

SPC 1

Establishing measures to ensure fair trials for prisoners of war



Forum:	SPC 1
Issue:	Establishing measures to ensure fair trials for prisoners of war
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Introduction

The history of prisoners of war (POWs) is as storied and convoluted as the history of warfare itself. The term dates back to 1610, but was first popularized in the First World War, to refer to the British and commonwealth soldiers captured by the German military. In modern times prisoners of war are unfortunately common, in wake of many significant conflicts. One upside is that prisoners of war are usually given a trial, for some hope that they will be freed. However, the biased nature of their imprisonment and subsequently, their treatment, has introduced a complex issue with the legal examination of their imprisonment. These prisoners are most often imprisoned by the opposing power in a conflict, leading to the judge likely also belonging to this power. This brings about the inevitability of the POW's trial being unfairly skewed by the judge's beliefs and opinions.

Protection of the rights of prisoners of war, have to be a priority for all member states, in order to preserve and/or create more lasting trust and respect between member states, and to ensure that the international legal system enacts justice regardless of national bias.



Definition of Key Terms

Prisoner of war (POW)

A person who has been captured, interned or imprisoned by a belligerent power in a war or armed conflict. The term dates back to the 1600s, and is a useful reminder of the situations in which these prisoners find themselves. Unfortunately, POWs are a pressing issue, even during the 21st century. During the major escalation of the conflict occurring between Ukraine and Russia in February 2022, it is reported that there are over 8,000 POWs held in Russia. In Syria, as a result of the conflict occurring within the country, there are approximately 5,000 detainees in only one detention camp. The issue of prisoners of war is one that humanity must address.

Fair Trial

A trial that is conducted justly and adheres to procedural regulations by an impartial judge. In the case of prisoners of war, fair trial is vital for their hopes of returning to their life and country, however, unfortunately, fair trials can be very rare for prisoners of war. This is demonstrated in the current conflict occurring between Ukraine and Russia. Most notably in this conflict, 2 British nationals who had volunteered in defence of Ukraine were sentenced to death. The two were wrongfully labelled as mercenaries (in violation of the definition established in Article 47 of the Additional Protocol 1 of the Geneva Conventions), and sentenced for crimes which they did not commit. On the other hand, fair trials for prisoners of war have led to many deserved sentences. In the case of the Nuremberg Trial, which has had a profound effect on international law, the POWs in question had committed the crimes of which they were being accused, and were sentenced fairly.

War/Armed Conflict

A incompatibility between two parties where the use of armed force results in at least 25 battle-related deaths in one calendar year. For example the North Korean-South Korean war of 1950, in which the two parties were in conflict for three years, resulting in nearly 5 million deaths. Another example would be the conflict between the United States of America and terrorist entities in Afghanistan. This conflict largely began in 2001, and caused around 250,000 deaths.



Protecting Power

In the instance of a prisoner of war on trial, the Protecting Power is the power to which the POW belongs. In the example of the Nuremberg Trials, in which former Nazi leaders were put on trial for their crimes, the Protecting Power is that of Nazi Germany.

Detaining Power

In the instance of a prisoner of war on trial, the Detaining Power is the power prosecuting the POW. In the previously given example of the Nuremberg Trials, the Detaining Power was the International Military Tribunal, consisting of the Allied powers.



General Overview

As mentioned in the introduction, prisoners of war have been treated with varying levels of decency and respect throughout the numerous armed conflicts and wars which have occurred in history. The bias involved in deciding a POW's sentence, especially when the judge overseeing them is loyal to either side in the conflict, could doom the POW to a life of wrongful punishment. Although the concern of fair trial for POWs may be a relatively new one, POWs themselves have been a concern for many years. Up until the 5th century (401 AD - 500 AD), POWs were generally considered as the property of the captor, most often used as slaves. Ancient civilisations treated their prisoners of war barbarically, often subjecting them to gruesome deaths. Philip of Macedon ordered his troops to drown 3,000 Greek prisoners, this being one of the many routine killings of POWs in those times. During the Middle Ages, people began to consider POWs as people rather than property, and the status of prisoners of war became a necessary concern for many world leaders. For example, in England, individual soldiers were only considered as an enemy when they were armed, and the captors could only keep the prisoner from returning to battle lines. However, despite the new rules put in place, prisoners of war were often mistreated, unless they had a significant amount of wealth. The wealthy prisoners of war were captured for ransom, and the less fortunate were either killed or enslaved by the belligerent power, this acting as a progenitor to the many manipulative and unethical manner in which prisoners of war would be used in the future. This was all changed when the UNCHR was adopted by the General Assembly in 1948. Although there is nothing specifically referencing POWs in the document, it implicitly covers them, as it states the rights are relevant to all people in Article 2. This allowed POWs a standard baseline of rights, which they had previously not had, especially in a court of law.

