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Editorial

Status of Prisoners of War in the Contemporary World

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ABSTRACT

The Third Geneva Convention is a global treaty that ensures humane treatment for prisoners of war (POWs) in contemporary conflicts. POWs are entitled to freedom of movement, protection from public curiosity, and protection from violence or intimidation. In non-international armed conflicts, captured insurgents are not considered POWs. However, their condition is equally deplorable. In 2018, Yemeni parties and the Arab Coalition Representative signed an agreement to exchange all prisoners, detainees, missing persons, arbitrarily detained, and those under house arrest. The Convention mandates equal treatment for all prisoners, including women. On the ground, the condition of the POWs is horrific, especially for the females who are subjected to sexual assault apart from undergoing other challenges for survival. This article provides a critique of the status of prisoners of war vis-à-vis the provisions of the Third Geneva Convention. A debate on the condition of POWs becomes even more imperative due to emerging scenarios attributed to armed conflicts in various parts of the world today.

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INTRODUCTION

The world is not a stranger to conflicts, its surface marred by scars of servitude of numerous men and women who have served the leaders of nations, empires and even ideologies. These violent conflicts, which lead the nations to victory, are carried on the backs of soldiers who participate in these wars. It is thus only fitting that these soldiers, if fallen into enemy hands, must be spared the wrath they might harbor against the nation or ideology they represent. An armed conflict cannot be imagined without detainees. Many types of detainees are protected by international humanitarian law, including those incarcerated as prisoners of war in foreign armed conflicts. When an adversary takes someone prisoner, there is an increased risk of abuse or harm to their health; in these circumstances, adherence to the Third Geneva Convention's regulations is essential. These regulations are in place for practical reasons, such as preventing enemy combatants from escaping, keeping order and security in a camp, and keeping them off the battlefield, in addition to moral and humanitarian imperatives and legal duties resulting from treaty ratification. In addition, the Convention mandates that parties to an armed conflict maintain the health of their prisoners¹.

Therefore, the duty to treat prisoners of war humanely, respecting their person and honour, lies at the heart of all 143 articles that comprise the Third Geneva Convention. Many of the Convention's articles expand on what this fundamental duty means². They cover every facet of a prisoner's life, from the moment of their initial arrest until their ultimate release, and they expressly forbid the use of coercion or torture of any kind during their incarceration. The Convention compels parties to the conflict to consider each prisoner's unique circumstances, including their gender, age, health, and any disabilities they may have, and it protects all prisoners of war without difference³.

LEGAL FRAMEWORKS AND INTERNATIONAL CONVENTIONS GOVERNING THE TREATMENT OF PRISONERS OF WAR IN CONTEMPORARY CONFLICTS

A thorough standard of care for prisoners of war is established under the Third Geneva Convention. POWs may be held in internment for the length of hostilities. However, this does not constitute punishment for their confinement (GC III, art. 21). Instead, detention is only permitted to keep prisoners from aiding and abetting the military campaign of the group they fought for. Comprehensive guidelines are provided for mandatory minimum conditions of imprisonment (e.g., GC III, articles. 21-28). After the war, POWs are entitled to release and repatriation (GC III, art. 118).⁴ Under no circumstances will POWs be subjected to cruel, inhumane, or humiliating treatment; see, for example, GC III articles. 13–33. According to GC III, art. 14, prisoners of war are entitled to respect for their person and honor in all circumstances. They need to be shielded from "public curiosity and insults." POWs may not be the target of acts of violence or intimidation (GC III, art. 13). The Third Geneva Convention also forbids abuses during interrogations (GC III, art. 17). A thorough list of fair trial rights is contained in the Third Geneva Convention, which stipulates, by default, that prisoners of war must be tried using the same process as the state's armed forces (e.g., GC III, arts. 99-108)⁵.

POWs can communicate with protective services (GC III, articles. 8–11, for example). They also enjoy "combatant immunity," which protects them from prosecution for mere involvement in hostilities (e.g., GC III, articles. 82, 85, 87-88). Furthermore, POW rights are unalienable and non-derogable, as stated in the Third Geneva Convention (GC III, art. 7)⁶. A thorough standard of care for prisoners of war is established under the Third Geneva Convention. POWs may be held in internment for the length of hostilities. However, this does not constitute punishment for their confinement (GC III, art. 21). Instead, detention is only permitted to keep prisoners from aiding and abetting the military campaign of the group they fought for. Comprehensive guidelines are provided for mandatory minimum conditions of imprisonment (e.g., GC III, articles. 21-28). After the war, POWs are entitled to release and repatriation (GC III, art. 118). Under no circumstances will POWs be subjected to cruel, inhumane, or humiliating treatment; see, for example, GC III articles. 13–33. POWs are entitled to respect for their person and

honor in all situations (GC III, art. 14)⁷.

