THE GENEVA CONVENTIONS OF 12 AUGUST 1949

COMMENTARY

published under the general editorship of

Jean S. PICTET
Doctor of Laws
Director for General Affairs of the International Committee of the Red Cross

III

GENEVA CONVENTION

RELATIVE TO THE TREATMENT OF PRISONERS OF WAR

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GENEVA
INTERNATIONAL COMMITTEE OF THE RED CROSS
1960

Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War, Geneva, 1949.

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GENEVA CONVENTION

RELATIVE TO THE TREATMENT OF PRISONERS OF WAR

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GENEVA
INTERNATIONAL COMMITTEE OF THE RED CROSS
1960

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FOREWORD

On August 12, 1949, Plenipotentiaries from almost every country in the world, after four months' continuous work at the Diplomatic Conference, approved the text of the new Geneva Conventions. All the Powers represented at the Conference signed the Conventions shortly afterwards and almost all have ratified them. Thus the 1949 Conventions, a decisive step in the work of protecting war victims, are now attaining the universality which has always given the humanitarian law of Geneva its force.

Once the Conventions had been drawn up the International Committee of the Red Cross decided to undertake a Commentary. This task was entrusted to members of the Committee's staff who had in most cases been working ever since the end of the last world conflict—and even before —on the revision of the Conventions, and were closely associated with the discussions of the Diplomatic Conference of 1949 and the meetings of experts which preceded it.

The first volume of the Commentary, dealing with the First Convention of 1949, appeared in 1952 and was followed in 1956[1] *by a second volume, concerning the Fourth Geneva Convention. The volume on the Third Convention is now being published.*

Although published by the International Committee, the Commentary is the personal work of its authors. The Committee moreover, whenever called upon for an opinion on a provision of an international Convention, always takes care to emphasize that only the participant States are qualified, through consultation between themselves, to give an official and, as it were, authentic interpretation of an intergovernmental treaty.

This Commentary which, like the preceding volumes, has been published under the general editorship of Mr. Jean S. Pictet, has been prepared by Mr. Jean de Preux, Doctor of Laws, with contributions

[1] Date of the original (French) edition. The English version was published in 1958.

by the following : Mr. Frédéric Siordet, for Articles 1 to 3 and 8 to 10, Mr. Claude Pilloud, for Articles 11, 85, 118 (first paragraph) and 129 to 132, Mr. René-Jean Wilhelm, for Articles 6 and 7 and also, in co-operation, Articles 69 to 77, 122, 123, and 125, Mr. Oscar Uhler, for Articles 127, 128 and 133 to 143, and Mr. J.-P. Schoenholzer. The whole text has been revised by Mr. Henri Coursier. The translation into English has been prepared by Mrs. A. P. de Heney.

This study has been based essentially on practical experience during the two world wars. The experience gained from the First World War led to the drafting of the 1929 Convention, on which the present Convention is largely based. The work of revision has been carried out in the light of the experience gained during the 1939-1945 conflict.

The International Committee hopes that the Commentary will be of service to all who, in Governments, armed forces and National Red Cross Societies, are called upon to assume responsibility in applying the Geneva Conventions, and to all, military and civilians, for whose benefit the Conventions were drawn up. It also hopes that by publishing this study it will help to make the Conventions widely known—for that is essential if they are to be effective—and to spread the influence of their principles throughout the world.

International Committee of the Red Cross.

INTRODUCTION

1. *The Red Cross and prisoners of war*

The experience of the International Committee of the Red Cross in assisting prisoners of war is of comparatively recent date. Although from the outset, Henry Dunant with remarkable foresight had proposed that the treatment to be accorded to prisoners should be regulated by a Convention, that suggestion was set aside so that efforts could be concentrated on the protection of the wounded and sick[1]. The International Committee was responsible for encouraging and authorizing the establishment of an information bureau for prisoners of war at Basle in 1870, working alongside the official Agency for wounded soldiers ; similarly in 1912 the International Committee's Agency at Belgrade gave help to prisoners as well as to the wounded and sick. It was, however, only after the establishment at Geneva in 1914 of an international Prisoners of War Agency that the Committee had the opportunity to tackle the immense and many-sided problem of war imprisonment, involving protection of prisoners, information regarding them, or direct assistance to them.