Later, during the first World War, the treatments of prisoners of war became more of a concern as a strategy. They became bargaining chips –unharmed and protected, so that captors could use them in their favour. This happened multiple times on the side of Germany and their allies during the war. However, this was later turned on its head in the latter part of the war, as a means to bring about the end of the war. This was observed most significantly during the 11 November 1918 Armistice. The clause stated that the immediate repatriation of all allied and United States prisoners of war, including those on trial would occur. This was a significant change in the war itself – some of these POWs had been in captivity for over four years at the time of their repatriation. This trend continued into the Second World War, prisoners of war being wrongfully imprisoned and used to the



advantage of the captors. In more recent times, in light of the conflict occurring in Ukraine, the question of prisoners of war on trial has become a large concern. Many soldiers of the Ukrainian armed forces and individuals who have fought alongside them have been detained by the belligerent power, and charged for many crimes, which could be either false or true. A soldier, who only works with the armed forces, may be charged and prosecuted for multiple different crimes, including 'committing a crime as part of a criminal group, 'forcible seizure of power or retention of power', 'being a mercenary' and 'the promotion of training in terrorist activities'. These charges are widely considered as false, yet because the court ruled in the favour of the prosecution, the prisoners of war must carry out the punishments.

The risks of unfair trials for prisoners of war can be extensive and challenging. The POW rarely has the freedom to speak out on the incorrect charges set against them, leading to the inevitability of unfair punishment for the prisoner of war. These wrongful rulings can lead to unnecessary physical and mental pain, as the punishments for convicted POWs can be very demanding. In the 1900s, the work would usually be gruelling manual labour, for years on end, and this type of punishment still holds true in many countries today. The ethical implications aside, unfair trials for prisoners of war can often bolster tensions between member states/belligerent powers, thus lengthening the conflict occurring between them. Ensuring a standard rule at which to measure the fairness of trials may lessen the likelihood of these tensions staying at the heights at which they are in midst of the conflict.

Another issue facing POWs, in terms of their rights to trial, is when a party purposely labels them as something other than a POW, thus rendering the rights set in place for them as futile. An example of this can be seen in the United States of America, where, during their 'war on terror' following the September 11 2001 attacks, began to label POWs as 'unlawful combatants', as an excuse to treat them in a completely different manner. They are not considered combatants or civilians, rather a different class, allowing them to deprive the 'unlawful combatants' of many of their rights, and allowing their indefinite detention. This deprived them of their rights as criminal defendants, causing their sentencing to be decided without them appearing in court, and without meeting the lawyers representing them. This is yet another risk related to prisoners of war, and, in turn, their fair trial.

In 1907, the Hague Convention of 1907 covered the treatment of prisoners of war, stating that a prisoner of war must be 'humanely treated', yet has very little on the question of trials for



prisoners of war. It does mention that 'A spy taken in the act shall not be punished without previous trial', yet it has been readily documented that the trial either did not occur, or was very obviously unfair, forcing the prisoner of war into wrongful punishment because of the prosecutor's bias. A few decades later, the Third Geneva Conventions relative to the Treatment of Prisoners of War finished its final revisions in 1949, although it was first adopted in 1929. Developed in close association with the Red Cross, the Convention outlines the proper and humane treatment that POWs deserve. It specifically states that the POWs may have counsel and interpreters in order to help them navigate the trial process. Further, it ensures that the Detaining Power must send a precisely worded version of the conviction, a report of the trial and any preliminary investigation, and all information on the establishment where the sentence shall be served, to the prisoner's representative, the POW themselves and the Protecting Power. However, the fairness of a trial is only mentioned briefly in the Convention, only stating that the trial must follow the legal procedures that are required by the Detaining Power. This may introduce even more bias to the trial process, thus further setting the prisoner of war at a disadvantage. However, once the Universal Declaration of Human Rights was adopted in 1948, POWs had another fallback, as many articles in the document protect them in a court of law. For example, Article 5 states 'No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment', which, in the case of POWs, can be a huge asset, as they are often mistreated by their captors, both before and after their sentencing. Additionally, Article 7, which states that 'All are equal before the law and are entitled without any discrimination to equal protection of the law', which ensures that bias within a trial is diminished. Further, Article 11a states 'Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence', making sure all detainees, including POWs, are 'innocent until proven guilty', which, if observed correctly, can be an advantage to the detainee.

Unfortunately any acts or treaties created by individual member states rarely have any effect, as conflicts resulting in prisoners of war generally are across national borders. Therefore, measures to ensure all trials involving prisoners of war is essential to keeping the judicial system fair.



Major Parties Involved

United Nations (UN)

The United Nations contains multiple bodies which may address the problems associated with fair trials for prisoners of war, including the UNHCR, and UNHRC. The cumulative power of the United Nations has the capability of resolving this issue in a way that is in the interest of humanity.

International Committee of the Red Cross (ICRC)

The International Committee of the Red Cross acts as an impartial organisation that seeks to protect the lives of victims of armed conflicts and other violent situations. The ICRC makes sure that the Geneva Conventions are fulfilled, and that victims of war's rights are satisfied, just as in the issue at hand.

