

# Prisoners of War

CONTEMPORARY TOPICAL  
QUESTIONS IN THE CONTEXT  
OF THE RUSSO-UKRAINIAN  
WAR

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# Table of contents

- ▶ Definition
- ▶ Categories of persons who are eligible for POW status
- ▶ Treatment of POW's
- ▶ Russo-Ukrainian war
- ▶ Contemporary questions/problems

# Definition

- ▶ **International armed conflict BUT: Parties can agree otherwise during NIAC's**
- ▶ **GC III/ AP I**
- ▶ **Art. 4 A GCIII:** Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following Categories, who have fallen into the power of the enemy:

# Categories of persons who are eligible for POW status (1)

1) 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.(REGULAR AF)


# Categories of persons who are eligible for POW status (2)

2) 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 such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions (IRREGULAR AF):

- a) that of being commanded by a person responsible for his subordinates;
- b) that of having a fixed distinctive sign recognizable at a distance;
- c) that of carrying arms openly;
- d) that of conducting their operations in accordance with the laws and customs of war

**BUT, UNREALISTIC BURDEN OF PROOF?**

# Categories of persons who are eligible for POW status (2)

- ▶ “Irregular AF” have to prove that they are being commanded by a person responsible for his subordinates.
- ▶ Critical information?  Art 43 AP I defines ‘armed forces’

1) 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 of 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.

2) 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.

3) Whenever a Party to a conflict incorporates a paramilitary or armed law enforcement agency into its armed forces it shall so notify the other Parties to the conflict.

**Art 44 AP I: Any combatant, as defined in Article 43, who falls into the power of an adverse Party shall be a prisoner of war.**

# Categories of persons who are eligible for POW status (1+2)

Conditions for combatants to be eligible for POW status:

- ▶ Military organized
- ▶ Under command responsible to a Party
- ▶ Respect for LOAC rules
- ▶ Distinguish from civilian population (carrying arms openly is the minimum requirement)
- ▶ In case of incorporating paramilitary forces, the Party shall notify the other Party

Art 43 and 44 AP I

# Categories of persons who are eligible for POW status (3)

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



# Categories of persons who are eligible for POW status (4)


4) 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 similar to the annexed model.

# Categories of persons who are eligible for POW status (5)

5) 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.

# Categories of persons who are eligible for POW status (6)

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 time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.

- ▶ Invasion or loss of control during occupation
- ▶ Spontaneous = no organization  Countries where the majority of the population does not own weapons?

# Categories of persons who are eligible for POW status

In case of doubt?

- ▶ Art. 5 GC III: “ [...] such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal.”
- ▶ Art. 44 (4) AP I: “equivalent protection but can be prosecuted”



# Treatment of POW's

## MAIN IDEAS

- ▶ Military necessity (art. 21 GC III) v. Humanity (art. 13 GC III)
- ▶ Combatants privilege: no prosecution for taking direct part in hostilities while respecting LOAC
- ▶ POW's need to be protected but may be prevented from taking part in the hostilities
- ▶ POW's must be released after the cessation of active hostilities (art. 118 GC III) **NOT** after the signing of a peace treaty

# Treatment of POW's

- ▶ GC III is the main body of rules that protects POW's alongside HRL
- ▶ GC III groups the different protection rules for POWs by theme



General Protection of POW's

Discipline

Quarters food and clothing of POW's

Beginning of captivity

Termination of Captivity

...

# Treatment of POW's (examples)

- ▶ , no prisoner of war may be subjected to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical, dental or hospital treatment of the prisoner concerned and carried out in his interest. Likewise, prisoners of war must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity. Measures of reprisal against prisoners of war are prohibited. (art. 13 GC III)
- ▶ Every prisoner of war, when questioned on the subject, 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. (art. 17 GC III)

# Treatment of POW's (examples)

- ▶ All effects and articles of personal use, except arms, horses, 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. (art. 18 GC III)
- ▶ The basic daily food rations shall be sufficient in quantity, quality and variety to keep prisoners of war in good health and to prevent loss of weight or the development of nutritional deficiencies. Account shall also be taken of the habitual diet of the prisoners. (art. 26 GCIII)



# Treatment of POW's (examples)

- ▶ No prisoner of war may at any time be sent to, or detained in areas where he may be exposed to the fire of the combat zone, nor may his presence be used to render certain points or areas immune from military operations. (art 23 GC III)
- ▶ ...

