

APPENDIX A
EXCERPT FROM THE
GENEVA CONVENTION RELATIVE TO THE TREATMENT
OF PRISONERS OF WAR, 12 AUGUST 1949

Article 4

A. 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:

(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.

(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, fulfill the following conditions:

(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.

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

(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.

(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.

(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.

B. The following shall likewise be treated as prisoners of war under the present Convention:

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(1) Persons belonging, or having belonged, to the armed forces of the occupied country, if the occupying Power considers it necessary by reason of such allegiance to intern them, even though it has originally liberated them while hostilities were going on outside the territory it occupies, in particular where such persons have made an unsuccessful attempt to rejoin the armed forces to which they belong and which are engaged in combat, or where they fail to comply with a summons made to them with a view to internment.

(2) The persons belonging to one of the categories enumerated in the present Article, who have been received by neutral or non-belligerent Powers on their territory and whom these Powers are required to intern under international law, without prejudice to any more favourable treatment which these Powers may choose to give and with the exception of Articles 8, 10, 15, 30, fifth paragraph 58-67, 92, 126 and, where diplomatic relations exist between the Parties to the conflict and the neutral or non-belligerent Power concerned, those Articles concerning the Protecting Power. Where such diplomatic relations exist, the Parties to a conflict on whom these persons depend shall be allowed to perform towards them the functions of a Protecting Power as provided in the present Convention, without prejudice to the functions which these Parties normally exercise in conformity with diplomatic and consular usage and treaties.

C. This Article shall in no way affect the status of medical personnel and chaplains as provided for in Article 33 of the present Convention.

Article 5

The present Convention shall apply to the persons referred to in Article 4 from the time they fall into the power of the enemy and until their final release and repatriation.

Should any doubt arise as to whether persons, having committed a belligerent act and having fallen into the hands of the enemy, belong to any of the categories enumerated in Article 4, such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal.

APPENDIX B

UNITED STATES CENTRAL COMMAND
7115 South Boundary Boulevard
MacDill Air Force Base, Florida 33621-5101

APPOINTMENT OF TRIBUNAL

A Tribunal under Article 5 of the Geneva Convention Relative to the Treatment of Prisoners of War is hereby convened. It will hear such cases as shall be brought before it pursuant to USCENCOM Regulation 27-13 without further action of referral or otherwise.

The following commissioned officers shall serve as members of the Tribunal:

(b)(3) 141320
(b)(6)

MEMBERS:

Major [REDACTED] USA, 999-99-9999; President

Captain [REDACTED] JAGC, USA, 999-99-9999; Judge Advocate, Member

1st Lt [REDACTED] USA, 999-99-9999; Member

FOR THE COMMANDER IN CHIEF:

STAFF JUDGE ADVOCATE

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APPENDIX C

TRIBUNAL PROCEDURES

1. JURISDICTION. Tribunals convened pursuant to this regulation shall be limited in their deliberations to the determination of whether detained persons ordered to appear before it are entitled to EPW status under the GPW.

2. APPLICABLE LAW. In making its determination of entitlement to EPW status the Tribunal should apply the following:

a. Hague Convention No. IV Respecting the Laws and Customs of War on Land and Annex Thereto Embodying Regulations Respecting the Laws and Customs of Warfare on Land, 18 October 1907; 36 Stat. 2277; TS 539; 1 Bevans 631.

b. Geneva Convention for the Amelioration of the Condition of Wounded and Sick in Armed Forces in the Field, 12 August 1949; 6 UST 3114; TIAS 3362; 75 UNTS 31.

c. Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces, 12 August 1949; 6 UST 3217; TIAS 3363; 75 UNTS 85.

d. Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949; 6 UST 3316; TIAS 3364; 75 UNTS 135.

e. Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949; 6 UST 3516; TIAS 3365; 75 UNTS 287.

3. COMPOSITION.

a. Interpreter. Each Tribunal will have an interpreter appointed by the President of the Tribunal who shall be competent in English and Arabic (or other language understood by the Detainees). The interpreter shall have no vote.

b. Recorder. Each Tribunal shall have a commissioned officer appointed by the President of the Tribunal to obtain and present all relevant evidence to the Tribunal and to cause a record to be made of the proceedings. The recorder shall have no vote.

c. Tribunal. A panel of three commissioned officers, at least one of whom must be a judge advocate, convened to make determinations of fact pursuant to GPW Article 5 and this regulation. The senior member of each Tribunal shall be an officer serving in the grade of O-4 or above and shall be its President.

4. POWERS OF THE TRIBUNAL. The Tribunal shall have the power to:

a. Determine the mental and physical capacity of the detainee to participate in the hearing.

b. Order U.S. military witnesses to appear and to request the appearance of civilian witnesses.

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c. Require the production of documents and real evidence in the custody of the United States and to request host nation assistance in the production of documents and evidence not in the custody of the United States.

d. Require each witness to testify under oath. A form of oath for Muslim witnesses is attached (Annex E). The oath will be administered by the judge advocate member of the Tribunal.

