

---

## UNITED NATIONS ASSOCIATION of GREATER BOSTON



---

### TOPIC: RIGHTS OF DETAINEES AND PRISONERS OF WAR

#### INTRODUCTION

Armed conflict between or within states has been a constant throughout history and the treatment of captured enemies an integral part wartime activities. Today parties to conflict must decide whether capture combatants are held as **detainees** or **prisoners of war (POW)**. Detainees are persons imprisoned for political reasons,<sup>1</sup> whereas prisoners of war are captured enemy combatants in times of conflict.<sup>2</sup> Prisoners of war may be members of armed forces, militias or persons accompanying them, and civilians that take up arms. Apart from basic human rights, defining an individual's status as a detainee or prisoner of war will determine to which rights he or she is entitled.

#### BACKGROUND

##### *Historical Background*

Throughout history individuals held during times of conflict have suffered at the hands of their captors. During the Roman Empire, prisoners of war were initially sacrificed at a warriors' burial, but later they became gladiators in the Roman games with their combat amusement for Roman society.<sup>3</sup> Under the Aztec Empire, prisoners of war were killed in a sacrifice ritual,<sup>4</sup> while in the Ottoman Empire, Christian captives were ransomed.<sup>5</sup>

During more recent history attitudes towards POWs and detainees have changed and increasing measures have been taken stop inhumane treatment. In the past century and a half several advancements have been made in the international legal arena to secure the rights of prisoners of war and detainees during conventional wars and conflicts. However, a new challenge with regards to these established laws has emerged in the 21<sup>st</sup> century as the nature of armed conflict is becoming more complex. Throughout history conventional wars have been fought between two or more nation-states, but currently we see the emergence of unconventional wars, between states and parties that are not part of an internationally recognized-armed force, often time using unconventional warfare, such as guerilla or terrorist tactics.

The imprisonment and alleged ill treatment by the United States of Taliban and Al-Qaeda members in camps and prisons such as **Abu Ghraib** in Iraq and **Camp X-Ray** in Cuba, has brought the issue of the rights of detainees and prisoners of war in unconventional wars in the news recently. While the United States stands firm on its policy that these captured persons should not be treated as prisoners of war for they are not part of a conventional army, many

human rights organizations and countries claim that the laws for POWs should apply to them as well. This issue brings forth the following problem: Do established laws created for conventional warfare still work under these changing conditions, or do they need to be revised?

### *Beginning of International Humanitarian Law*

Throughout history attempts have also been made to alleviate wartime suffering. Some examples include the Hindu code of Manu which introduced the concept of war crimes in 200 BC, Chinese warrior Sun Tzu suggesting a limit on war conduct in the 6<sup>th</sup> century BC, the 1305 trial of Scottish hero, William Wallace, for killing civilians during wartime, and philosopher Hugo Grotius' 1625 work entitled "On the Law of War and Peace," emphasizing the humane treatment of civilians.<sup>6</sup>

**International humanitarian law** and the mechanisms to enforce it emerged in mid 19<sup>th</sup> century. This type of law aims "to protect persons who are not, or are no longer, directly engaged in hostilities - the wounded, shipwrecked, prisoners of war and civilians; [and] to limit the effects of violence in fighting to the attainment of the objectives of the conflict."<sup>7</sup> Some of the most important international humanitarian laws are the **Geneva Conventions**.

### *Geneva Conventions*

In 1864, the first Geneva Convention protecting wartime wounded and sick was signed. In 1906, the second Geneva Convention dealing with wartime wounded, sick and shipwrecked was created. In 1929, the **third Geneva Convention** dealing with the treatment of prisoners of war was formed. As a consequence of the cumulative effects of WWI and WWII, the first, second and third Geneva Conventions were revised and the **fourth Geneva Convention**, dealing with the treatment of civilians during wartime, was adopted in 1949. These conventions still exist today and are enforced by an international organization known as the **International Committee of the Red Cross (ICRC)**.<sup>8</sup> Currently, 194 states uphold the Conventions.<sup>9</sup>

