

Who are the Prisoners of War?

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Indeed a good question. The word "prisoner" is often associated with some stigma attributing some wrong-doing on his part. Laymen may still think that prisoners of war may have done some wrong-doing during war. This is why they are called by the name and are interned.

I may hasten to say that nothing can be farther from truth than this wrong impression. Their only doing is that they fight for the defence of their country and in the process may get captured by the other belligerent. They are unfortunate victims of war as the Geneva Conventions 1949 indicate. But since there are a number of categories included under the label "victims of war", enemy armed personnel captured during war are given a separate label of "prisoners of war".

Prisoners of war are quite different from ordinary prisoners. While ordinary prisoners are detested by the society they live in, prisoners of war occupy a place of honour within their national society. Winston Churchill considered the prisoners of war to be in the power of the captor whose humanity spares their life and whose compassion gives them their daily bread. Today, they enjoy some rights and privileges under the Third Geneva Convention 1949 Relative to Prisoners of War irrespective of the compassion and humanity of the detaining power.

During the process of war, a number of enemy persons are captured by the other belligerent. All are not treated as prisoners of war. Only selected few categories from among the captured personnel qualify to be treated as prisoners of war and given this privileged status. Hence this query: who are the prisoners of war?

Armed forces

A typical example of enemy personnel to be treated as prisoners of war is that of members of enemy armed forces in case they are captured by the other belligerent. Armed forces are commissioned to commit hostilities against the enemy. They exhibit their enemy character by wearing a uniform and carrying arms openly. They constitute a disciplined contingent commanded by a responsible officer. One has not yet known any army which may be different from above characteristics. Any such personnel when captured during war are treated as prisoners of war (hereinafter abbreviated as POWs).

Article 4 of the Third Geneva Convention 1949 enumerates the categories of

1. For a fuller study of the status and treatment of prisoners of war, see Hingorani, R.C., *Prisoners of War* (1982).

personnel who qualify to be treated as POWs in case of their capture. It is supplemented by Article 43 and 44 of 1977 Protocol I Additional to the Geneva Conventions of 1949. While the Geneva Convention has been ratified by 151 States and is nearly universal in the matter of law relating to war victims including prisoners of war, the Protocol has been ratified by only 24 States.² Article 43.1 of the Protocol states that the armed forces of a party "consist of all organised armed forces, groups and units which are under a command responsible to that party for the conduct of its subordinates" and who are "subject to an internal disciplinary system". Armed forces of a country would include national militia or volunteer corps which form part of armed forces. Article 44.1 confers POW status on such combatant groups.

Practices indicate a four tier formula which a potential POW should fulfil. These are responsible commander, distinct uniform or symbol, carrying of arms openly and law abiding attitude in respect of rules of warfare.³ Conditions 1 and 4 are designed to enforce discipline and respect for rules of warfare among the combatants who may otherwise run amuck with wide power to kill. Conditions 2 and 3 are motivated with a twin purpose of maintaining population and forewarning the enemy whether he is facing a combatant who can kill him or be killed by him or a civilian who should be spared.⁴

In cases of members of armed forces, while the Geneva Convention assumes that armed forces do fulfil the above four requirements,⁵ the Protocol insists on responsible commander and internal discipline among members of the armed forces.⁶ Any deviation from these requirements may land members of the armed forces in difficulties and cause them denial of POW status, sometimes temporarily and sometimes during the whole period of their captivity. Sample survey of instances is given below.

1. *Armed forces and war crimes*

It is said that members of the armed forces who have committed war crimes or have not observed rules and customs of warfare are not entitled to POW status when they are captured. A number of early publicists had supported this view.⁷ Some of the war crime trials⁸ gave credence to such thinking which was echoed during the Geneva Diplomatic Conference in 1949.⁹ North Vietnam did not treat American fliers as POWs on two grounds — non-recognition of state of war by Hanoi regime and attribution of war crimes to the captured American fliers.

Any denial of POW status to some members of armed forces on the plea of their having committed war crimes is not in conformity with the Geneva

2. *International Review of Red Cross*, July/August 1982, 245 and 219, respectively.

3. Article 4.1 of Geneva Convention III of 1949. Also see Hingorani, op cit, 19–20.

4. *Ibid.*, 20–21.

