

# MONITORING INTERNATIONAL HUMANITARIAN LAW IN IRAQ

*A project of the International Humanitarian Law Research Initiative*

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## Briefing on the Status and Treatment of POWs in Iraq

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In the course of a military campaign, combatants that surrender, are captured, or otherwise have fallen into the power of the enemy, may benefit from a specific protection regime granted by the Third Geneva Convention. This briefing note reviews the conditions of the prisoner of war (POW) protection regime, the rights and treatment of POWs, the conditions for their repatriation, and underlines some of the key issues arising in the current conflict in Iraq. The issue of POW rights, and the legal duties of both Iraq and the U.S. in their treatment of POWs, has become increasingly relevant in the current conflict. Officials from both sides of the conflict have recently cited IHL as supporting their position.

### Review and summary of IHL provisions regarding:

- Prisoner of War Status, and
- Treatment of Prisoners of War

### On Prisoner of War status

#### What is a Prisoner of War?

In principle, a combatant belonging to a party to an international armed conflict that has fallen into the power of the enemy becomes a prisoner of war (POW). POW status provides a series of rights and privileges to these persons and also creates a set of specific obligations for the detaining authorities in terms of internment, treatment and repatriation. The purpose of this protection is to ensure the safety and dignity of captured combatants while under the control of the enemy and for the duration of the hostilities.

#### When is POW status relevant?

Prisoner of war status applies only in situations of international armed conflict, defined as conflicts between states. POW status is not available to combatants captured in internal armed conflicts, where there are hostilities between a state and a non-state armed group, or between non-state armed groups, unless the parties thereto agree otherwise.

#### Who can be a POW?

POW status is granted to selected categories of individuals that have fallen into the power of the enemy. (See [Article 4](#) of the Third Geneva Convention.) These categories are:

- Regular combatants

The first and most important group of individuals eligible for POW status is regular combatants. The main characteristic of regular combatants is that, being part of a regular army, they have the right to directly participate in hostilities. If they fall into the power of the enemy, they become prisoners of war and cannot be prosecuted or punished for having taken part in these hostilities. Members of militias, paramilitary

groups and volunteer corps forming part of the regular armed forces are considered regular combatants and benefit from POW status.

- Other combatants

The general rule is that combatants who do not belong to the armed forces of the party to the international conflict in question do not benefit from POW status. However, there can be situations where military groups, although not being part of the regular armed forces, may belong to the party to the conflict, such as resistance movements in occupied territories. These combatants may benefit from POW status if they fulfill the following conditions:

- (a) the combatants must be organized into a military structure, i.e. commanded by a person responsible for his subordinates;
- (b) the combatants must wear a fixed distinctive sign recognizable at a distance;
- (c) they must carry arms openly; and,
- (d) they must conduct their operations in accordance with the laws and customs of war.

Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war can also benefit from POW status.

- Non-combatants

According to the Third Geneva Convention, non-combatant individuals accompanying the armed forces without actually being members thereof, such as the civilian crew of a military aircraft, war correspondents, supply contractors or suppliers for the welfare of the armed forces also benefit from POW status, provided that they are authorized to fulfill these functions by the armed forces and carry proper identification issued by the armed forces

- Exceptions

To benefit from POW status, combatants must clearly distinguish themselves from civilians or members of the enemy armed forces, by wearing a distinctive uniform or sign and carrying their weapons openly. Those who fail to fulfill these obligations at the time of their capture cannot benefit from POW status. Spies and “saboteurs” by concealing their combatant status, are not entitled to the status of prisoner of war. (See [Article 46](#) of Additional Protocol I.)

A combatant that distinguishes himself from the civilian population and violates IHL does not lose combatant status and retains, if captured by the enemy, the POW status.

Mercenaries do not have the right to be a combatant or a prisoner of war. A mercenary is a person taking a direct part in the hostilities who is neither a national nor a resident of the territory of the party to the conflict, is specially recruited and paid a compensation substantially in excess of that promised or paid to combatants of similar rank and function in the armed forces of that party. (See [Article 47](#) of Additional Protocol I.)

**Is POW status granted automatically?**

Persons from the above categories falling into the power of the enemy are automatically entitled to the POW status. In case of doubt, any person who takes part in hostilities is presumed to be a prisoner of war until such time as their status has been determined by a competent tribunal. (See [Article 5](#) of the Third Geneva Convention.)

