Combatants and prisoners of war

International humanitarian law determines who may and may not legitimately take part in hostilities. Persons entitled to take direct part in hostilities are called ‘combatants’.

The relevant treaty provisions regarding combatant status are contained in Geneva Convention I, Article 13(1)-(2), Geneva Convention II, Article 13(1)-(2), Geneva Convention III, Article 4A(1)-(2), and Articles 43-44 of Additional Protocol I. As outlined in Geneva Convention III, Article 4A, combatants and other protected persons are those who fall into the following categories:

1. members of the armed forces (including militias or volunteer corps forming part of such armed forces).
2. members of other militias and other volunteer corps, including those of organised resistance movements, operating in or outside their own territory, even if this territory is occupied, provided that they:
   1. a. are commanded by a person responsible for his subordinates;
   1. b. have a fixed distinctive sign recognisable at a distance;
   1. c. carry arms openly; and
   1. d. conduct their operations in accordance with the laws and customs of war.
3. members of regular armed forces who profess allegiance to a government or an authority not recognised by the Detaining Power.
4. persons accompanying the armed forces 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.
5. members of crews, including masters, pilots and apprentices, of the merchant marine and the crews of civil aircraft.
6. 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 the time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.

In addition to the categories outlined in the Geneva Conventions, certain other categories of combatant are found in Additional Protocol I. Under Articles 43-44 of API, combatants also include persons engaged in ‘armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination ...’.

Limiting the Rules on Distinction

Protocol I amends the strict standards of the Geneva Conventions. Under Article 44, the requirement of wearing a fixed, distinctive emblem is dispensed with, as is the requirement of the open carrying of arms. This development creates a limited exemption to the general rule of distinction. Therefore, while Article 44(3) establishes the requirement that ‘combatants are obliged to distinguish themselves from the civilian population when they are engaged in an attack or in a military operation preparatory to an attack’, it also provides that such distinction is to be considered in light of operational necessity.

Article 44(3) also recognises that ‘there are situations in armed conflicts where, owing to the nature of the hostilities an armed combatant cannot so distinguish himself’ and provides that such a combatant will not lose his combatant status so long as he ‘carries his arms openly (a) during each military engagement, and (b) during such time as he is visible to the adversary while he is engaged in a military deployment preceding the launching of an attack in which he is to participate.’ However, this article does not extend to regular armies the right to engage in guerrilla tactics. Article 44(7) specifies that the article is ‘not intended to change the generally accepted practice of States with respect to the wearing of the uniform by combatants assigned to the regular, uniformed armed units of a Party to the conflict.’

The Importance of Combatant Status
The fundamental importance of combatant status lies in the fact that combatants who fulfil the necessary requirements are legitimately permitted to participate in armed hostilities. What this amounts to is a ‘combatant immunity’. At the cessation of hostilities, a legitimate combatant will not face prosecution for acts committed during the course of the armed conflict, unless such acts were in violation of the laws of armed conflict. This is the essence of combatant status; it is an international status which provides immunity from the operation of domestic criminal law for such acts as murder, assault, and destruction of property – provided such acts are committed in conformity with the international laws of armed conflict, and are done by properly designated combatants, as part of legitimate military engagements, in the context of the armed conflict.

**Prisoner of War (POW) Status**

In addition to combatant immunity, legitimate combatants are also entitled, upon capture by enemy forces to treatment as prisoners of war (POWs). POW status is not punitive; it is not designed to punish a person for their lawful participation in the conflict. It is meant only to remove the combatant from the armed conflict. The rules regarding POW status are contained in Geneva Convention III, and provide numerous protections for POWs. These include comprehensive rules regarding their treatment during captivity, including the right of respect for their persons and honour, protection against physical violence, torture, and unnecessary scientific and/or medical treatments or experimentation. POWs may not be forcibly enlisted in the enemy’s armed forces, nor compelled to undertake hazardous work, such as mine removal. POWs are to be provided with adequate food and shelter during their captivity, as well as access to medical care.

They are entitled to:

- retain their personal property;
- send and receive correspondence with family; and
- receive material aid from relief organisations such as the ICRC.

POWs are also afforded substantive judicial guarantees in the case of any legal action being taken against them. At the cessation of hostilities, POWs are to be repatriated as soon as possible. The rights afforded to POWs are absolute, and cannot be renounced. Detaining powers who violate certain principles of the POW Convention will have committed war crimes.