5. Pictet, JS, *Commentary: Geneva Convention III Relative to the Treatment of Prisoners of War* (1960), 63 wherein he says: "Regular armed forces have all the material characteristics and all the attributes of armed forces in the sense of sub-paragraph (1); they wear uniform, they have an organised hierarchy and they know and respect the laws and customs of war."

6. Article 43.1.

7. Flory, *Prisoners of War* (1942), 27–8; Phillipson, *International Law and the Great War* (1915), 259; Spaight, *Air Power and War Rights* (1947), 50.

8. *Re Yamashita*, 327 US 1 at 20–3 (1945); *Johnson v Eisentrager*, 339 US 763 at 789–90 (1949); *German High Command Trial* (1948), 12 LRTWC 1 at 63.

9. Final records of the Geneva Diplomatic Conference, Volume 2A, 319.

Convention of 1949, nor in conformity with the Additional Protocol I. The four requirements are not applicable to members of the armed forces as defined in Article 4.1 of the Convention. These are applicable only to volunteer corps not forming part of armed forces, partisans and resistance groups.

Besides, one cannot punish the captured personnel until they have been tried under the Convention and punished for alleged war crimes. There is also Article 85 which states that prisoners of war "shall retain, even if convicted, the benefits of the present Convention". Of course, the Socialist countries have made reservations to this Article.

There is Article 5 paragraph 2 of the Convention which says that captured personnel will be treated as POWs until competent tribunal holds otherwise in case of doubtful categories. Article 45.1 of the Protocol I reiterates Article 5 of the Convention when it says that the disputed captured personnel will be entitled to the POW status unless it is held otherwise by a competent tribunal.

2. *Paratroopers (commandos)*

These air-borne personnel of belligerent army seek to operate behind enemy lines for purposes of sabotaging, transmission of intelligence and assistance to the incoming army. Ever since the advent of aerial facilities, belligerents have resorted to paratroop landings behind enemy lines. The world community had the taste of this type of warfare during World War II in which both the Allied as well as the Axis Powers resorted to commando activities. These activities were equally witnessed during the Vietnam war, Arab-Israel wars, Indo-Pakistan wars and Falkland Islands war.

Naturally, in view of their activities behind enemy lines, their mode of operation cannot be blame-free. They have to work in clandestine manner, sometimes donning local civilian dress, sometimes donning enemy uniforms and at times wearing one's own uniform. They would mostly kill those who challenge them, there being no scope for taking prisoners.

During World War II, Nazi troops had been ordered to kill commando troops on the spot without taking them as prisoners of war.¹⁰ It was sought to be justified on the ground that commandos did not participate in regular hostilities. Therefore there was a need to take reprisals against illegal activities of the commandos.¹¹

This raises a basic issue regarding mode of participation of paratroopers of one belligerent behind the lines of another belligerent. If they operate while exhibiting their enemy character, they are entitled to be treated as POWs when captured. However, if they are captured while in civilian dress or in enemy's uniform, they run the risk of being treated as spies or saboteurs.¹² Same fate awaits an evadee aviator who has accidentally landed in enemy country by bailing

10. Hitler's "Commando Order" dated October 18, 1942: 4 IMT 441-2.

11. See the "Opinion of the Armed Forces Legal Department" quoted 15 IMT 484.

12. Thus was held in the case of two Indonesian members of Armed Forces who were sentenced by Singapore High Court to death for carrying out hostile acts in civilian dress. The decision was confirmed in appeal by the Court of Malaysia. Later, the Privy Council upheld the sentence: *Mohammad Ali v Public Prosecutor* [1968] 3 All ER 488. Viscount Dilhorne, one of the three judges, observed (at 494) that although the Geneva Convention did not specifically mention wearing of uniform by members of armed forces, International Law recognized the necessity of distinguishing between combatants and non-combatants. Regarding World War II practices, see *Ex parte Quirin*, 317 US 1 (1942).

out from burning or disabled aircraft. Naturally, he prefers to wear civilian dress to hide his enemy character and thus prevent himself from being captured by the territorial army.

Initially, however, they are all entitled to be treated as POWs under Articles 5 and 45 of the Convention and Protocol respectively until their status is determined by competent tribunal.

3. Traitors and deserters

Traitors and deserters in the enemy armed forces are not treated as POWs. There is no dispute as to that. However, difficulty arises when the word "traitor" is sought to be interpreted to include a non-conformist to his original State's ideology irrespective of the fact whether his original State is involved or not involved in the conflict. In the fifties, during the French-Indochinese war, nationals of East European countries who had enlisted with the French army, were not treated as POWs by the Ho Chi Minh Government.¹³ These expatriates from Socialist countries were considered as traitors to their State's ideology which was being championed by the Indochinese regime. Hence, they were denied POW status.