# Russo-Ukrainian war (since 22/2/22)

POW protection rules in GC III  
apply when:

IAC

Person is eligible for POW Status

Conditions for combatants to be eligible for POW status:

Military organized

Command responsible to the Party

Respect for LOAC rules

Distinguish from civilian population

# Russo-Ukrainian war (since 22/2/22)

Briefing by Russian Defence Ministry spokesperson (03/03/22)  
([https://eng.mil.ru/en/news\\_page/country/more.htm?id=12411468](https://eng.mil.ru/en/news_page/country/more.htm?id=12411468))

[...]

Great Britain, Denmark, Latvia, Poland and Croatia legally allowed their citizens to participate in hostilities on the territory of Ukraine. The command of the French foreign legion plans to send military personnel - ethnic Ukrainians to help the Kiev regime.

According to Zelensky, about 16,000 foreign mercenaries are expected to arrive in Ukraine in addition to the existing ones in order to compensate for the crushing military failures of the Ukrainian armed forces. For them, a visa-free regime is officially introduced.

Last week alone, about 200 mercenaries from Croatia arrived through Poland and joined one of the nationalist battalions in southeastern Ukraine.

Today, the Defence Attache at the Croatian Embassy in Moscow was summoned to the Russian Defence Ministry.

The military attache was pointed out to the illegal activities of Croatian citizen Denis Sheler, who participated in the hostilities in the south-east of Ukraine in 2015, forming detachments of Croatian mercenaries to be sent to Ukraine.

We noticed that we are aware of the arrival in Ukraine of about 200 Croatian mercenaries.

I want to emphasize that all mercenaries sent by the West to help the Kiev nationalist regime are not combatants under international humanitarian law.

They are not entitled to prisoner of war status.

The best thing that awaits foreign mercenaries upon arrest is criminal prosecution.

# Russo-Ukrainian war (since 22/2/22)

## Sources:

- ▶ UN OHCHR Reports on violations of International Humanitarian and Human Rights Law 2022- Feb 2023
- ▶ UN OHCHR conducted confidential interviews with 169 released Ukrainian POW's after April 2023
- ▶ Reports by OSCE 13 April 2022 and 14 July 2022 "Moscow mechanism"

## Problems:

- ▶ Russia does not grant complete and confidential access to POW facilities. Several interviews with POW's were granted but without confidentiality. Most credible info comes from released POW's.
- ▶ Ukraine did grant complete and confidential access to POW facilities. However the OHCHR has reasons to believe that unofficial camps exist in Kiev



# Russo-Ukrainian war (since 22/2/22)

## Violations of IHL on POW's by Russia

- ▶ On 8 June 2022, three combatants of a foreign legion were sentenced to death in Donetsk. (One person was not admitted access to the court and case was decided behind closed doors)
- ▶ 24 female POW's claimed that they were separated from the men, but the specific needs they have as women were not met. (art. 14 GC III)
- ▶ 75% of POWs surveyed reported being housed in correctional facilities. (art. 21 GC III)
- ▶ POW's were coerced to give personal information under threat of torture. 68 POW's claimed they were tortured to apologize on Russian TV and were being forced to make incriminating statements to fellow inmates. Videos showed POW's being forced to sing Russian songs and to ask Ukrainian troops to lay down arms. (art. 17 GC III) (art. 13 GC III)