In armed conflict, the party holding a captured individual determines his or her status as either a detainee or prisoner of war. Article 5 of the third Geneva Convention states that if any doubt arises concerning the prisoner's status, a competent tribunal of the detaining country will determine it.<sup>10</sup> In order to be considered a prisoner of war, a combatant must meet the following conditions: 1) be a part of a chain of command, 2) wear a recognizable insignia, 3) openly carry weapons and 4) observe the laws of war.<sup>11</sup> Under the Conventions, all persons that are captured in times of war must initially be presumed a prisoner of war, until proven otherwise.

### *Legal Distinction between Detainees and Prisoners of War*

Due to a legal distinction made by the Romans and later incorporated into international law, detainees do not receive prisoner of war status. In The Times of London in 2001, military historian Sir Michael Howard stated that the Romans made a distinction between a war against a legitimate enemy (known as *bellum*) and a war against pirates, robbers, outlaws, and other "common enemies of mankind"<sup>12</sup> (known as *guerra*). Therefore, legitimate enemies are held as



prisoners of war, whereas common enemies are held as detainees. The Geneva Conventions are meant to apply to war against a legitimate enemy and not to the other common enemies.<sup>13</sup>

### *Rights of Prisoners of War*

The third Geneva Convention ensures the rights of prisoners of war. Some of the most important are in regards to humane treatment. Prisoners of war have the right to be kept in facilities located outside the combat zone in order to ensure their safety. Prisoners must also be allowed to practice their religion, send and receive letters, have a copy of the Geneva Conventions, and be allowed to appoint an authority within their group who can bargain with the detaining authorities. They may be interrogated while in custody, but they are only required to provide their surname, first name, rank, date of birth, and army, regimental, personal or serial number when questioned. They cannot be punished if they provide no additional information. Female prisoners of war have the right to be treated with due regard for their sex. Children prisoners of war are entitled to special treatment.<sup>14</sup> Prisoners of war cannot be tried for only participating in the armed conflict; they may, however, be tried for acts against humanity, war crimes, and common crimes under the law of the country holding them or international law. If the only crime they have committed is to participate in the armed conflict, then they should be repatriated when the conflict is over. Prisoners of war have the right to military courts and to appeal the sentence if desired.<sup>15</sup>

#### **CASE STUDY: POLISH PRISONERS OF WAR DURING WORLD WAR II**

“In September 1939, Poland was invaded by German and Soviet troops. A large proportion of the Polish army was captured: around 400,000 men by the German forces and over 200,000 by Soviet troops. Until February 1940, the German authorities gave the ICRC lists of the Polish prisoners of war they held, but after that date they stopped. In 1943, they again began to send these lists, but now only officers were mentioned. What had happened was that most of the Polish soldiers who became prisoners of war were turned into "civilian workers" by the German authorities. They were thus -- in defiance of the 1929 Convention relative to the treatment of prisoners of war -- deprived of their prisoner-of-war status and of the protection this should have afforded them. Prisoners of war who refused to become "civilian workers" were mostly sent to concentration camps. In this way, the ICRC lost track of a large number of them. At no time during the war did the USSR give the ICRC lists of Polish prisoners. When, in April 1943, the massacre of over 5,000 Polish officers at Katyn was discovered, the USSR refused to allow the ICRC to take part in an international investigation”.

Source: International Committee of the Red Cross -  
<http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/57jnwv?opendocument>

### *Rights of Detainees*

The fourth Geneva Convention, **customary international law** and Protocol I of the Geneva Conventions ensure the rights of detainees. Detainees may be charged with criminal offenses,



such as war crimes, crimes against humanity, and common crimes. They have the right to a fair, non-military trial and judicial guarantees. They also have the right to be assisted by a counsel, an interpreter, and to appeal.<sup>16</sup>

#### **CASE STUDY: DETAINEES IN THE SUEZ CANAL CRISIS OF 1956**

In July 1956 Egypt nationalized the Suez Canal. As a consequence, Israel launched an attack on Egyptian forces, to which France and the United Kingdom responded by occupying the canal zone in November 1956. That same year, the United Nations General Assembly passed a resolution that called for a cease-fire, and the fighting forces agreed to halt their fire under the condition that the British and French forces were replaced with a UN force.

