Prisoners of War

A combatant who falls into the hands of an adverse party to a conflict in the course of an international armed conflict is a prisoner of war. Individuals who fall into the hands of the enemy during an armed conflict are protected under humanitarian law. If the individual is a combatant, he or she is accorded protection as a prisoner of war. If the individual is a civilian, he or she is protected as such. As explained in the ICRC Commentary on the Geneva Conventions: “nobody in enemy hands can be outside the law.”

The Third Geneva Convention of 1949 specifically regulates the treatment of prisoners of war, the definition of which is derived from the definition of combatant (GCI–III). Civilians who participate in the hostilities also benefit from guarantees of treatment in international and non-international armed conflicts (GCIV). In non-international armed conflicts, the combatant status is not officially recognized for members of non-state armed groups. Humanitarian law applicable to non-international armed conflicts provides, however, a specific regime of protection for persons deprived of their liberty for reasons related to the conflict ( ▸ Detention ). This status of detention applies at a minimum to combatants who fight within non-state armed groups in non-international armed conflicts. ▸ Civilians ▸ Combatants ▸ Detention ▸ Non-state armed groups

The treatment provided for prisoners of war can always be granted by the detaining power to detainees who do not meet the criteria and conditions set up by the Third Convention. It can also be partially applied by way of Special Agreement in situations that do not amount to an international armed conflict.

The Additional Protocol to the Geneva Conventions Relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I), adopted in 1977, takes a different approach to the question of prisoners of war. It enumerates the categories of persons who must be protected under the status of prisoners of war if captured by an adverse party. The goal is to ensure that individuals are not denied this status if an authority chooses an excessively restrictive interpretation of the Third Geneva Convention definition. Additional Protocol I also establishes guarantees to prevent the status from being denied to a person who is entitled to it. During an armed conflict, an individual who directly participates in the hostilities and falls into the hands of the enemy will enjoy protection under the Third Convention until such time that his or her status is determined by a competent independent and impartial tribunal, according to the rule of law (GCIII Art. 5, API Art. 45).

These texts regulate the conditions for the detention of prisoners of war (housing, food, hygiene and medical care, religion, physical and intellectual activities, discipline, transfer, work, correspondence, money). Prisoner-of-war status entails certain fundamental guarantees in the case of disciplinary and penal sanctions.

This status takes into account the fact that combatants have a legitimate right to use violence, until they are captured. It tries to ascertain that capture and detention are not used as an occasion for revenge, ill treatment, or torture of prisoners of war to obtain information. Prisoners of war may be questioned; however, no physical or mental torture, nor any other form of coercion, may be inflicted on them to secure information of any kind. Prisoner-of-war status also prevents prisoners from being prosecuted and sentenced solely for having taken part in a conflict. Where combatants have violated humanitarian law—including perpetration of terrorist acts—they may not be deprived of prisoner-of-war status but may be prosecuted for crimes committed according to the rule of law and judicial guarantees recognized by humanitarian law. Offenses punishable by the death penalty are limited.

▸ Death penalty ▸ Fundamental guarantees ▸ Ill treatment ▸ Judicial guarantees

In 1977, the definition of a prisoner of war that had been established in 1949 was expanded to take into consideration the evolving notion of “combatants,” tied to new military techniques. Under the new definition, prisoner-of-war status is no longer reserved exclusively for combatants who are members of the armed forces: it may also be granted to civilians who are members of resistance movements and to participants in popular uprisings. The category of “unlawful combatants” used by certain countries denies protections that prisoners of war normally enjoy and has no legal basis in humanitarian law.

Even if a combatant has committed grave violations of humanitarian law, he or she may not be deprived of prisoner-of-war status and the protections granted by this status. Determination of combatant and prisoner-of-war status must comply with criteria and procedures set by humanitarian law. The definition of a prisoner of war is rarely applicable to internal armed conflicts. However, the Additional Protocol to the Geneva Conventions Relating to the Protection of Victims of Non-international Armed Conflicts (Additional Protocol II) establishes specific provisions and guarantees of treatment for persons detained for reasons related to a conflict (APII Art. 5).

Definition of Prisoners of War (Third 1949 Geneva Convention)

The Third Geneva Convention defines the categories of persons who are entitled to prisoners of war status:

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

—Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces.

—Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that [they] fulfill the following conditions:

that of being commanded by a person responsible for his subordinates;

that of having a fixed distinctive sign recognizable at a distance;

that of carrying arms openly;

that of conducting their operations in accordance with the laws and customs of war.

—Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power.

—Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorization from the armed forces which they accompany, who shall provide them for that purpose with an identity card. . . .

—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 benefit by more favourable treatment under any other provisions of international law.

—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. (GCIV Art. 4.A)

The following shall likewise be treated as prisoners of war under the present Convention:

—Persons belonging, or having belonged, to the armed forces of the occupying country, if the Occupying Power considers it necessary by reason of such allegiance to intern them, even though it has originally liberated them while hostilities were going on outside the territory it occupies, in particular where such persons have made an unsuccessful attempt to rejoin the armed forces to which they belong and which are engaged in combat, or where they fail to comply with a summons made to them with a view to internment.

—The persons belonging to one of the categories enumerated in the present Article, who have been received by neutral or non-belligerent Powers on their territory and whom these Powers are required to intern under international law, without prejudice to any more favourable treatment which these Powers may choose to give. . . . (GCIII Art. 4.B)

The 1977 Additional Protocol I expanded the definition of a prisoner of war to take into consideration the evolving notion of “combatants,” tied to new military techniques. Under the new definition, prisoner-of-war status may also be granted to armed groups that do not formally belong to regular armed forces (API Arts. 43, 44) and to those—including civilians—who take part in the conflict. The extended definition of armed forces and combatant includes:

The armed forces of a Party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct or its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party.

Such armed forces shall be subject to an internal disciplinary system which, inter alia , shall enforce compliance with the rules of international law applicable in armed conflict.

Members of the armed forces of a Party to a conflict (other than medical personnel and chaplains covered by Article 33 of the Third Convention) are combatants, that is to say, they have the right to participate directly in hostilities. (API Art. 43)

According to the 1977 Additional Protocol I, the status of prisoner of war is linked with the objective criteria based on direct participation in the conflict, rather that legal criteria based on the formal belonging to armed forces. Therefore, both combatants and civilians directly taking part in a conflict may claim prisoner-of-war status and the protection attached to it.

A person who takes part in hostilities and falls into the power of an adverse party shall be presumed to be a prisoner of war. The individual will be afforded protection under the Third Convention if he claims the status of prisoner of war, if he appears to be entitled to such status, or if the party on which he depends claims such status on his behalf by notifying the detaining Power or the Protecting Power [ICRC]. Should any doubt arise as to whether any such person is entitled to prisoner-of-war status, he shall continue to have such status and, therefore, to be protected by the Third Convention and this Protocol until such time as his status has been determined by a competent tribunal. (API Art. 45.1)

Therefore, the category of “unlawful combatants” used to prevent some combatants from enjoying the status or the protection to afforded prisoners has no legal basis in humanitarian law since the 1977 Additional Protocols. Humanitarian law creates a framework that sets up procedural guarantees used when deciding whether a person should qualify as a civilian or a combatant, and whether he or she should enjoy the status of prisoner of war.

▸ Combatant

Granting PrisonerofWar Status (Additional Protocol I)

A certain number of guarantees are foreseen to regulate which persons—either combatants or civilians—are granted the status of prisoner of war. This prevents the detaining power from being able to discretionarily decide on the status of the prisoner. Further guarantees grant the protection afforded to prisoners of war even to those who may not directly enjoy the prisoner-of-war status.

Presumption and Control by a Competent Tribunal

Any person who falls into the power of an adverse party shall be presumed to be a prisoner of war. In order to prevent challenges to whether a combatant belongs to the armed forces, Additional Protocol I expands the application of this principle. Prisoner-of-war status is granted both to groups of armed forces and to anybody taking part in the hostilities. The Third Geneva Convention and Additional Protocol I stipulate that where doubt arises as to whether somebody is entitled to the status of prisoner of war, status shall be determined by a competent tribunal, and not by the detaining power.

Should any doubt arise as to whether persons, having committed a belligerent act and having fallen into the hands of the enemy, belong to any of the categories of combatant (enumerated in GCIII Art. 4), such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal (GCIII Art. 5).

