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L Press Guidance
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TREATMENT OF DETAINEES IN GUANTANAMO

Q: Is there daylight between the State Department and the Administration on the classification of the detainees – POWs or illegal combatants? What are the legal differences between the two? How does the Geneva Convention apply to both POWs and illegal combatants?

**-- THE LEGAL STATUS OF DETAINEES IS CURRENTLY BEING
REVIEWED WITHIN THE ADMINISTRATION.**

**-- WHATEVER THE LEGAL STATUS OF DETAINEES, THE
INDIVIDUALS BEING DETAINED AT GUANTANAMO ARE
BEING TREATED HUMANELY CONSISTENT WITH THE
PRINCIPLES OF THE GENEVA CONVENTIONS.**

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For Background Only:

Reports over the weekend distinguished between prisoners of war (POWs) and "unlawful combatants" under the Geneva Conventions. POWs are those persons who fall within one of several defined categories of armed forces, provided for in the Third Geneva Convention on the protection of POWs. All such categories presume that armed forces meet one of several requirements designed to ensure that combatants distinguish themselves from the civilian population and enemy soldiers (e.g., distinctive insignia/uniform and carrying arms openly) and adhere to the law of war. A detainee who belongs to an armed force that fails to meet such requirements would not be entitled to POW status. For instance, al Qaeda detainees have no entitlement to POW status precisely because, *inter alia*, their organization is designed to violate the law of war by targeting civilians.

The Geneva Conventions do not explicitly provide for a category of combatants who do not meet the POW requirements; customary international law refers to such persons as **unlawful combatants** -- persons not entitled to engage in hostilities as regular soldiers can. Such persons are entitled to the basic humane treatment protections of the Third Geneva Convention (under what is called "Common Article 3"), but they are not entitled to POW status and the various benefits accorded to POWs.

Importantly, the status question *will not affect treatment* of persons detained at GTMO, since all detainees are being treated consistent with the principles of the Third Geneva Convention, taking into account the temporary nature of facilities and the severe security environment.

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