The International Committee for the Red Cross participated in this conflict ensuring the four parties involved upheld the Geneva Conventions. The ICRC intervened in Egypt, where Jews in the country were accused of conspiring with Israel after the conflict started and repressive measures were ordered against them. The ICRC called on the Egyptian government to end these measures and also chartered ships to transport around 7,000 persons to permanent resettlement in Greece and Italy.

Source: International Committee for the Red Cross -

[http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/icrc\\_suez56?opendocument](http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/icrc_suez56?opendocument)

#### **PAST INTERNATIONAL ACTION**

During the *Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law* held in Geneva from 1974 to 1977, two additional protocols were added to the Geneva Conventions. “Protocol I deals with the protection of victims of international conflicts. Protocol II concerns the victims of internal armed conflicts, including those between the armed forces of a government and dissidents or other organized groups which control part of its territory, but does not deal with internal disturbances and tensions in the form of riots, or other isolated and sporadic acts of violence.”<sup>17</sup>

In 1976 the *International Covenant on Civil and Political Rights* entered into force. Article 7 of this covenant in 1976 states that no person shall be subject to inhuman or degrading treatment.<sup>18</sup> This article applies to both detainees and prisoners of war. Additionally, in 1987 the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* entered into force, which states measures that nations should take to prevent torture and other inhuman treatment<sup>19</sup>.

The United Nations has also passed several resolutions that emphasize the protection of human rights of prisoners. In 1955, the *First United Nations Congress on the Prevention of Crime and the Treatment of Offenders* adopted the “Standard Minimum Rules for the Treatment of Prisoners.” This resolution states the basic rules by which imprisonment institutions should abide and the rules applicable to special categories like prisoners under sentence, the mentally ill or insane, individuals waiting for trial, civil prisoners and those detained without charge. The UN Social and Economic Council approved this standard in 1977. In 1988, the UN General



Assembly resolution was passed dealing with the “Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment” and in 1990 a General Assembly Resolution was passed that dealt with the “Basic Principles for the Treatment of Prisoners.” Both of these resolutions brought forth the basic human rights which prisoners are entitled.

#### *U.S. Controversy Regarding POWs and Detainees*

Since military operations in 2001 the United States has imprisoned Al-Qaeda and Taliban members that have allegedly conspired against the country. These prisoners have been held in facilities such as Camp X-Ray and Camp Delta in Guantanamo Bay, Cuba and the Abu Ghraib prison in Iraq. Most of the prisoners are classified as detainees and not prisoners of war. They have been referred to as **unlawful or non-privileged combatants**. The United States has often stated that prisoners in these camps are treated humanely, but many human rights groups have denounced the ill treatment reported in these facilities.

The European Union, the UN Secretary-General, the UN High Commissioner for Human Rights, Human Rights Watch and Amnesty International have stated that the detainees held by the United States should be regarded as prisoners of war.<sup>20</sup> The International Red Cross also agrees with this assessment. Currently, U.S. policy regarding this matter remains unchanged.

#### **CRITICAL THINKING**

Most members of the Taliban detained by the United States belonged to the Afghan armed forces; however, the Taliban government in Afghanistan was not recognized by the United States. What challenge does the United States face in determining the status of these prisoners under the Geneva Conventions?

#### **RECOMMENDATIONS FOR FORMULATING A RESOLUTION**

The issue of the rights of detainees and prisoners of war is an important component of armed conflict. Determining the status of detained individuals defines the treatment they will receive. This issue is not new; prisoners of war and politically motivated detainees have existed as long as wars have been fought. When dealing with this issue on an international level, respect for state sovereignty, non-intervention, and current international humanitarian law have to be taken into consideration.