5. RIGHTS OF THE DETAINEE.

a. The detainee shall have the right to be present at all open sessions of the Tribunal.

b. The detainee may not be compelled to testify.

c. The detainee shall not have the right to legal counsel; however, the detainee may have a personal representative assist him at the hearing if that personal representative is immediately available.

d. The detainee shall be informed, in Arabic (or other language understood by the Detainee) of the purpose of the Tribunal, the provisions of GPW Articles 4 and 5, and of the procedure to be followed by the Tribunal.

e. The detainee shall have the right to present evidence to the Tribunal, including the testimony of witnesses who are immediately available.

f. The detainee may examine and cross-examine witnesses, and examine evidence. Documentary evidence may be masked, as necessary, to protect sensitive sources and methods of obtaining information.

g. The detainee shall be advised of the foregoing rights at the beginning of the hearing.

6. APPLICABLE PROCEDURE.

a. Admissibility of Evidence. All evidence, including hearsay evidence, is admissible. The Tribunal will determine the weight to be given to evidence considered.

b. Control of Case. The hearing is not adversarial, but rather is a fact-finding procedure. The President of the Tribunal, and other members of the Tribunal with the President's consent, will interrogate the detainee, witnesses, etc. Additionally, the President of the Tribunal may direct the Recorder to obtain evidence in addition to that presented.

c. Burden of Proof.

(1) Under this regulation, a matter shall be proven as fact if the fact-finder is persuaded of the truth of the matter by a preponderance of the evidence.

(2) Unless it is established by a preponderance of the evidence that the detainee is not entitled to EPW status, the detainee will be granted EPW status.

d. Voting. The decisions of the Tribunal shall be determined by a majority of the voting members of the Tribunal.

e. Legal Review. The USARCENT Staff Judge Advocate shall determine the legal sufficiency of each hearing in which a detainee who committed a belligerent act was not granted EPW status. In such cases, the detainees shall be entitled to continued EPW treatment pending completion of the legal review. Where a Tribunal's decision is determined not to be legally sufficient, a new hearing will be ordered.

7. CONDUCT OF HEARING. The Tribunal's hearing shall be substantially as follows:

- a. The President upon calling the Tribunal to order should first announce the order appointing the Tribunal (See Annex F).
- b. The Recorder will cause a record to be made of the time, date, and place of the hearing, and the identity and qualifications of all participants.
- c. The President should advise the detainee of his rights, the purpose of the hearing and of the consequences of the Tribunal's decision.
- d. The Recorder will read the report of the Screening Officer or other interrogating officer summarizing the facts upon which the interrogating officer's referral was based and will present all other relevant evidence available.
- e. The Recorder will call the witnesses, if any. Witnesses will be excluded from the hearing except while testifying. An oath or affirmation will be administered to each witness by the judge advocate member of the Tribunal.
- f. The Detainee shall be permitted to present evidence. The Recorder will assist the Detainee in obtaining the production of documents and the presence of witnesses immediately available.
- g. The Tribunal will deliberate in closed session. Only voting members will be present. The Tribunal will make its determination of status by a majority vote. The junior voting member will summarize the Tribunal's decision on the Report of Tribunal Decision (Annex D). The decisions will be signed by each voting members.
- h. The President will announce the decision of the Tribunal in open session.

8. POST HEARING PROCEDURES.

- a. The Recorder will prepare the record of the hearing.
- b. In cases in which the detainee has been determined not to be entitled to EPW status, the following items will be attached to the decision:
 - (1) A statement of the time and place of the hearing, persons present, and their qualifications.

(2) A brief resume of the facts and circumstances upon which the decision was based.

(3) A summary or copies of all evidence presented to the Tribunal.

c. In cases in which the detainee has been determined to be entitled to EPW status, no record of the proceedings is required.

d. The original and one copy of the Tribunal's decision and all supporting documents will be forwarded by the President to the convening authority within one week of the date of the announcement of the decision.

APPENDIX D

REPORT OF TRIBUNAL DECISIONTRIBUNAL CONVENED BY: (ORDER NUMBER/HEADQUARTERS/DATE)

CASE NO. _____ DATE _____

LOCATION: (UNIT, GEOGRAPHIC LOCATION)

In Re:† _____, Respondent

This Tribunal, having been directed to make a determination as to the legal status of the above-named respondent under Article 5 of the Geneva Convention Relative to the Treatment of Prisoners of War, who came into the power of (_____ UNIT _____) of the Armed Forces of (NATION) at (GEOGRAPHIC LOCATION) on or about (DATE) and having examined all available evidence, has determined that he (is) (is not) an Enemy Prisoner of War as defined in Article 4 of the Convention.