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The core principles of fair and humane treatment extend to prisoners of war (POWs) not only because they meet specific criteria for POW status but also because they are captured in armed conflicts by enemy forces⁹. Despite variations in circumstances, such as whether the detainee is a member of the opposing armed forces, a civilian combatant, or part of a partisan group, certain fundamental guarantees apply broadly, including Common Article 3, the Fourth Geneva Convention, and provisions regarding fair trial rights. Over time, these protections have expanded, often exceeding those granted explicitly to POWs. While many protections are rooted in humanitarian concerns, some reflect a unique respect for POWs as sanctioned fighters for a sovereign state¹⁰. These protections encompass various aspects, from saluting protocols and rights to wear badges of rank to prohibitions on humiliating labour assignments. Additionally, POWs are assimilated into the legal framework of the detaining state's armed forces, though this may not always ensure their rights are fully upheld. Other protections aim to prevent mistreatment based on loyalty to their state, including the right to refuse parole agreements contrary to their laws and regulations, immunity from punishment for escape attempts, and restrictions on forced participation in actions against their own state¹¹.

In general, prisoners of war are not allowed to be forced to actively participate in military operations against the country of their nationality (e.g., Hague Regulations, art. 23(h)). When

imposing judicial punishment on prisoners of war who have been found guilty of a crime, the sentencing authority must consider that the prisoners are under the authority of another sovereign and that their situation is the result of events beyond their control (GC III, art. 87)¹².

ANALYSIS OF THE TREATMENT OF PRISONERS OF WAR IN SPECIFIC CONTEMPORARY CONFLICTS

All armed conflicts are divided into two categories under modern international humanitarian law: international and non-international. It is evident in international armed conflict how to distinguish between combatants and civilians. Unless they enlist in the military, in which case they forfeit their civilian rights and acquire combatant rights, the civilian is entitled to immunity from assault. It is the combatant's right to engage in hostilities without facing criminal consequences. An international armed conflict participant who is captured becomes a prisoner of war. In non-international armed conflicts, there is no such thing as a combatant, and captured insurgents have no rights and are not treated as prisoners of war, in contrast to the acknowledged status of prisoners of war in international armed conflicts¹³.

The term 'illegal combatant' was first introduced in 1942 by the United States Supreme Court judgment in the case *ex parte Quirin*.: In this particular case, the US Supreme Court upheld the judgement of a United States military tribunal regarding several German saboteurs in the United States. This decision states:

"The law of war draws a distinction between the armed forces and the peaceful populations of belligerent nations and between those who are lawful and unlawful combatants. Lawful combatants are subject to capture and detention as prisoners of war by opposing military forces. Unlawful combatants are likewise subject to capture and detention, but they are also subject to trial and punishment by military tribunals for acts which render their belligerency unlawful. The spy who secretly and without uniform passes the military lines of a belligerent in time of war, seeking to gather military information and communicate it to the enemy, or an enemy combatant who without uniform comes secretly through the lines to wage war by destruction of life or property, are familiar examples of belligerents who are generally deemed

not to be entitled to the status of prisoners of war, but to be offenders against the law of war subject to trial and punishment by military tribunals”¹⁴.

The United States Supreme Court noted in *Hamdi et al. v. Rumsfeld et al.* (2004) that although Congress had authorized the detention of combatants under the specific circumstances claimed in this case, due process required that those detained in the United States as enemy combatants be afforded a meaningful opportunity to challenge the legality of their detention before an impartial judge. On the same day, the Court also decided that inmates having this status could contest their detention¹⁵. The petitioners, who are twelve Kuwaitis and two Australians, were apprehended overseas during hostilities and have been detained since early 2002 at the Guantanamo Bay Naval Base in Cuba, which the United States occupies by lease and treaty, along with an estimated 640 other non-Americans in military custody. The Supreme Court ruled that foreign nationals who have been seized abroad during conflicts and who are being imprisoned at the Guantanamo Bay Naval Base may file legal challenges against their imprisonment in US courts¹⁶.

This was efficiently contradicted in the Supreme Court case of *Boumediene et al. v. Bush* (2008), where it was reaffirmed that the US court system has jurisdiction to consider challenges to the incarceration of enemy combatants detained in Guantanamo Bay. The decision further established that the US laws and Constitution are inherently ‘designed to survive and remain in force in extraordinary times’¹⁷.