A person who takes part in the hostilities and falls into the hands of the adverse party is presumed to be a prisoner of war if he claims the status of prisoner of war or if he appears to be entitled to such status or if the party on which he depends claims such status on his behalf by notifying the detaining power or the protecting power (ICRC). Should any doubt arise as to whether any such person is entitled to prisoner-of-war status, he shall continue to have such status and, therefore, to be protected by the Third Convention and Additional Protocol I until such time as his status has been determined by a competent tribunal (API Art. 45.1).In such situations, protection of an individual is strengthened; according to Additional Protocol I, where the detained person claims such status, a competent tribunal decides, and the procedures may be controlled, in particular by the ICRC. This measure is crucial as it protects civilians from being subject to improper criminal prosecution by the detaining power, as a result of having taken part directly in the hostilities.

If a person who has fallen into the power of an adverse party is not held as a prisoner of war and is to be tried by that party for an offense arising out of the hostilities, he shall have the right to assert his entitlement to prisoner-of-war status before a judicial tribunal and to have that question adjudicated. Whenever possible under the applicable procedure, this adjudication shall occur before the trial for the offense. The representatives of the ICRC shall be entitled to attend the proceedings in which that question is adjudicated (API Art. 45.2).

▸ Death penalty; ▸ Judicial guarantees ▸ Occupied territory

Civilians who take direct part in the hostilities and for such time as they take a direct part in hostilities are not afforded the protection humanitarian law normally grants to civilians (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).

This means that the detaining power must prove before a competent tribunal that an individual may not benefit from this status. Persons not granted combatant or prisoner-of-war status will be treated as civilians. As a minimum, they will be afforded fundamental guarantees if detained, and due process of law will apply if they have to be prosecuted for violations of humanitarian law. ▸ Civilians ▸ Detention ▸ Fundamental guarantees ▸ Judicial guarantees

Children, even if they are combatants, remain protected by the special provisions foreseen for them by humanitarian law, whether or not they are prisoners of war (API Art. 77).

▸ Children

Nonapplication of the PrisonerofWar Status

Some wrongly claim that where armed groups have violated humanitarian law, they may be deprived of combatant or prisoner-of-war status. According to the Geneva Conventions, members of armed forces must be under responsible command that is able to comply with obligations under humanitarian law. However, this does not impact the prisoner-of-war status of those who have taken part in hostilities. Additional Protocol I made this point clear.

A combatant’s failure to respect the rules of international law applicable to armed conflicts may not deprive that person of his or her status as a prisoner of war (API Art. 44.2). A prisoner may be prosecuted for violations of humanitarian law while maintaining his or her rights as a prisoner of war, including judicial guarantees.

The distinction between civilians and combatants is the core element of the protection granted to civilians under humanitarian law. Therefore, the Geneva Conventions insist that combatants are obliged to distinguish themselves from the civilian population and must carry their arms openly.

A combatant who fails to meet the requirement to distinguish himself from civilians and who falls into the power of an adverse party forfeits his right to be a prisoner of war (API Art. 44.4). Additional Protocol I weakened the obligation for combatants to distinguish themselves as it recognizes that there are situations in armed conflicts where, owing to the nature of the hostilities, an armed combatant may be unable to adequately distinguish himself. Therefore, such obligation does not include the duty to wear uniform and distinct insignias; it may be enough to openly carry arms when engaged in a military operation. However, this article stipulates that, even when denied prisoner-of-war status, the combatant continues to enjoy protection equivalent to that granted to prisoners of war by Geneva Convention III and Additional Protocol I. Again, it is up to a competent tribunal to assess the situation and decide on the status, not to the detaining power.

The difference between prisoner-of-war status and being treated as a prisoner of war implies that an individual who has used force without acting openly as a combatant may be prosecuted according to the domestic law of the detaining power for this fact. However, this person will enjoy the protections the Third Geneva Convention normally grants to prisoners of war, particularly with regard to judicial guarantees.

Mercenaries enjoy neither combatant nor prisoner-of-war status (API Art. 47). The 1977 Additional Protocol I strictly defines mercenaries. This definition does not include foreigners who voluntarily take up arms to join combats and organized militias linked with the armed forces of a party to the conflict. These foreign volunteers should be granted prisoner-of-war status and have access to a tribunal to decide on their status, regardless of their nationality.