Delegates may consider the following when drafting resolutions:

- Should prisoners of war and detainees be given the same rights? If so, which ones? If not, why should they have different rights?
- Do the Geneva Conventions need to be revised or do new international humanitarian laws that deal with prisoners of war and detainees in unconventional wars need to be created?
- How can countries be encouraged to uphold these laws? Should sanctions and/or other forms of punishments be applied to countries that do not enforce them?



## QUESTIONS TO CONSIDER

Delegates should develop responses to the following questions from the point of view of the country they are representing.

- Does your country currently hold prisoners of war or detainees? Has it held them in the past?
- Are citizens of your country being held as prisoners of war or detainees?
- Has your country signed and ratified the third and fourth Geneva Conventions or any additional protocols?
- Does your country hold an official position with regards to detainees being considered Prisoners of War or ‘unlawful’ or ‘non-privileged combatants’?
- Does your country believe that human rights are universal or that they vary within cultures?
- What type of record does your have for promoting human rights worldwide? If so, has it promoted the rights of prisoners and detainees?

## TERMS AND CONCEPTS

**Abu Ghraib**: an Iraqi province which gave its name to a U.S. run prison in the same area.

**Camp X-Ray**: a temporary facility in Guantanamo Bay, Cuba, where the U.S. maintained Taliban and Al-Qaeda prisoners up until April 28, 2002. The prisoners were then moved to a permanent facility called Camp Delta, also in Cuba.

**Customary International Law**: unwritten international law between states, based on customs accepted as laws.

**Detainees**: Detainees are persons imprisoned for political reasons They do not receive Prisoner of War status, because they are not members of armed forces, militias or persons accompanying them, and civilians that take up arms.

**Geneva Conventions**: series of international treaties intended to alleviate wartime sufferings for soldiers and civilians. They were created between 1864 and 1949.

**Third Geneva Convention**: The third Geneva Convention ensures the rights of Prisoners of War.

**Fourth Geneva Convention**: The fourth Geneva Convention ensures the rights of all individuals captured that do not attain the status of a prisoner of war.

**Human Rights**: basic rights of all individuals.



**International Committee of the Red Cross (ICRC):** the International Organization in charge of upholding the Geneva Conventions.

**International Humanitarian Law:** body of law that limits sufferings in armed conflicts.

**Prisoners of War (POWs):** as defined by the Geneva Conventions, are captured enemy combatants that are members of armed forces, or militias or persons accompanying them, or civilians that take up arms in times of conflict.

**Unlawful or non-privileged combatants:** name given by the United States to detainees (mainly Taliban and Al-Qaeda members) who are not POWs. Neither term appears in the Geneva Conventions.

## SOURCES FOR RESEARCH

Human Rights Watch - <http://www.hrw.org> – this is the website of Human Rights Watch, an organization that promotes human rights worldwide. In it you can find several articles regarding human rights of prisoners and detainees worldwide.

*Summary of International and U.S. Law Prohibiting Torture and Other Ill-treatment of Persons in Custody* – [http://hrw.org/english/docs/2004/05/24/usint8614\\_txt.htm](http://hrw.org/english/docs/2004/05/24/usint8614_txt.htm) – article within the Human Rights Watch website that summarizes international law prohibiting torture and other ill-treatment of persons in custody.

Office of the High Commissioner for Human Rights - <http://www.ohchr.org/EN/Pages/WelcomePage.aspx> – this is the website of the UN Office of the High Commissioner for Human Rights, which is the branch of the UN that deals with human rights worldwide. In this website you can find laws, such the International Covenant on Political and Civil Rights and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

International Committee of the Red Cross - <http://www.icrc.org/web/eng/siteeng0.nsf/html/home!Open> – this is the website of the International Committee of the Red Cross, which is the International Organization in charge of upholding the Geneva Conventions. This website has useful information about the Geneva Conventions, and specific country case studies of rights of prisoners of war and detainees.

Amnesty International - <http://www.amnesty.org> – this is the website of Amnesty International, an organization that promotes human rights worldwide.