The status of prisoners of war had already been determined by the Regulations annexed to the Fourth Hague Convention of 1907, which were a landmark of substantial progress. During the First World War, however, from 1914 to 1918, those provisions proved too indefinite and the belligerents were compelled to sign temporary agreements amongst themselves on disputed points. Meanwhile, the International Committee of the Red Cross did its best to prove by practical measures the interest shown by the Red Cross in prisoners of war. As in 1870 and 1912, on its own initiative it opened an International Prisoners of War Agency which within a short time had 7 million individual cards in its card-indexes ; the Agency was soon renowned throughout the world and it made every effort to encourage and develop the work of assistance. Moreover, by sending delegates

[1] See *Revue internationale de la Croix-Rouge*, April 1953, pp. 274-279.

to the camps, it was able not only to bring the comfort of a friendly visit to prisoners of war, but also to make an impartial judgment of the treatment accorded to them and to persuade the Detaining Powers to make the improvements which were called for by the tenets of the Red Cross. Once the war was ended, the International Committee of the Red Cross did not immediately " demobilize ". It took an important and active part in the repatriation of prisoners of war, particularly those from the Russo-German front where repatriation was beset with particularly difficult problems of a geographical, political or material nature. On the legal side, the International Committee of the Red Cross lost no time in seeking to profit by the experience gained during the war to improve the conditions of prisoners of war by giving them a regular statute. The Committee's activity and achievements had endowed it with such authority in these matters that in 1921 the representatives of Governments and of the National Societies at the Xth International Red Cross Conference unanimously approved the principles submitted to them by the Committee as the basis of a new Geneva Convention. The Conference invited the International Committee to draw up at once a draft code on the lines of these principles [1]. The draft was presented to the 1929 Diplomatic Conference, was adopted and the " Geneva Convention of July 27, 1929, relative to the Treatment of Prisoners of War ", sometimes known as the " Prisoners of War Code ", thus came into being.

During the Second World War this Convention applied to millions of prisoners of war ; it provided the basis for action by the International Committee of the Red Cross in their behalf and made it possible to carry out over 11,000 camp visits, to send relief at the rate of 2,000 freight cars per month from 1943 on and to build up a card-index containing 30 million cards.

2. *The antecedents of the 1949 Convention*

In ancient times the concept of " prisoner of war " was unknown and the defeated became the victor's " chattel " ; in the Middle Ages it became customary to free captives upon payment of a ransom. These practices were abandoned in modern times, but it was not until the Peace Conferences of 1899 and 1907 that States first agreed to limit as between themselves their sovereign rights over prisoners of war.

[1] See *Actes de la Dixième Conférence internationale de la Croix-Rouge, Résolution No. XV*, Geneva, 1921, pp. 218-221.

The first declaration that no reprisals should be carried out upon prisoners of war was contained in the 1863 Instructions for the United States army in the field. In 1874 the Brussels Conference drew up a draft International Declaration which was the first international move with a view to regulating the status of prisoners of war ; shortly afterwards, in 1880, the International Law Institute adopted a set of rules known as the *Oxford Manual,* which were also intended to codify the laws of war.

The Regulations annexed to the Hague Conventions of 1899 and 1907 concerning the Laws and Customs of War on Land gave prisoners of war a definite legal statute to protect them from arbitrary treatment by the Detaining Power. As we have said, it proved necessary during the First World War to supplement the Hague Regulations by special agreements between the belligerents (the Berne agreements of 1917 and 1918) ; thus the 1929 Convention was based on the experience of practical application of the principles stated at The Hague which recognized the right of prisoners to be humanely treated.

In accordance with the request by the Xth International Conference of the Red Cross, which took place at Geneva in 1921, the International Committee of the Red Cross drew up in 1923 a draft Convention which served as a working paper at the 1929 Diplomatic Conference, held at Geneva from July 1 to 27, when the Prisoners of War Code was drawn up. The new Convention was closely related to the Hague Regulations, since prisoner-of-war status depended on the definition of a belligerent as stipulated in Articles 1, 2 and 3 of those Regulations. Thus neither the 1929 Convention, nor indeed the present Convention, rescinded the Hague Regulations ; but they provided important supplementary provisions : the prohibition of measures of reprisal and collective penalties ; the organization of labour of prisoners of war and the civil responsibility of employers ; the right of prisoners to elect their representatives ; the codification of judicial procedures and punitive measures ; and last but not least, the organization of supervision by the Protecting Powers and the official recognition of the rôle of the International Committee of the Red Cross, both in general and in regard to the organization of a Central Information Agency.