Spies may not benefit from prisoner-of-war status if they act without wearing the uniform of their armed forces (API Art. 46).

Both mercenaries and spies must be treated humanely and are entitled at least to the fundamental guarantees.

▸ Combatant ▸ Espionage ▸ Fundamental guarantees ▸ Mercenaries

The Status of Prisoner of War (Third Geneva Convention)

Once prisoners of war are in the hands of the adversary, they are particularly vulnerable to acts of revenge, pressure, and humiliation. The status of prisoners of war is set out in detail throughout the 143 articles of the Third Geneva Convention, which regulates the protection of combatants fallen into the hands of the adverse power and the conditions of their detention.

This protection rests on the Convention’s reaffirmation of certain rights and obligations, as well as on the mechanism of supervision embodied in the mandate of the protecting power. If the parties to a conflict fail to designate a protecting power, the ICRC will play this role with regard to the prisoners on both sides (GCIII Arts. 8–10). In practice, this reciprocal principle is pivotal to convince the parties to the conflict to respect the rights established by the Third Convention. However, in certain situations—namely, in non-international armed conflicts—the benefits of reciprocity are not always sufficient to prevent ill treatment. The role of the ICRC is even more important in such cases.

The rights and obligations set out by the Third Geneva Convention can be summarized as follows:

Prisoners of war must be treated humanely at all times. Any unlawful act or omission by the detaining power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited and will be considered a serious breach of humanitarian law (GCIII Art. 13).

Prisoners of war are entitled in all circumstances to respect for their person. Women must be treated with due regard to their specific needs and must benefit from treatment as favorable as that granted to men (GCIII Art. 14). ▸ Women

The detaining power is bound to provide prisoners of war, free of charge, with the necessary maintenance and medical attention required by their state of health (GCIII Art. 15).

All prisoners of war must be treated alike by the detaining power (GCIII Art. 16).

Prisoners are only under obligation to give their last and first names, rank, date of birth, and serial number. Each party to a conflict is required to furnish each prisoner of war under its jurisdiction with an identity card. Questioning is not prohibited, but the Third Convention stipulates that no physical or mental torture, or any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer when questioned may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind. The questioning of prisoners of war shall be carried out in a language they understand (GCIII Art. 17).

Prisoners of war may not be deprived of their personal belongings (GCIII Art. 18).

Prisoners of war must be evacuated, as soon as possible after their capture, to camps situated away from the combat zones. Such evacuation must be carried out humanely and in conditions similar to those for the forces of the detaining power in their changes of station. Prisoners of war must be given sufficient food and drinking water and the necessary clothing and medical attention (GCIII Arts. 19, 20).

Premises of internment must provide every guarantee of hygiene and healthfulness and take into account the climate in the area (GCIII Art. 22).

Prisoner of war camps must be clearly marked by the letters PW or PG (for prisoners of war or prisonniers de guerre ), whenever military considerations so permit (GCIII Art. 23).

Prisoners of war shall be quartered under conditions as favorable as those for the forces of the detaining power who are quartered in the same area. The said conditions must in no case be prejudicial to their health. The premises must be entirely protected from dampness and adequately heated and lighted (GCIII Art. 25).

The basic daily food rations must be sufficient in quantity, quality, and variety to keep prisoners of war in good health and to prevent weight loss or the development of nutritional deficiencies. The habitual diet of the prisoners must also be taken into account (GCIII Art. 26).

The detaining power is bound to take all necessary sanitary measures to ensure the cleanliness and healthfulness of camps and to prevent epidemics. In any camps in which female prisoners of war are accommodated, separate conveniences shall be provided for them (GCIII Art. 29).

Every camp must have a satisfactory infirmary. Prisoners of war shall receive medical attention, preferably from medical personnel of the power on which they depend and, if possible, of their nationality. Prisoners of war suffering from serious diseases or whose condition necessitates special treatment must be admitted to any military or civilian medical unit where such treatment can be given. Medical inspections of prisoners of war are to be held at least once a month. They shall include checking and recording the weight of each prisoner and his or her general state of health, nutrition, and cleanliness (GCIII Arts. 30 and 31).

