
- Whenever possible, military requirements necessitate clearly marking prisoner of war camps with the letters PW or PG. (GC III Art. 23)²⁶.
- The housing circumstances for prisoners of war must be comparable to those of the detaining power's military stationed in the same region. In no event may the aforementioned circumstances be harmful to their health. Completely dry, warm, and well-lit conditions are required within the building.(GC III Art. 25)²⁷.
- In order to maintain good health and prevent nutritional deficits or weight loss, the basic daily meal rations must be adequate in amount, quality, and diversity for prisoners of war. It is also important to consider the inmates' typical eating habits.(GC III Art. 26)²⁸.
- In order to keep the camps clean and healthy and to avoid epidemics, the power holding them must take all required hygienic steps. There must be designated facilities for female prisoners of war in all prison camps. (GC III Art. 29)²⁹.
- There ought to be a good infirmary at every camp. Inmates must be able to access medical care, ideally from doctors and nurses affiliated with the power they are serving and, if feasible, their own country. Any military or civilian medical facility that is able to provide specialized care to prisoners of war with serious illnesses or conditions shall admit such prisoners. Prisoners of war are required to undergo medical examinations

²² Article 17 GC III

²³ Article 18 GC III

²⁴ Article 19-20 GC III

²⁵ Article 22 GC III

²⁶ Article 23 GC III

²⁷ Article 25 GC III

²⁸ Article 26 GC III

²⁹ Article 29 GC III

on a monthly basis. The inmates' weight, general health, nutrition, and cleanliness, as well as their overall condition, will be recorded.(GCIII Arts. 30 and 31)³⁰.

- Detainees who are members of the medical staff or chaplains employed by the detaining authority to aid POWs are not to be regarded as POWs themselves. Nonetheless, they will be provided with all the resources they need to do their jobs, including the protections and benefits of the Third Convention. (GCIII Art. 33)³¹.
- Religious freedom, athletic participation, and intellectual pursuits are all guaranteed to prisoners of war. (GCIII Arts. 34–38)³².
- A responsible commissioned officer from the regular armed forces of the detaining power must be placed in immediate charge of each camp. The officer in question is expected to be well-versed in and adhere to the Third Geneva Convention. In a language that the prisoners of war can comprehend, the camp must display all rules and regulations pertaining to the inmates' behavior, including the wording of the Convention. (GCIII Arts. 39–42)³³.
- Depending on factors such as the captives' age, sex, rank, and health, the power holding them may employ them as laborers for non-military tasks.
- Supervising duties are the only ones that non-commissioned officers are obligated to carry out. No prisoner of war may be subjected to degrading or harmful labor without compensation³⁴. (GCIII Arts. 49–57).
- All the financial matters pertaining to prisoners of war are specifically addressed in Articles 58 to 68.
- The relationships between prisoners and the outside world are outlined in Articles 69–77. The detaining authority is required to inform the authorities the inmates rely on of their capture, as stated in the requirements. In addition, the prisoners must be allowed to receive and send letters, with the frequency ranging from two to four per month depending on the type of card used. With the oversight of the ICRC, prisoners are also permitted to receive individual or group shipments of goods, including food, clothes, medical supplies, and items with a religious, educational, or recreational purpose.

³⁰ Article 30-31 GC III

³¹ Article 33 GC III

³² Article 34-38 GC III

³³ Article 39-42 GC III

³⁴ Article 49-57 GC III

- Regarding their circumstances of captivity, prisoners of war have the right to petition the military authorities over whom they have control.(GCIII Art. 78)³⁵.
- Articles 82 to 108 enumerate the penal and disciplinary sanctions:

—Typically, the laws and military tribunals of the power holding the prisoner of war are applied to them. In addition to safeguarding defense resources and rights, these courts must perpetually provide assurances of judicial impartiality and independence.

—Prisoners of war are safeguarded by the Convention's provisions even after a conviction. This includes the right to make complaints and the judicial safeguards that were rightfully theirs, as outlined in Articles 78–126.

— The use of collective punishment for specific offenses, physical punishment, solitary confinement in dark places, and cruelty and torture in general are all strictly prohibited.

— The Convention makes it quite clear what the range of disciplinary sanctions is.