It may be stressed here that there is no scope for widening the definition of "traitor" which should confine itself to its natural meaning. Any widening of the definition would be arbitrary and against canons of law. Expatriates from foreign countries cannot be treated as traitors. Hence if they form part of armed forces, they must be treated as POWs.

4. Foreign participants in belligerent armed forces

Belligerent armed forces sometimes have foreign participants who are part of the armed forces. The French army has the foreign legion. British and Indian armies have Gurkha regiments as part of their armed forces. Saudi Arabia has a number of Pakistanis in its army. Some other countries have foreigners as advisers. All those foreign participants are an integral part of national armed forces and they are entitled to POW status in case of their capture during war.

During the Falkland war in 1982, Argentine had labelled Gurkha members of the British army as mercenaries under Article 47 of the Protocol and, therefore, not entitled to POW status. Any such assertion on the part of the Argentine Government was unwarranted. Governments have foreign nationals as an integrated unit of their army. Their being foreigners alone does not make them mercenaries which have been defined in Article 47 of the Protocol.

According to Article 47.2 of the Protocol, a mercenary is one who:

- (a) is specially recruited locally or abroad in order to fight in an armed conflict;
- (b) does, in fact, take part in the hostilities;
- (c) is motivated to take part in the hostilities essentially by the desire of private gain and in fact is promised, by or on behalf of a party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that party;

13. *The New York Times*, December 15, 1954.

14. *The Statesman* (India) May 22 and May 30, 1982.

- (d) is neither a national of a party to the conflict nor a resident of the territory controlled by a party to the conflict;
- (e) is not a member of the armed forces of a party to the conflict;
- (f) has not been sent by a State which is not a party to the conflict on official duty as a member of its armed forces.

From the above text, it may be clear that a mercenary has two special features which deprive him of the POW status in case of capture. One is that he is not a member of the armed forces of the belligerent party. The second is that he is motivated more by desire of private gain and material compensation which he is promised and which is excessive and different from what his counterparts get in the regular army.

A mercenary is generally viewed as a soldier of fortune who is adventurous enough to fish in troubled waters and get duly compensated for his unscrupulous combat by the party for whom he is staking his life. In return, he is promised right to plunder and many perks. He has no stake in the outcome of hostilities except in their continuation which would fetch him more money and quench his passion. He is not subject to any discipline.

No one has a good word for a mercenary. Grotius disliked his role and Machiavelli condemned him as treacherous, ambitious and undisciplined. Nations have not yet forgotten the devastation caused in France by mercenaries in the fourteenth century during the period of the 100 years war. Hence, he is denied POW status when he is captured.

A foreign participant is part of the belligerent army and is subject to its internal discipline. He is paid what others are paid. While money may be one consideration for joining the armed forces, he normally joins the armed forces because he belongs to the martial race as in the case of Gurkhas in British or Indian armies. He could also join the army for a cause or ideology. He is, therefore, entitled to POW status in case of his capture.

5. Armed forces after surrender

Instances have occurred when some units of belligerent armed forces continue their hostile acts even after surrender by superior political and military authorities. Such activities were noticed during World War II on the Part of Axis as well as Allied Powers. Three situations can be envisaged in the circumstances: one, when some units continue to fight within the territory which is now occupied by the other belligerent; two, when the units carry their fight from outside their own territory; three, when the units join their allies who are continuing the fight.

In the first situation, position of the units continuing to fight from within the territory may assimilate to that of partisans who must fulfil the four requirements in order to acquire the POW status if they are later on captured. In that context, it must be said that Churchill's warning of annihilation on 8 May 1945 to German soldiers¹⁵ could only be justified for psychological purposes. They could not be killed if they had offered to surrender when they found themselves in a hopeless situation.

In the second situation when they continue their hostilities from outside their

15. As cited by Hingorani, *op cit*, 35.

territory, they enjoy the status of armed forces of exile government which may have been formed. A number of Governments in exile were formed during World War II and their armed forces were continuing the hostilities. At the worst, they may constitute armed forces of an unrecognised Government in which case also they are entitled to POW status.