Additional identifying information concerning the detainee is follows:

Rank:† _____ Service Number:† _____
 Date of Birth:† _____ Unit:‡ _____
 Place of Birth:‡ _____ Father's name:‡ _____
 Mother's name:‡ _____ Spouse's name:‡ _____
 Home Town:‡ _____ Aliases, if any:‡ _____

IT IS ORDERED that the Respondent: (Here include the Tribunal's direction as to the disposition of the respondent, e.g., "Delivered to the Provost Marshal for Transfer to an EPW camp" or "Delivered to Civil Authorities" or "Released from Custody.")

 (Rank, Name), President, *
 (Unit, Social Security No.)

 (Rank, Name, Member *
 Unit, Social Security No.

 (Rank, Name), Member, *
 (Unit, Social Security No.)

The decision of the foregoing Tribunal in which the detainee was determined not to be entitled to EPW status has been determined to be legally sufficient/insufficient.

FOR THE USARCENT STAFF JUDGE ADVOCATE

 Rank, Name, Title

† An EPW is required by the GPW to provide this information.

‡ An EPW may not be compelled to provide this information.

* Judge Advocate Member will so indicate.

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APPENDIX E

FORM OF OATH FOR A MUSLIM

In the Name of Allah, the Most Compassionate, the Most Merciful, who gave us Muhammad His Prophet and the Holy Koran, I, (NAME), swear that my testimony before this Tribunal will be the truth.

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APPENDIX F

ARTICLE FIVE TRIBUNAL HEARING GUIDE

RECORDER: All Rise (The Tribunal enters)

PRESIDENT: (NAME OF DETAINEE), this Tribunal is convened by order of _____ under the provisions of Article Five of the Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949. It will determine whether you have committed a belligerent act against the United States Armed Forces or Other Friendly Forces acting pursuant to United Nations Security Council Resolution 678 and, if so, whether you fall within one of the classes of persons entitled to treatment as a prisoner of war.

INTERPRETER: (TRANSLATION OF ABOVE).

PRESIDENT: (NAME OF DETAINEE), you have the following rights during this hearing:

You have the right to be present at all open sessions of the Tribunal. However, if you become disorderly, you will be removed from the hearing, and the Tribunal will continue to hear evidence.

You may not be compelled to testify. However, you may testify if you wish to do so.

You may have a personal representative assist you at the hearing if that personal representative is immediately available.

You have the right to present evidence to this Tribunal, including the testimony of witnesses who are immediately available.

You may ask questions of witnesses and examine documents offered in evidence. However, certain documents may be partially masked for security reasons.

INTERPRETER: (TRANSLATION OF ABOVE)

PRESIDENT: Do you understand these rights?

INTERPRETER: (TRANSLATION OF ABOVE)

PRESIDENT: Do you have any questions concerning these rights?

INTERPRETER: (TRANSLATION OF ABOVE)

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PRESIDENT: Is there someone who is available whom you wish to have assist you as your personal representative? (If so, the Detainee's personal representative will be permitted to assist him.)

INTERPRETER: (TRANSLATION OF ABOVE)

PRESIDENT: (RECORDER), please present your evidence.

(The judge advocate on the Tribunal will administer an oath to each witness. A standard oath will be used for non-Muslim witnesses; the Muslim form of oath will be used for Muslim witnesses. The testimony of witnesses will be translated for the Detainee.)

(Documentary evidence will be shown to the detainee and explained to him by the interpreter.)

PRESIDENT: (DETAINEE), you may now testify or offer other evidence. The Recorder will assist you in obtaining the presence of witnesses who are immediately available and in obtaining documents which are immediately available.

INTERPRETER: (TRANSLATION OF ABOVE)

PRESIDENT: (DETAINEE), do you wish to have any witnesses called to testify?

INTERPRETER: (TRANSLATION OF ABOVE)

PRESIDENT: Do you wish to present any documents or other evidence?

INTERPRETER: (TRANSLATION OF ABOVE)

PRESIDENT: Do you wish to make a statement to the Tribunal?

INTERPRETER: (TRANSLATION OF ABOVE)

(The detainee may now present evidence; the recorder will assist the detainee in obtaining evidence.)

PRESIDENT: (RECORDER), Do you have any additional evidence to present in response to the detainee's evidence?

INTERPRETER: (TRANSLATION OF ABOVE)

PRESIDENT: The Tribunal will now close to consider the evidence.

(The Tribunal considers the evidence and votes.)

RECORDER: All rise.

PRESIDENT: (DETAINEE), this Tribunal has determined:

(That you have not committed a belligerent act; therefore, you will be released.)

(That you have committed a belligerent act, but you are entitled to Prisoner of War status. You will be delivered to the Provost Marshal for evacuation to a Prisoner of War camp.)

(That you have committed a belligerent act, but that you are not entitled to Prisoner of War status. This decision will be reviewed by higher authority. Until then, you will remain in American custody. If this decision is confirmed upon review by higher authority, you will be transferred to the appropriate authorities for further legal proceedings.)

INTERPRETER: (TRANSLATION OF ABOVE)

PRESIDENT: This hearing is adjourned.