—Escape may be punished only by disciplinary punishment. ▶ Collective punishment ▶ Corporal punishment ▶ Judicial guarantees

- Any POW with life-threatening injuries or certain diseases must be evacuated immediately to their home country or hospitalized in a neutral state. (Arts. 109–117). Article 110 details the precise parameters that control these choices. Those who require immediate return home due to injuries or illnesses include:

—those who appear to have suffered a severe decline in mental or physical health due to an incurable illness or injury;

—those who have made a full recovery from illness or injury but whom it appears have suffered a severe and lasting decline in mental or physical fitness;

— those who are injured or ill who are not expected to make a full recovery within a year, as determined by medical professionals

Those that a neutral state could potentially accommodate are:

—those who are ill or injured but do not expect to deteriorate for at least a year, or for treatment in a neutral nation, even sooner;

—prisoners of war whose physical or mental health is gravely jeopardized by prolonged incarceration, as determined by medical professionals, but whose release in a neutral nation could alleviate this danger.³⁶

An agreement between the relevant nations allows for the direct repatriation of some prisoners

³⁵ Article 78 GC III

³⁶ Sánchez, A. P. (2011). The legal framework for the detention of prisoners of war. *International Review of the Red Cross*, 93(882), 111-132.

of war treated in a neutral country. if:

—their health has worsened to the point where they meet the requirements for immediate repatriation;

—despite receiving treatment, they continue to have severely diminished mental or physical abilities.

- (Annex I of the Third Geneva Convention, relating to Art. 110, provides a model agreement concerning the direct repatriation and accommodation in neutral countries of wounded and sick prisoners.) The parties to a conflict must establish Mixed Medical Commissions from the outset of the conflict to assess the condition of the wounded and sick.
- As soon as hostilities end, all prisoners of war must be liberated and returned home without delay. (GCIII Arts. 118, 119)³⁷.
- Articles 120 and 121 address the death of prisoners of war. Individuals' rights to burial, notification of death certificates, the validity of individual wills, and the duty of the detaining authority to investigate any death whose cause is questionable are all governed by these laws.³⁸
- In order to better understand the situation of prisoners of war and coordinate relief efforts, the warring factions have agreed to establish information bureaus.(GCIII Arts. 122–125).
- The following violations of the Geneva Conventions have been perpetrated against war prisoners:: “committing a crime against humanity by intentionally killing, torturing, or otherwise treating a prisoner of war inhumanely, including through the use of biological experiments, causing them great bodily pain or harm, forcing them to serve in the forces of the enemy power, or deliberately denying them the right to a fair and regular trial as outlined in this Convention.” (GCIII Art. 130)³⁹.

Fundamental Guarantees

A person's status as a prisoner of war is directly related to their status as a combatant and, by extension, as a member of the armed forces. Even in internal armed conflicts, not everyone who has taken part in hostilities—whether they be citizens, mercenaries, or even children—is

³⁷ Article 118, 119 GC III

³⁸ Peel, J., & Sassoli, M. (2015). The ICRC and the protection of prisoners of war. *International Review of the Red Cross*, 97(899), 339-360.

³⁹ Article 130 GC III

automatically considered a combatant. And yet, even in these cases, a handful of basic assurances do hold.⁴⁰

Those who do not or will not take part in hostilities (whether they be international or domestic) are, in fact, guaranteed certain basic rights under Common Article 3 of the Four Geneva Conventions. It ensures that everyone, in any situation, has the same rights. When deciding whether or not to apply Common Article 3 to individuals subject to their power and effective control, states cannot cite reasons such as the conflict's specificity, the difficulty of qualifying it, accusations of illegal involvement in the hostilities or terrorism, or the person's nationality. Here, in 2006, the U.S. Supreme Court rejected the rationale put up by U.S. authorities and determined that Common Article 3 applied to the Guantanamo Bay captives within the framework of the war on terror. Both precedent and customary law on a global scale upheld this ruling. The two 1977 Additional Protocols completed the fundamental protections of Common Article 3. Supplementary rights are granted to individuals, regardless of their status, who do not or do not participate in hostilities in both international and non-international armed conflicts⁴¹.

In International Armed Conflicts

Article 75 of Additional Protocol I to the Geneva Convention provides that “Every individual who has been involved in armed conflict and does not qualify for prisoner of war status (as determined by judicial decisions—refer to the section above) or who is not protected by more favorable provisions of the Fourth Geneva Convention (Relative to the Protection of Civilians) is entitled to the basic protections guaranteed by these conventions..” These assurances cover a range of matters, including as treatment, custody, and access to justice⁴².

