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Detention of combatants and the war on terror / by James A. Schoettler

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Abstract:	Many sources of treaty law allow the detention of combatants in international armed conflicts. Once detained, international humanitarian law (IHL) prohibits the capturing State from prosecuting those combatants who qualify as "prisoners of war". In this chapter, the author examines the law applicable to the determination of a person's status as a combatant, as it has been applied by the United States in the transnational armed conflict against al-Qaeda and associated forces. The author explains the specificity of that conflict: the members of al-Qaeda fail to qualify as prisoners of war, inter alia, because they do not satisfy legal requirements under IHL. Therefore, this chapter explores the distinction between "privileged belligerents" and "unprivileged belligerents", those who can be prosecuted under the domestic law of the capturing State for any belligerent acts they have committed. The author emphasizes the principal court decisions evaluating the US government's approach, and the response of the executive and legislative branches to this litigation. This chapter also looks at developments with respect to the rights of individuals held in long-term detention by U.S. forces outside the United States. [Summary by students at the International Criminal and Humanitarian Law Clinic, Laval University]
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