EXCHANGE AGREEMENT AND RELEASE OF DETAINEES IN YEMEN: 2018–2019

Since 2014, Yemen has been devastated by armed conflict. In support of the Yemeni government, a military coalition headed by Saudi Arabia has been conducting attacks against the Houthis, a non-state armed group, since 2015. There has been ongoing fighting throughout the nation between armed groups and government forces as well as between armed groups themselves. The United Nations (UN) is still working to mediate a settlement between the parties. People are still being held or interned in connection with the fighting in

the meantime. Both sides have freed hundreds of captives in compliance with IHL, as per a UN-brokered agreement that was struck in 2018 to foster confidence between the Yemeni parties and the representative of the Arab Coalition. The need to show credibility and enhance their public image, as well as diplomatic efforts and external pressure, could have had an impact on the participants to the agreement¹⁸.

1. In December 2018, the Yemeni parties and the Arab Coalition Representative signed an agreement to carry out a “comprehensive and complete exchange of all prisoners, detainees, missing persons, arbitrarily detained and forcibly disappeared persons, and those under house arrest” through an exchange process facilitated by the UN and the ICRC.
2. In 2019, the parties to the agreement began to honour their commitment: the Houthi National Committee for Prisoners’ Affairs released 290 detainees, while the Saudi-led coalition released 128 detainees.

Exchanging prisoners of war and other detainees between Georgia and Russia: 2008–2009

Armed conflict between Georgia and the Russian Federation over South Ossetia and Abkhazia began in August 2008. Prisoners of war were taken by both sides (PoWs). The ICRC was allowed access to Russian detainees in Georgian custody related to the war by the Georgian government. Both sides agreed to support humanitarian relief efforts and halt hostilities as part of a deal mediated by the European Union. All those imprisoned in relation to the conflict were later released and turned over to each other by the parties. Georgia’s detaining authorities provided the ICRC with unimpeded access to facilities under their control. They enabled them to visit Russian PoWs and other people held in connection with the conflict to check on their treatment and living conditions. Detainees had the opportunity to communicate with their families by Red Cross Message.

1. With European Union mediation, Georgia and Russia agreed to a six-point agreement aimed at ending active hostilities and preparing the parties to work towards a sustainable political settlement. This included a deal to facilitate humanitarian relief operations.

2. Within days of the agreement, the parties exchanged prisoners: Georgia handed over five Russian soldiers to Russian officials, while Russia handed over 15 Georgians, including two civilians, to Georgian officials. The parties agreed to further such exchanges in principle.
3. In 2009, an independent international fact-finding mission on the 2008 conflict reported that the parties had duly exchanged all people detained in connection with the conflict¹⁹.

RELEASING PRISONERS OF WAR IN THE DEMOCRATIC REPUBLIC OF CONGO: 1999–2000

In 1998, the Democratic Republic of the Congo (DRC) saw the emergence of a complicated military conflict. The conflict involved Congolese non-state armed groups backed by Burundi, Rwanda, and Uganda and armed forces loyal to the government of the DRC, with help from Angola, Namibia, and Zimbabwe. Every party accepted POWs or prisoners of war.

The sides agreed to free POWs when they signed the Lusaka peace accord in 1999. In 2000, the DRC freed hundreds of prisoners with backing from the UN Security Council, among other bodies.

1. In 1999, representatives of Angola, the DRC, Namibia, Rwanda, Uganda and Zimbabwe signed the Lusaka Ceasefire Agreement, committing to ending hostilities among all their forces in the DRC. Under the agreement, the parties undertook to exchange PoWs and release any other people detained in connection with the conflict.
2. The parties granted the ICRC regular access to PoWs to monitor their conditions during captivity.
3. In 2000, the DRC government announced an amnesty, releasing over 100 political detainees. Upon the subsequent release of 177 Namibian, Rwandan and Zimbabwean PoWs, the ICRC repatriated them to their respective countries at the request of the relevant authorities.

PSYCHOLOGICAL EFFECTS OF CAPTIVITY ON PRISONERS OF WAR IN MODERN CONFLICTS.