University of Minnesota Human Rights Library - <http://www1.umn.edu/humanrts/instree/auogs.htm> – this is the website of the University of Minnesota's Human Rights Library, which has links to some of the UN resolutions on the rights of detainees.



**PLAY THE PRISONERS OF WAR GAME!**

[http://nobelprize.org/educational\\_games/peace/redcross/](http://nobelprize.org/educational_games/peace/redcross/).

This interactive game will give you a better understanding of how to classify prisoners, the most important articles of the third Geneva Convention, which rights should be given to prisoners while captured and imprisoned, and the role of the Red Cross in ensuring the convention.



## REFERENCES

- <sup>1</sup> Merriam-Webster's Online Dictionary, <http://www.merriam-webster.com/dictionary/detainees>
- <sup>2</sup> "Rights and Duties of Prisoners of War," <http://hrw.org/press/2003/03/pow032403.htm>
- <sup>3</sup> "The Games," <http://www.roman-empire.net/society/soc-games.html>
- <sup>4</sup> "Roman Catholicism and the Aztec Religion," <http://www.hyperhistory.net/apwh/essays/comp/cw16catholicaztec31011208.htm>
- <sup>5</sup> "Historical Attitudes toward Prisoners of War," <http://www.infoplease.com/ce6/society/A0860527.html>
- <sup>6</sup> "A Brief History of the Laws of War," <http://www.spj.org/gc-history.asp>
- <sup>7</sup> "Fact Sheet No. 13, International Humanitarian Law and Human Rights," <http://www.unhchr.ch/html/menu6/2/fs13.htm>
- <sup>8</sup> "A Brief History of the Laws of War," <http://www.spj.org/gc-history.asp>
- <sup>9</sup> "The Geneva Conventions: the core of international humanitarian law", <http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/genevaconventions?opendocument>
- <sup>10</sup> "Background Paper held on Geneva Conventions and Persons Held by U.S. forces," [http://www.hrw.org/backgrounder/usa/pow-bck.htm#P99\\_25054](http://www.hrw.org/backgrounder/usa/pow-bck.htm#P99_25054).
- <sup>11</sup> "U.S., critics debate whether detainees are POWs," <http://cnnstudentnews.cnn.com/2002/fyi/news/01/23/gitmo.detainees>
- <sup>12</sup> "Detainees or Prisoners of War?" <http://www.ashbrook.org/publicat/oped/owens/02/pow.html>
- <sup>13</sup> "Detainees or Prisoners of War?" <http://www.ashbrook.org/publicat/oped/owens/02/pow.html>
- <sup>14</sup> "Rights and Duties of Prisoners of War," <http://www.hrw.org/press/2003/03/pow032403.htm>
- <sup>15</sup> "Background Paper held on Geneva Conventions and Persons Held by U.S. forces," [http://www.hrw.org/backgrounder/usa/pow-bck.htm#P99\\_25054](http://www.hrw.org/backgrounder/usa/pow-bck.htm#P99_25054)
- <sup>16</sup> "Background Paper held on Geneva Conventions and Persons Held by U.S. forces," [http://www.hrw.org/backgrounder/usa/pow-bck.htm#P99\\_25054](http://www.hrw.org/backgrounder/usa/pow-bck.htm#P99_25054)
- <sup>17</sup> "Fact Sheet No. 13, International Humanitarian Law and Human Rights," <http://www.unhchr.ch/html/menu6/2/fs13.htm>
- <sup>18</sup> "International Covenant on Civil and Political Rights," [http://www.unhchr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhchr.ch/html/menu3/b/a_ccpr.htm)
- <sup>19</sup> "Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment," [http://www.unhchr.ch/html/menu3/b/h\\_cat39.htm](http://www.unhchr.ch/html/menu3/b/h_cat39.htm)
- <sup>20</sup> "U.S. under fire for treatment of detainees: critics abroad cite inhuman conditions, ambiguous legal status of prisoners," <http://www.encyclopedia.com/doc/1G1-82884977.html>