In the third situation, if some members of the armed forces join their allies after their parent forces have surrendered, they may form a foreign legion of the allied forces in which case they continue to hold the status of members of armed forces. They shall be treated as POWs in case they are captured later on. A number of Polish aviators and seamen had joined the Royal Air Force and the Royal Navy after Russo-German occupation of Poland during World War II. They were treated as POWs on their capture.¹⁶

6. Armed forces of unrecognised states

Article 4A.(3) says that members of a regular armed force who profess allegiance to a government or an authority not recognised by the capturing power will be entitled to POW status. This clause was inserted in the light of what happened during World War II when De Gaulle's Free French Forces and Badoglio's Italian forces were having difficulties in being treated as POWs.

The purport of this clause is that members of armed forces will not suffer deprivations on account of the fact that their Government or authority is not recognised by the capturing power. It presupposes that there is an authority or Government really in existence which has remained unrecognised due to political reasons. Such practices can be noticed even today.

In the fifties during the Korean conflict, both the regimes — South Korean as well as North Korean — were not recognised by each other. However, when hostilities broke between them, their personnel were treated as POWs on the basis of Article 4A.(3), keeping in view the realities of the situation.

Today also, the State of Israel and Palestine Liberation Organisation (PLO) do not recognise each other. Most Arab States do not recognise the State of Israel. However, while Israel's members of armed forces are treated as prisoners of war, members of PLO are treated as terrorists by Israel.

PLO is an authority which is recognised not only by a good number of governments, it is also recognised by the United Nations and other allied international agencies. It has unified government with Arafat as head of Government and who is treated as such. Members of regular armed forces of PLO, therefore, are entitled to POW status as per Geneva Convention. It is in this context that the special United States envoy in Middle East, Phillip C Habib, had given a written guarantee that the Reagan administration would seek the release and repatriation of Palestinian prisoners whom the Israelis consider as terrorists held on criminal charges.¹⁷

Somewhat similar situations may be noticed in Kampuchea where armed forces of former Pol Pot Government (now Sihanouk coalition) may have the

16. Wilhelm, JR, "Can the Status of Prisoners of War be Altered?", *International Review of Red Cross*, July/September 1953, 23-4.

17. *International Herald Tribune*, Paris, August 21-22, 1982. However, see press statement of Colonel Pinchos Harris, former Deputy Surgeon General of the Israel Defence Forces that 6000 Palestinians captured in Lebanon will be tried as criminals: *The Statesman* (India) July 11, 1982.

same status under Article 4A.(3) in case they are involved in armed hostilities against the joint command of Heng Samrin and Vietnamese forces in Kampuchea. Sihanouk forces of Kampuchea may be analogous to those of Free French Forces under De Gaulle which were fighting then against the German occupation forces and Vichy Government in France. Perhaps history repeats itself.

Other combatant groups

Apart from armed forces which form the nucleus of belligerent forces in an armed conflict between two or more States, there could be other combatant groups as well depending upon the nature of armed conflict and parties involved in it. Members of those combatant groups constitute militia or volunteer corps which do not form part of national armed forces. They are entitled to POW status in case of their capture provided they fulfil certain conditions which are required of them. Three such volunteer corps have remained prominent in various armed conflicts in the past. They may be identified as *resistance movements*, *national liberation movements* and *levée en mass*. They are discussed below.

1. Resistance movements

During World War II, it was noticed that a number of territories were occupied by the Axis Powers. Some members of the demobilised armed forces or armed forces which had surrendered organised themselves to resist occupation of their territory. They operated within the occupied territory and were labelled as resistance movements. They were mostly operative in France, Greece, Yugoslavia and some portions of occupied Russia. Although the occupying power was ruthless with them, they managed to operate. During the discussion which preceded the conclusion of the Geneva Conventions of 1949, the question was how far members of resistance movements could benefit by the POW Convention. There were two views — one of the occupying power and the other of occupied territories and humanitarian forces.¹⁸

Resistance movements present a unique problem in the domain of modern warfare. On one hand is the code of war accompanied by the problem of safety of occupying power and his duty to maintain law and order in the territory. On the other hand is the democratic orientation of modern warfare which is total and all embracing. It is not a question of replacement of one king by another king. It is people's war where everyone contributes in his humble manner.

It was, therefore, decided that if the resistance movement is organised and belongs to a party to the conflict, its members can get lawful combatant status, if they fulfil the four conditions which have been discussed above.