1. Post-Traumatic Stress Disorders: The Disorder of Post-Traumatic Stress When it comes to the psychological effects of trauma, particularly those arising from being captured during a

battle, post-traumatic stress disorder (PTSD) is the disorder that is studied the most. Many studies have compared veterans who were camp prisoners with a similar group of veterans who did not have that experience or with members of the general public to identify factors that contributed to its development and persistence over years, if not decades, after release from captivity²⁰. But research also looks at other psychological problems and what factors lead to them occurring in addition to PTSD²¹. Because every captivity has unique characteristics that vary depending on the circumstances and severity of traumatic stressors, the methods of torture and exhaustion used, and the length of the captivity, research findings show variations in the prevalence of PTSD and other mental disorders among the groups under investigation. According to specific research, the length of time spent in captivity is related to the prevalence of PTSD decades after the incident. Thus, it varies from 5% to 15% (American veterans of World War II) and up to 80% (Korean War) based on the studied veteran population of former prisoners of war. Some research has not demonstrated that the time spent in captivity is relevant²². Numerous studies have shown that the most important predictor of the onset and maintenance of PTSD is how inmates are treated. Some studies show that exposure to extreme conditions and cruel treatment causes significant weight loss, indicating a substantial vulnerability to traumatisation. These conditions also have psychological effects, with a high prevalence of post-traumatic stress disorder (PTSD) in these groups of prisoners of war. Individual symptoms and clusters of PTSD symptoms, the correlation between specific clusters or symptoms and specific types of traumatic events that cause PTSD, as well as the intensity of PTSD about the dominance of particular symptoms, are all analysed based on the occurrence analysis of PTSD, whether it is of a lifetime or current nature, at the time of the research. By doing this, it is made clear that the symptoms of PTSD vary throughout its chronic course, with avoidance behaviour symptoms.

Some research indicates a strong association between symptoms of reliving trauma and imprisonment, while traumatisation during captivity is also linked to prominent symptoms of emotional numbness. Research indicates that erasing memories of traumatic events—particularly those that were exceedingly challenging or entailed severe humiliation and

torture—is one of the most prevalent symptoms among severely traumatised veterans, impeding their ability to heal. Research indicates that a deep sense of shame over the traumas and humiliation suffered is the leading cause of these avoidance symptoms. Conversely, depressive symptoms, thoughts of suicide, and psychotic symptoms have been linked to intense shame²³. Studies have also examined the sense of alienation and isolation that war veterans feel, which is particularly acute for those who have been in captivity as opposed to those who have fought in combat but were not held captive. This can be explained by the unique circumstances of the trauma of captivity, in which prisoners are not only frequently kept in solitary confinement but also witness a particular, egoless, and apathetic relationship with their captors. This relationship will later cause them to feel insecure and distrustful of other people, ultimately leading to loneliness. Specific research works address the relationship between veteran loneliness and suicidal thoughts and attempts²⁴. A long-term prospective study compared veterans who were not housed in a war camp to those who had experienced suicidal thoughts at three different intervals (18, 30, and 35 years after the war). Over time, there was a noticeable rise in suicidal thoughts among former camp inmates, which was more prevalent and partly caused by PTSD²⁵.

2. Other Psychological Disorders- Research examines the presence of various mental diseases in addition to the prevalence of PTSD in ex-offenders, typically by contrasting PTSD subjects with non-PTSD participants. While some research²⁶ found no difference in the prevalence of other mental diseases between the PTSD-positive and PTSD-negative groups, other studies have demonstrated that veterans with PTSD are more likely to experience other mental problems²⁷. Depression is one of the most prevalent comorbid psychiatric diseases; research highlights the significance of diagnosing depression as well as the worse prognosis and more complex clinical picture when PTSD and depression co-occur. Numerous studies have established that seriously traumatised camp captives frequently acquire depression. This phenomenon is explained, among other things, by the loss these soldiers experience²⁸. According to studies, veterans who have gone through such traumatic experiences may lose their sense of self-worth, faith in other people, and