Members of the medical personnel and chaplains held by the detaining power with a view to assisting prisoners of war shall not be considered prisoners of war. They shall, however, receive as a minimum the benefits and protection of the Third Convention and shall be given all facilities necessary to carry out their work (GCIII Art. 33).

Prisoners of war shall enjoy complete latitude in the exercise of their religion and in the practice of sports and intellectual activities (GCIII Arts. 34–38).

Every camp shall be put under the immediate authority of a responsible commissioned officer belonging to the regular armed forces of the detaining power. This officer must know and implement the provisions of the Third Geneva Convention. Any regulations relating to the conduct of prisoners—including the text of the Convention—shall be posted in the camp, in a language the prisoners of war understand (GCIII Arts. 39–42).

The detaining power may hire the prisoners of war as workers, taking into account their state of health, as well as their age, sex, and rank, and only for work that is not for military purposes.

Non-commissioned officers shall only be required to do supervisory work. Prisoners of war may not be forced to do dangerous or humiliating work, and their labor must be paid (GCIII Arts. 49–57).

The management and transfer of prisoners of war’s financial resources are precisely regulated by Articles 58 to 68.

Prisoners’ relations with the exterior are regulated by Articles 69 to 77. The provisions include the fact that the detaining power must notify the authorities on which the prisoners depend of the capture, and it must allow the prisoners to receive and send letters—two to four per month, depending on the model card used. Prisoners are also allowed to receive individual parcels or collective shipments containing, in particular, foodstuffs, clothing, medical supplies, and articles of a religious, educational, or recreational character, under the ICRC’s supervision.

Prisoners of war have the right to make requests to the military authorities in whose power they are, regarding their conditions of captivity (GCIII Art. 78).

Articles 82 to 108 enumerate the penal and disciplinary sanctions:

—As a rule, prisoners of war are subject to the laws of the detaining power and its military tribunals. Such tribunals must always offer guarantees of judicial independence and impartiality and protect the means and rights of defense.

—Even if convicted, prisoners of war continue to be protected by the provisions of the Convention (prisoners of war may never be deprived of the protection derived from Arts. 78 to 126, concerning their right to file complaints and the judicial guarantees to which they were entitled).

—Collective punishment imposed for individual acts, corporal punishment, imprisonment in premises without daylight, and, in general, any form of torture or cruelty, are forbidden.

—The scale of applicable disciplinary punishments is clearly established by the Convention.

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

Prisoners of war who are seriously wounded or suffer from specified diseases must be repatriated directly back to their own country or to a hospital in a neutral State (Arts. 109–117). Article 110 sets forth the specific conditions governing such decisions. Those whose diseases or wounds warrant a direct repatriation are:

—the incurably wounded or sick whose mental or physical fitness seems to have been gravely diminished;

—the wounded or sick who have recovered but whose mental or physical fitness seems to have been gravely and permanently diminished;

—the wounded or sick who, according to medical opinion, are not likely to recover within one year.

Those who may be accommodated in a neutral State are:

—the wounded and sick whose recovery may be expected within one year, or sooner if treated in a neutral country;

—prisoners of war whose mental or physical health, according to medical opinion, is seriously threatened by continued captivity, but whose accommodation in a neutral country might remove such a threat.

Certain prisoners of war accommodated in a neutral country can be directly repatriated following their treatment, under an agreement between the powers concerned, if:

—their state of health has deteriorated so as to fulfill the conditions laid down for direct repatriation;

—their mental or physical powers remain considerably impaired, even after treatment.

To address the needs of direct repatriation or hospitalization in a neutral State, the parties to a conflict must set up Mixed Medical Commissions from the beginning of the conflict, which examine the state of the wounded and sick (Annex I of the Third Geneva Convention, relating to Art. 110, provides a model agreement concerning direct repatriation and accommodation in neutral countries of wounded and sick prisoners).

Prisoners of war must be released and repatriated without delay after the cessation of active hostilities (GCIII Arts. 118, 119).

Articles 120 and 121 address the death of prisoners of war. They regulate the validity of individual wills, notification of death certificates, the right to individual burial, and the obligation of the detaining power to investigate any death the cause of which is suspect.

