



## VICTIMS OF CONVENIENCE: HOW REDEFINING COMBATANT STATUS ENDANGERS U.S. SOLDIERS

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“The treatment of prisoners of war and of the civilian population of occupied areas is the most certain measure and index of the civilization of a people and of a nation.”—Pope Pius XII<sup>1</sup>

### I. INTRODUCTION

Following the terrorist attacks of September 11, 2001, the Bush administration launched what has become known as the Global War on Terror. In the ongoing fight against terrorism, the United States has reinterpreted some of its existing international treaty obligations to meet the shifting demands of the War on Terrorism’s fluid battlefields. Of particular significance is the US’s new relationship to the 1949 Third Geneva Convention Relative to the Treatment of Prisoners of War.<sup>2</sup> The Bush Administration has reinterpreted how a combatant is defined in regards to the application of Prisoner of War status under the Third Geneva Convention. Prior to this new reading of what constitutes a combatant, combatants were granted Prisoner of War status under the Third Geneva Convention by virtue of membership in the armed forces of a High Contracting Party to the Conventions.<sup>3</sup> Prisoner of War status ensures that the prisoners are not tortured and that they receive the basic necessities. However, the Bush Administration has restricted how individuals captured by US forces can acquire Prisoner of War status. This paper shall demonstrate that this reinterpretation is shortsighted, dangerous, and jeopardizes the safety of United States military personnel by providing future enemies with precedent for denying US military personnel Prisoner of War status and protections. By restricting Prisoner of War status beyond conventionally accepted parameters, the United States risks having its own servicemen and women exposed to increased danger if apprehended by the enemy since captured US military personnel may fail to qualify as Prisoners of War under the US’s own new interpretation. For example, if US soldiers were out of uniform or concealing weaponry, they could theoretically find themselves labeled “unlawful enemy combatants” for failing to meet combatant definitional criteria, subjecting them to their enemy without POW status.

The international treaties that are supposed to legally define POW status and other guidelines for war include the Geneva Conventions of 1949 and their Additional Protocols of 1977.<sup>4</sup> While it may seem surprising that an activity as destructive and disruptive as war is governed by law, this concept is almost universally accepted. War has been subject to certain norms, legal and otherwise for much of human history. Societies around the world have seen war as a necessary or even normal state of affairs, while simultaneously recognizing the

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<sup>1</sup> HOWARD S. LEVIE, PRISONERS OF WAR IN INTERNATIONAL ARMED CONFLICT (1977).

<sup>2</sup> Third Geneva Convention Relative to the Treatment of Prisoners of War, 12 Aug. 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135.

<sup>3</sup> Telephone Interview with Major Sean Watts, Professor, International and Operational Law Department, The Judge Advocate General’s Legal Center and School, in Charlottesville, Virginia (19 Mar. 2007).

<sup>4</sup> See generally First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 Aug. 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31; Second Geneva Convention for the Amelioration of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 Aug. 1949, 6 U.S.T. 3217, 75 U.N.T.S. 85; Third Geneva Convention Relative to the Treatment of Prisoners of War, 12 Aug. 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 Aug. 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287.