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## **On the treatment of Prisoners of War**

The Third Geneva Convention provides a detailed account of the obligations of the Detaining Power regarding the treatment of POWs. This briefing note provides an overview of the protection regime.

### **General protection**

Prisoners of war are no longer combatants. They should therefore be treated with humanity and be protected against the effect of hostilities. Assaulting, molesting or omitting to provide assistance and care to POWs that may result in serious injuries or death of the prisoners is considered a war crime under IHL. Likewise, POWs should be protected at all times against acts of violence or intimidation from the public, as well as insults and public curiosity (See [Article 13](#) and [Article 14](#) of the Third Geneva Convention).

### **Questioning Prisoners of War**

According to [Article 17](#), every prisoner of war, when questioned, is bound to give only his surname, first names and rank, date of birth, and army, regimental, personal or serial number, or failing this, equivalent information. The questioning of prisoners of war must be carried out in a language which they understand.

No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatsoever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to any unpleasant or disadvantageous treatment of any kind.

### **Registration**

One of the essential aspects of POW protection is the registration of the prisoner. Through this registration process, the Detaining Power is made accountable for the whereabouts and well-being of each prisoner. The prisoners have the right, immediately upon their capture or at the latest one week after his or her arrival in a camp, to send to their family and the ICRC-based Central Tracing Agency a card informing them of their captivity and state of health. At no time should prisoners of war be without identity documents. The Detaining Power shall supply such documents to prisoners of war who possess none. (See [Article 69](#) and [Article 70](#) of the Third Geneva Convention.)

### **Evacuation and Internment**

POWs should be evacuated as soon as possible after their capture to camps situated in an area far enough from the combat zone for them to be out of danger. POWs can be evacuated to locations outside the territory of their state of origin.

Prisoners of war may be interned without any procedure or particular reasons. The purpose of this internment is not to punish them for their participation into the hostilities, but to hinder their ability to take part again into the hostilities and ensure their protection against potential reprisals from the public.

POWs can only be detained in premises located on land and affording every guarantee of hygiene and health. These locations should be specifically designed and assigned to hold POWs. They should not be mixed with other categories of prisoners (See [Article 22](#) of Third Geneva Convention).

Prisoners should be accommodated under conditions as favorable as those for the forces of the Detaining Power located in the same area. Female prisoners should be accommodated in separate dormitories.

### **Personal property**

All effects and articles of personal use, except arms, military equipment and military documents, shall remain in the possession of prisoners of war, likewise their metal helmets and gas masks and like articles issued for personal protection. Effects and articles used for their clothing or feeding shall likewise remain in their possession, even if such effects and articles belong to their regulation military equipment.

### **Labor**

The Detaining Power may utilize the labor of prisoners of war who are physically fit, taking into account their age, sex, rank and physical aptitude, and with a view particularly to maintaining them in a good state of physical and mental health. For the type of work authorized and conditions, see [Article 49](#), [Article 50](#) and [Article 51](#) of Third Geneva Convention.

### **Communication with the outside**

Prisoners of war are allowed to send and receive letters and cards. The minimum number of letters and cards sent by each prisoner of war shall not be less than two letters and four cards monthly. As a general rule, the correspondence of prisoners of war shall be written in their native language. The Detaining Power may allow correspondence in other languages (See [Article 71](#) of the Third Geneva Convention).

### **Penal and disciplinary sanctions**

A prisoner of war remains subject to the laws, regulations and orders in force for the armed forces of the Detaining Power. The Detaining Power is justified in taking judicial or disciplinary measures in respect of any offence committed by a prisoner of war against such laws, regulations or orders. However, no proceedings or punishments contrary to the provisions of the convention can be applied. For more information on penal and disciplinary sanctions, see Article 82 – 108 of the [Third Geneva Convention](#).

This briefing note has been prepared by the International Humanitarian Law Research Initiative at the Harvard Program on Humanitarian Policy and Conflict Research. This initiative provides basic information on legal aspects of the current conflict in Iraq. It has been developed by a team of Harvard-based experts on IHL to meet the needs of policy makers, practitioners and the media concerning current challenges in the application of international humanitarian law in Iraq.

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