It is expected that members of the organised resistance movements are commanded by a person who can enforce discipline among his subordinates. Any lapse on his part may land him in trouble. The group should also wear a distinctive sign constantly¹⁹ and exhibit its combatant character by carrying arms openly. The purport is to show a belligerent character as distinguished from

18. Pictet, *op cit*, 52-6.

19. *Ibid*, 59.

civilian character. Arms may not literally be taken openly. It is enough if the enemy is informed by movements that he is facing an armed foe. The requirement of abiding by rules and customs of warfare is that they should know the rules of war, distinguish between civilians and combatants and not kill disarmed or disabled enemy soldiers.

The operation of resistance movements may be witnessed today in Kampuchea and Afghanistan. These two territories may have some similarity of situation with occupied territories during World War II. It may be said that Vietnam has occupied Kampuchea and installed Heng Samrin as its puppet government. Similarly the Soviet Union may be said to have occupied Afghanistan and installed Karmal in the same way Hitler installed Vichy Government in France. There are some reports of organised resistance within these territories and the movements may be equated with resistance movements of yesteryears if they fulfil the four requirements.

2. *National liberation movements*

Unlike resistance movements which are specifically mentioned in Article 4A.(2) of the Third Geneva Convention 1949, National Liberation Movements have not been specifically named anywhere in any Convention, including Additional Protocol I of 1977. However, rights of these movements were discussed during 1974–1977 deliberations of the Geneva Diplomatic Conference as well as before that in the International Red Cross meetings. These movements have been fighting against colonial domination, alien occupation and racist regimes. The conflict being unequal as between fully armed colonial or occupying power or rabid racist regime and suppressed ill-equipped local population, it was realised in the diplomatic circles that such a conflict cannot be a traditional armed conflict as between two States. Such a conflict between one State and another emerging State or authority is bound to have its peculiarities, converging on civil as well as international war. Article 2.4 of the Additional Protocol I seeks to make it an international war.

During the Geneva Diplomatic Conference in 1974–1977, opinion was divided as to the lawful combatant status of National Liberation Movements. While Third World and Socialist countries were for POW status for such movements, Western countries considered their activities as acts of international terrorism which cannot be made legitimate by treating such conflicts as international.²⁰

The world community, however, was committed to give lawful combatant status to freedom fighters and others who had revolted against colonial domination, alien occupation or racist regimes. As early as 1968, the Teheran Conference on Human Rights had commended such status to such participants: vide its Resolution XXIII which was confirmed by the U.N. General Assembly in its Resolution 2444 that very year. The Geneva Diplomatic Conference only legislated what was recommended earlier.

Thus Article 44.3 of the Additional Protocol I of 1977 states that if, due to nature of hostilities, an armed combatant cannot distinguish himself constantly, he shall at least carry arms openly:

20. C.D.D.H./SR.2 at 15.

- (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.

The purpose of these two clauses is to enable the adversary to distinguish between civilian and combatant personnel among its opponents for twin purposes of sparing the civilians and being forewarned about the combatant status of the other opponents.

While "military engagement" may not be difficult to interpret, "military deployment" prior to launching of an attack may be subject to different interpretations as was evident at the Diplomatic Conference. The United States felt that the combatant must distinguish himself from the moment when he proceeds to a place from which an attack is to be launched.²¹ However, the Egyptian position was that it meant the last step when the combatants were taking firing positions just before they were to launch attack.²² The combatant must exhibit his combatant character to the adversary while taking firing positions.²³

Keeping in view the intricacies and realities of unequal wars and bearing in mind that "there are situations in armed conflicts where owing to the nature of the hostilities, an armed combatant cannot so distinguish himself", United States interpretation would stultify the meaning of Article 44.2. Thus, if he were to distinguish himself as a combatant when he prepared to go to the place from where he is to launch his attack, his efforts are likely to be exposed due to electronic intelligence and superior military reconnaissance of the colonial or occupying power. What is required of him is to exhibit his combatant character when he prepares himself to initiate his hostile actions.