The parties to the conflict commit to setting up information bureaus that will gather information and organize relief actions relating to prisoners of war (GCIII Arts. 122–125).

The following acts, committed against prisoners of war, are grave breaches of the Geneva Conventions: “willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, compelling a prisoner of war to serve in the forces of the hostile Power, or willfully depriving a prisoner of war of the rights of fair and regular trial prescribed in this Convention” (GCIII Art. 130).

▸ War crimes/Crimes against humanity

Fundamental Guarantees

Prisoner of war status is closely tied to the definition of combatants and hence to the status of members of the armed forces. However, combatant status does not automatically cover all persons who have participated in hostilities (which may include civilians, mercenaries, or child soldiers), especially in internal armed conflicts. Nonetheless, a certain number of fundamental guarantees do remain applicable in such situations.

Indeed, Common Article 3 to the four Geneva Conventions provides fundamental guarantees for all persons who do not, or no longer, participate in hostilities (in international or non-international armed conflicts). It provides the same rights for all individuals and whatever the circumstances are. States cannot invoke the specific nature of the conflict, the difficulty to qualify it, the accusation of illegal participation in the hostilities, terrorism, or the nationality of the person concerned to refuse the application of Common Article 3 to persons who are placed under their power and effective control. In this context, the U.S. Supreme Court rejected in 2006 the argument used by U.S. authorities and ruled that Common Article 3 was applicable in the context of the war on terror to the Guantanamo detainees. This decision was confirmed by international jurisprudence and customary law. Fundamental guarantees of Common Article 3 were completed by the two 1977 Additional Protocols. They provide supplementary rights for persons who do not, or no longer, participate in the hostilities in international and non-international armed conflicts, whatever is the status of those individuals.

▸ Children ▸ Combatants ▸ Detention ▸ Fundamental guarantees ▸ Situations and persons not expressly covered by humanitarian law

In International Armed Conflicts

Article 75 of Additional Protocol I to the Geneva Convention provides that “any person who has taken part in hostilities but is not entitled to prisoner of war status [according to judicial decision—see supra] and is not covered by more favorable provisions under the Fourth Geneva Convention (Relative to the Protection of Civilians) has a right, at all times, to the fundamental guarantees established by the Conventions.” Those guarantees include guarantees of treatment, guarantees of detention, and judicial guarantees. ▸ Detention ▸ Fundamental guarantees ▸ Judicial guarantees

In Noninternational Armed Conflicts

Additional Protocol II, relating to non-international armed conflicts, does not directly refer to the definition of prisoners of war. However, Additional Protocol II includes clauses that aim to protect detained persons or persons deprived of their liberty in relation to the conflict, prohibit ill-treatment, and set out fundamental guarantees and judicial guarantees granted to such persons, regardless of whether they have taken part in hostilities.

All persons who are not covered by more favorable provisions are at least entitled to the fundamental guarantees and hence have the right to the respect for their person, their honor, their religious convictions and practices, and their right to be treated humanely, without any adverse distinction (GCI–IV Common Art. 3, APII Art. 4). ▸ Fundamental guarantees

Persons deprived of their liberty for reasons related to the armed conflict are protected against ill treatment and benefit from specific guarantees (APII Art. 5). These are detailed in the entry on ▸ Detention . ▸ Ill treatment

The study on the rules of customary international humanitarian law published by the ICRC in 2005 (customary IHL study) recognize that combatants must distinguish themselves from the civilian population while they are engaged in an attack or in a military operation preparatory to an attack. If they fail to do so, they do not have the right to prisoner-of-war status, but cannot be convicted or sentenced without previous trial and the respect of judicial guarantees (Rules 106 and 107 of the customary IHL study). Customary international humanitarian law recalls that all persons placed hors de combat must be treated with humanity and lists all the fundamental guarantees applicable to persons hors de combat , including guarantees of detention, tria,l and sentencing. (Rules 87–105).

Detained individuals who come under the category of combatants, as well as those involved in hostilities, may be able to benefit from prisoner-of-war status and the guarantees attached to that status, according to the Third Geneva Convention, following specific conditions of reciprocity and according to special agreements signed between the parties to the conflict. This status is thus not granted automatically but is the result of a reciprocal agreement signed between the parties to the internal conflict. ▸ Detention