faith in the world as a result of the cruel treatment they received from their captors and the unfavourable conditions they were kept in²⁹. The most prevalent comorbid mental illnesses, outside depression, were phobic disorders, alcoholism, and panic disorder³⁰. Several research have demonstrated a substantial correlation between the development of specific disorders and the experience of captivity or the severity of trauma, in addition to the fact that the results of these studies also relate the presence of other mental disorders with PTSD. However, there was no discernible association with the emergence of other illnesses. For instance, the lifetime frequency of drunkenness in the jail population did not differ significantly from that of the general community. At the same time, the prevalence of schizophrenia and depressive disorders was higher among prisoners of war³¹. Research validates the susceptibility of ex-prisoners to war, even after five decades of detention. An investigation into the mental health of ex-offenders during the COVID-19 pandemic revealed that these individuals smoked more, drank more alcohol, and used marijuana to help with their symptoms. The profound psychological alterations brought on by extreme traumatising as a component of the interpersonal trauma typical of incarceration account for this notable susceptibility. Apart from the elevated occurrence of dissociative disorders in the initial years following incarceration, research has also revealed a greater incidence of chronic persistent dissociative disorders among ex-offenders in contrast to a control group comprising veterans who were not POWs. Dissociative states are interpreted as a means of escaping memories and ideas of a near-death experience that inmates experienced as a result of a variety of terrible events that occurred during their incarceration³². Comparing soldiers who were not prisoners to those who were, several studies do not reveal a higher prevalence of mental problems in camp inmates. For instance, the intensity of trauma was not a significant predictor of most mental disorders. Still, it was an important predictor of the development and persistence of post-traumatic stress disorder (PTSD), according to a study that included three groups of camp prisoners and looked at the prevalence of mental disorders four or five decades after World War II and the Korean War³³.

GENDER-SPECIFIC EXPERIENCES OF PRISONERS OF WAR IN CONTEMPORARY CONFLICTS

Article 16 of the convention, which establishes the general standard of equal treatment, mandates that all prisoners of war "be treated alike." This does not imply that all prisoners must be treated equally; instead, non-adverse distinctions—that is, distinctions supported by the materially different circumstances and needs of protected individuals—are permitted and occasionally even necessary to achieve equal treatment (paras 1742–1743). To guarantee that men and women prisoners of war are equally protected, women prisoners of war must receive different treatment to the extent that their circumstances and needs differ from those of men. Thus, Article 16 of GCI provides essential protection, especially as it forbids discrimination based on factors like race and religion.

Article 26 mandates that the Detaining Power feeds the POWs in a way that will maintain their health. To accomplish this, food rations for specific prisoners of war could need to be modified to account for their unique situation, such as maintaining the health of pregnant or nursing mothers (para. 2113). Similarly, the commentary on Article 27, which deals with attire, stipulates that apparel for Prisoners must be gender-appropriate (para. 2151). In these cases, equal treatment under Article 16 (paragraph 1748) and due regard for women under Article 14(2) require the non-adverse distinction—that is, the provision of different food or clothing—in the application of a seemingly general provision (para. 1687).

Regarding sexual assault in detention facilities (and its global upsurge linked to pandemic lockdowns), GCIII safeguards all prisoners from sexual assault, especially female prisoners who might be more vulnerable than male prisoners. Article 14(1) of GCIII prohibits sexual violence. This article states that prisoners of war have the right to "respect for their persons and their honor" under all circumstances. Paragraph 1664 of the Commentary, which upholds the ban on sexual violence, places the violation of this prohibition as one of "respect for persons" rather than "honour," acknowledging the harm caused by gendered concepts of the latter. The need to provide humane treatment and the prohibition of violent acts found in Article 13(1)

(2) (paragraph 1578) forbid sexual violence against any Prisoner.

CONCLUSION

The treatment of prisoners of war (POWs) in the contemporary world is governed by international humanitarian law, primarily the Third Geneva Convention. This convention outlines the rights and protections afforded to POWs, including humane treatment, fair trial rights, access to communication with protective services, and immunity from prosecution for lawful combatants. Various contemporary conflicts, such as those in Yemen, Georgia and Russia, and the Democratic Republic of Congo, have seen efforts to adhere to these conventions through exchange agreements and releases of detainees.

However, the psychological effects of captivity on POWs are profound and enduring, often leading to post-traumatic stress disorder (PTSD) and other mental health issues. Studies show that the way prisoners are treated during captivity significantly impacts the development and persistence of PTSD. Additionally, gender-specific experiences of POWs require tailored treatment and considerations under international law.

Humanitarian organizations play a crucial role in advocating for the rights and welfare of POWs, particularly in addressing issues such as sexual assault in detention facilities. Overall, while international conventions provide a framework for the humane treatment of POWs, the psychological toll of captivity underscores the importance of ongoing support and advocacy efforts for their well-being.

ENDNOTES

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³ <https://blogs.icrc.org/law-and-policy/2020/06/18/gciii-commentary-update/>

⁴ <https://lieber.westpoint.edu/protecting-pows-in-contemporary-conflicts/>

⁵ Ibid

⁶ Ibid

⁷ Ibid

⁸ Ibid

⁹ GC III, arts. 13-33, GC III, art. 13, GC III, arts. 99-108

¹⁰ POWs have a right to release and repatriation at the end of the conflict (GC III, art. 118)

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