United Nations High Commissioner for Refugees (UNHCR)

The UNHCR's work involves all victims of war, and protects the rights of the massive population of people affected by war or armed conflict. The UNHCR has advocated for the fair trial and repatriation of POWs, during many previous conflicts and the current conflict between the Russian Federation and Ukraine.

United Nations Human Rights Council (UNHRC)

The unfair trials that prisoners of war go through infringes on one's right to fair trial, as show in The Human Rights Act, which gives the Human Rights Council grounds to intervene. The Human Rights Council has spoken out about the infringement upon many human rights in some major conflicts, including, notably the current conflict occurring between the Russian Federation and Ukraine, as shown in their Report on the Human Rights Situation in Ukraine. The Council's power may be instrumental in ensuring fair trial for prisoners of war.

Amnesty International

Amnesty International is defined by their mission to achieve a world where human rights are enjoyed by all. In situations where armed conflicts result in human rights violations, Amnesty International campaigns and demands justice for these occurrences. The organisation conducts



various investigations into potential violations, and attempts to uphold international humanitarian law.



Timeline of Key Events

Date	Description of event
October 18 th , 1907	The Hague Convention on War on Land are adopted, acting as the first major international convention on the topic of war and prisoners of war.
July 19 th 1914	The first World War begins, and as the biggest war to date at the time, results in record breaking amounts of POWs, over 10 million.
July 27 th 1929	The Geneva Convention of 1929 relative to the treatment of prisoners of war is first adopted.
September 1 st 1929	The Second World War begins, and shall end with numbers of prisoners of war which are estimated to rival those of World War One.
February 25 th 1943	49 POWs are killed in the Featherston POW incident, while serving their court-mandated punishment. This serves as one of the first documented instances of unfair treatment towards POWs.
November 20 th 1945 – October 1 st 1946	The Nuremberg Trials are held in Nuremberg Germany. The International Military Tribunal (IMT) investigates 24 Nazi government officials, and finds 19 guilty and acquits two. This trial was simultaneously translated into four languages, as it was the first POW trial with 10 judges, each from different countries.
March 15 th 2001	The Syrian Civil War begins, between multiple insurgent forces. As a result of the war, POWs are taken to different detention camps, and are regularly killed without a thorough trial (as documented in many camps, such as the Saydnaya Camp), a flagrant violation of the prisoners' rights.
September 11 th , 2001	The USA begins their 'war on terror' against Al-Qaeda and other groups. In order to be able to detain and sentence prisoners without giving them their rights as outlined in the UDHR and Geneva Conventions, the country begins labelling POWs as 'unlawful combatants'.



July 12 th 2006	The Lebanon – Israel conflict begins, as an escalation of tensions which had been rising for years. There were many airstrikes and ground invasions on Lebanon, resulting in many deaths, imprisonments, and sentences.
2011	The ICRC begins to update the Commentaries on the Geneva Conventions, in attempt to address the new issue which have come up, including the issue of fair trial for prisoners of war.
August 15 th 2021	The Taliban takes control of Afghanistan, rolling back many advances in human rights, and taking many prisoners. Many allegations have been made on the Taliban's mistreatment of prisoners, including torture, denial of food and water, and killing prisoners. Although the Taliban has not confirmed these allegations, the United Nations Assistance Mission in Afghanistan has catalogued the violations with accuracy.



UN involvement, Relevant Resolutions, Treaties and Events

- Geneva Convention relative to the Treatment of Prisoners of war, 27 July 1929.
- UN Economic and Social Council Resolution on the right to fair trial, 22 July 1997 (E/DEC/1997/285).
- UN General Assembly Resolution on measures for the peaceful solution of the problem of prisoners of war, 1951 (A/RES/427(V)).
- UN General Assembly Resolution on extrajudicial, summary or arbitrary executions, 18 December 2008 (A/RES/63/182).
- UN General Assembly Resolution on the basic principles for the treatment of prisoners, 14 December 1990, (A/RES/45/111).



Possible Solutions

There have been multiple proposed solutions, yet none that have been implemented to make a large difference.

One such solution could be to ensure a qualified UN official be present at the trials, so that they may intervene if the trial is biased or unfair in any way. Of course the official would have to not have any stakes in the trial and the conflict in general, so they can act as a neutral party to oversee the trials. This would, in theory, prevent the bias of the Detaining Party to colour the result of the trial, as the neutral party would step in to stop that from happening.

Another solution could be to require the trial not be carried out by a judge belonging to either power involved in the conflict. Once more, a neutral party overseeing the trial will ensure the trial stay fair and unbiased.

It may be impossible to control every aspect of a certain member state/hostile power's trial, but some aspects can and must be controlled to keep the trial fair. If international regulations are put in place, depending on the state's law jurisdictions, the trial can be kept fair. These regulations must somehow comply with the legal systems in place in member states, however, which is a big undertaking.



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Appendix or Appendices

- I. The Third Geneva Convention Relative to the Treatment of Prisoners of War – (<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/1595a804df7efd6bc125641400640d89/6fef854a3517b75ac125641e004a9e68?OpenDocument>)
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