In Non International Armed Conflicts

The concept of prisoners of war is not explicitly addressed in Additional Protocol II, which deals with armed conflicts that do not include international parties. Nevertheless, regardless of their involvement in hostilities, detained or deprived persons are protected by Additional Protocol II's provisions, which aim to prevent ill-treatment, prohibit torture, and establish basic

⁴⁰ Mölsä, P. (2016). The right of fair trial for prisoners of war: A historical and legal analysis. *International Review of the Red Cross*, 98(908), 83-114.

⁴¹ Jones, S. (2010). The evolving concept of the prisoner of war. *International Review of the Red Cross*, 92(878), 205-224.

⁴² Hillenbrand, P. (2003). Combatant immunity and the treatment of prisoners of war. *International Review of the Red Cross*, 85(849), 507-534.

and judicial protections⁴³.

- Everyone has the right to basic protections, including the freedom from discrimination based on race, religion, gender, sexual orientation, age, national origin, disability, or any other legally protected characteristic. (GCI–IV Common Art. 3, APII Art. 4).
- Individuals who have their freedom taken away due to the armed conflict are safeguarded against any form of mistreatment and are entitled to certain safeguards. (APII Art. 5). These are detailed in the entry on
- While attacking or conducting military operations in preparation for an attack, fighters must differentiate themselves from civilian populations, according to the ICRC's 2005 report on the principles of customary international humanitarian law (customary IHL study). In the absence of a prior trial and the preservation of judicial protections, they forfeit their right to be considered prisoners of war and are not subject to conviction or sentencing. (Rules 106 and 107 of the customary IHL study). Humanitarian treatment of all those placed hors of combat is a tenet of customary international humanitarian law, which also enumerates all the basic safeguards that apply to such individuals, such as the right to be detained, tried, and sentenced.. (Rules 87–105).
- Individuals detained who are considered combatants or otherwise involved in hostilities may be eligible for prisoner-of-war status and the protections that come with it, as outlined in the Third Geneva Convention, subject to certain conditions of reciprocity and specific agreements made between the warring factions. As a result, the parties to the internal conflict must sign a reciprocal agreement in order to receive this status; it is not awarded automatically.⁴⁴

CONCLUSION AND SUGGESTIONS

It has come to light that the "Bible" for prisoners of war is the Convention Relating to Prisoners of War 1949, most often referred to as the third Geneva Convention. There is an urgent need to establish certain essential protections for prisoners of war due to their traumatic experiences during the Second World War and the widespread outcry from peacekeepers over the human rights violations that happened during this time in relation to them. The Third Geneva Convention, which established numerous rights for prisoners of war, was the product of these

⁴³ Gasser, H. P. (2017). The protection of prisoners of war in non-international armed conflicts: A commentary on Article 4 Additional Protocol II. *International Review of the Red Cross*, 99(913), 321-342.

⁴⁴ Osakwe, C., & Umoh, U. E. (2014). Private military contractors, war crimes and international humanitarian law. *Scientia Militaria - South African Journal of Military Studies*, 42(1).

discussions. However, everyone is aware that "ITS IMPLEMENTATION" rather than "THE LAW" is the main issue. Even while the convention has unavoidably guaranteed many rights, powerful governments are clearly making a farce of it. The notorious Guantanamo Bay prison, which Amnesty International has called the "Gulag of our times," stands out the most. Rumor has claimed that the prisoners aren't even given the most basic safeguards guaranteed by the common Geneva Conventions, Article 3. Additionally, in the present day, various militant groups such as Boko Haram and ISIS are openly refusing to follow the Geneva convention's protections for prisoners of war, and some have even considered publicly executing these prisoners of war in order to send a strong message around the world.

The requirement is that it is insufficient to merely document the precautions. In addition, they need to be put into practical use. The only way this can happen is if the UN stops being a "toothless dog" and punishes the states that have repeatedly violated the protections meant for these war victims. These prisoners of war are being treated so poorly that they are not even being given food and drink. It is necessary to establish a precedent, and the only way to do it is for the United Nations to punish governments that break the law. Only then would the states be compelled to follow the conventions' instructions.

WHITE BLACK
LEGAL