# Russo-Ukrainian war (since 22/2/22)

## Violations of IHL on POW's by Russia

- ▶ Of 203 interviewed POW's, 122 claimed that all personal effects (money, jewelry, shoes, jackets) were stolen by Russian authorities. 7 claimed that they were coerced to give access to bank accounts after which money was transferred. (art. 18 GC III) (art. 27 GC III)
- ▶ Videos surfaced where Ukrainian POW's were executed (shot, decapitated,...) by Russian military personnel.
- ▶ 28 July 2022: 50 POW's of the Azov-regiment were killed during an explosion in a camp in Olenivka Donetsk. Interviews, satellite images and videos suggest that trenches were dug around the barracks in question and that guard posts were placed further away from the barracks in the days before the explosion, suggesting that this was a deliberate action. The guards also did not provide medical aid until 5 hours after the incident (art. 13 GC III) (art 23 GC III) (art. 8 Rome Statute: War Crime)

# Russo-Ukrainian war (since 22/2/22)

## Violations of IHL on POW's by Russia

- ▶ 173 interviewed POW's claimed that several acts of violence were committed against them and colleagues. (Beatings with sticks, kicking in the body, suffocation, fake executions, tourniquets, electric shocks, welcome beatings) mostly to acquire info. The worst beatings were committed against specific POW's (snipers, pro - Ukrainian tattoo's, artillery crews,...) (art 13 GC III)
- ▶ According to the UN OHCHR study 2022- feb 2023, 54 POW's claimed to have been sexually abused. Of 169 interviewed POW's after April 2023, 119 claimed to have been sexually assaulted (forced nudity, electric shocks to genitals, rape, threat of rape, threat of castration) (art 13 GC III)

# Russo-Ukrainian war (since 22/2/22)

## Violations of IHL on POW's by Ukraine

Before 22/2/22:

- ▶ 767 interned separatists were monitored by the UN OHCHR. 68 % were found to have been tortured and/or abused. ( beatings, suffocation, sexual abuse, electrocution, denied sleep, food and water, welcome beatings, run over by trucks, forced to walk over mine fields, branding,...)

After 22/2/22

- ▶ Most separatist combattants were prosecuted for acts of terrorism after their internment by non military courts. (IAC/NIAC?) (combattants privilege?) (art. 83-87 GC III)
- ▶ Secret camps
- ▶ Of 229 interviewed POW's, 113 claimed to have been tortured and mistreated during internment. (electrocution, suffocation, stress positions, shot in the legs, beatings,...) for information or as a punishment ("This is for Bucha")

# Russo-Ukrainian war (since 22/2/22)

## Violations of IHL on POW's by Ukraine

- ▶ Interviews suggest 25 POW's were executed
- ▶ Videos show 11 POW's being executed
- ▶ POW's were forced to criticize the Russian army and to ask colleagues to lay down the arms while being videotaped. (art. 13 GC III)
- ▶ Majority of interviewed POW's were content with treatment, food, water, hygiene, ability to contact family.



# Conclusion

- ▶ Ukraine does a way better job in respecting GC III than Russia
- ▶ POW's are still seen as sources for tactical information/ bargaining chips (secret camps/ no access)
- ▶ anger toward the other party is often elaborated on POWs

# Questions/ problems

- ▶ IHL rules concerning the protection of POW's apply during IAC's. but the world is a lot more complex now than during WW2 (a lot of non-stat actors). IT IS NOT ALWAYS EASY TO DETERMINE WHETHER A SPECIFIC CONFLICT IS A NIAC OR AN IAC
- ▶ Internationalization by 'overall control' over an armed group? (f.e. MH 17 case by the ECHR on 25 january 2023)
- ▶ Conflicts between two States where one State considers the other to be a part of their territory?

# Possible Solution?

NIAC



protracted armed violence: organization,  
intensity, duration

Common article 3 applies



separatists control a part of the territory  
separatists are able to organize sustained  
and concerted military operations and to  
implement protocol II

AP II applies



?

GC III applies/ New Additional Protocol



▶ QUESTIONS?