Article 44.2 may be of some relevance in the Afghan situation where rebel armed personnel are seeking the evacuation of superior Soviet forces and overthrow of pro-Soviet Government. It is understandable if all the arms-bearing Afghans who are captured by the Soviet or Karmal forces are treated as POWs under Article 44.2 although none of the two States — Soviet Union or Afghanistan — have ratified the Protocol. It may be of interest here to mention that both these States have signed the Protocol and advocated for POW status under the impugned Article. The International Red Cross Committee has taken up this issue with the local Afghan authorities for enabling the ICRC delegates to visit all prisoners captured while bearing arms or detained in connection with the Afghan conflict.²⁴ Presumably the ICRC is working as a substitute for the Protecting Power as provided under Article 5.4 of the Additional Protocol I, 1977.

3. *Levée en masse*

People have an inherent right to defend their city which has been invaded by the enemy. Article 4A.(6) of the Geneva Convention gives this right of *levée*

21. C.D.D.H./SR.6 at 149-50.

22. *Ibid.*, 144-5.

23. Mallison, WT, and Mallison, SV, "The Juridical Status of Privileged Combatants under the Geneva Protocol of 1977 concerning International Conflicts", 42 (Spring 1978) *Law and Contemporary Problems* 5 at 25.

24. *The Statesman*, (India), October 11, 1982.

en masse when they take up arms spontaneously to resist the invading forces provided they carry arms openly and respect laws and customs of warfare.

The purpose is to uphold the sacred right of people to defend one's own city which has been invaded but to forewarn the invading army of combatant character of such inhabitants who have taken up arms against the invading forces.

Instances of levee are on the decrease in view of aerial warfare and increase in professional combatancy. There were no instances of levee during World War II. Indigenous weapons cannot match sophisticated weaponry and trained personnel. Nevertheless, when the occasion arises, defence of one's city is a sacred right. Such a right could have been exercised by residents of Khoramshahr in Iran when it was invaded by Iraqi forces and there were street fights in the city. Similarly, the situation would have been similar if Israel had invaded West Beirut in which case the residents could have risen in levee and taken to arms visibly.

The right of levee is general and is not restricted to some categories of inhabitants. Patriotism is not the monopoly of any group. So if the convicts are released to defend the city, they could not be prosecuted as Japan did in Russo-Japanese War in 1904.²⁵

However, right of levee is restricted to residents of invaded city. No such right can be assumed by the residents of the city which is under occupation or is being evacuated by the enemy. Residents of neighbouring city may join the levee in an attempt to ward off the invading enemy.

Non-combatant groups

Apart from combatant groups which are entitled to POW status in case of their capture, there are some non-combatant groups which are also given POW status under Article 4 of the Convention. These are auxiliary services for armed forces, and crew of merchant vessels and civil aircraft.

Auxiliary services personnel normally accompany the armed forces for their essential and welfare activities. They would include mess contractors, engineers, workers and such other personnel. It is immaterial if such personnel belong to the same nationality or are from some other nationality. Non-nationals cannot be considered as mercenaries within the meaning of Article 47 of the Protocol. Such personnel as were found with PLO forces in Lebanon should have been treated as POWs.

Crew of merchant ships and civil aircraft are the victims of total war. Since they are potential personnel of belligerent navy and air force, they are detained when captured. Crew of merchant vessels have a history of their own. Up to mid-nineteenth century, they were given letters of marque which allowed them right to commit hostilities. This gave them combatant character. However, the Declaration of Paris 1856 proscribed the practice. Nevertheless, they were treated as POWs when captured. The Hague Convention 1907 provided for their release in cases where they undertake not to participate in hostilities. The Geneva Conventions 1949 formalised their status as POWs.

25. As given by Hingorani, op cit, 51.

Besides, under Article 33 of the Convention, medical and religious personnel who accompany the armed forces shall be treated as POWs in case they are captured and retained by the detaining power for medical care and religious ministrations of prisoners of war.

High Government functionaries like ministers, important members of parliament and officials are also liable to be detained as POWs for want of better status for them.

Conclusion

Essentially, members of belligerent armed forces are treated as prisoners of war in case of their capture. There is no specific requirement that they should have a commander responsible for the subordinates, wear uniform, carry arms openly and observe laws and customs of war. In practice, there is discipline among the armed forces, they are commanded by a responsible officer, wear uniform and are acquainted with rules of war. Complications arise when anything is lacking in them. Two overriding principles govern the grant of POW status; combatants should distinguish themselves from civilians and there should be respect for the laws and customs of war if it is to be saved from anarchy.

The other three combatant groups are creation of circumstances. While resistance movements operate in occupied territory, liberation movements seek freedom from colonial or occupying power or racist regime. Levee is a local rising against the invading army.