The 1929 Convention was applied throughout the Second World War and provided prisoners of war with effective protection and treatment far better than that which they had received during the 1914-1918 conflict.

It nevertheless became apparent to those who benefited from it as well as to those who had to apply it, that the 1929 Convention

needed revision on a number of points because of changes in the conduct and the consequences of war and even in human living conditions. In particular, it had become necessary to widen the scope of the term " prisoners of war " so as to include members of armed forces following capitulation and in order to avoid the arbitrary loss of that status at any given moment ; there was also a need for stricter regulations governing captivity, in view of the increase in work by prisoners of war, assistance received by them or judicial proceedings brought against them. It was necessary to reaffirm the principle of immediate liberation at the end of hostilities ; lastly, it was essential to ensure that the agencies responsible for looking after the interests of prisoners of war and seeing that the relevant regulations were respected should, in regard to both their status and their scope, be as independent as possible of the relations between belligerents.

Even before the end of hostilities, the International Committee of the Red Cross therefore embarked on a study of the possibility of revising the 1929 Convention.

3. *Revision of the 1929 Convention*

The International Committee of the Red Cross followed its usual methods. The available literature was gathered together and the points on which the law needed expanding, confirming or modifying brought out. Draft Conventions were then drawn up with expert help from Governments, National Red Cross Societies and other relief Societies. Several meetings were convened in Geneva for this purpose, the most important being the Preliminary Conference of National Red Cross Societies in 1946, and the Conference of Government Experts of 1947, which marked a decisive step forward. The International Committee then drew up complete texts and presented them to the XVIIth International Red Cross Conference at Stockholm in 1948. They were adopted there with certain amendments.

After passing through these various stages, the draft texts were taken as the only working document for the Diplomatic Conference which, convened by the Swiss Federal Council, as depositary of the Conventions, met at Geneva from April 21 to August 12, 1949, under the chairmanship of Mr. Max Petitpierre, Federal Councillor and Head of the Political Department. Fifty-nine States were officially represented by delegations with full powers to discuss the texts and four States sent observers. Experts from the International Committee gave daily co-operation in the technical matters.

The Conference set up four main Committees, which sat simultaneously and considered (*a*) the revision of the First Geneva Convention and the Hague Agreement of 1899 which adapts that Convention to maritime warfare, (*b*) the revision of the Prisoners of War Convention, (*c*) the preparation of a Convention for the protection of civilian persons in time of war, and (*d*) provisions common to all four Conventions. Numerous working parties were formed, and there were also a Co-ordination Committee and a Drafting Committee, which met towards the end of the Conference and endeavoured to achieve a uniform presentation of the texts.

The Second Committee elected Mr. Maurice Bourquin (Belgium) as Chairman, and Mr. Söderblom (Sweden) and Mr. Meykadeh (Iran), as Vice-Chairmen. The Committee's working methods were similar to those of the other general Committees of the Conference. The draft approved by the XVIIth International Conference of the Red Cross formed the basis for the first reading. Mr. Wilhelm, the representative of the International Committee of the Red Cross, attended the Committee's meetings as an expert and submitted comments on each Article.

At its meeting on May 2, 1949, the Committee decided to establish a Special Committee to consider the following Articles on which substantive disagreement had emerged : 4, 12, 65-67, 71, 84, 115, 118, 119, 125.

The members of the Committee included the following delegations : Australia, Belgium, Canada, Denmark, Finland, France, Greece, Hungary, India, Israel, Italy, the Netherlands, Spain, Switzerland, the Ukrainian Soviet Socialist Republic, the Union of Soviet Socialist Republics, the United Kingdom, and the United States of America. The Committee appointed the Swiss representative, Mr. Zutter, as Chairman, General Parker (United States of America) as Vice-Chairman and General Devijver (Belgium), as Rapporteur. Mr. Wilhelm was the expert representing the International Committee of the Red Cross. The Special Committee considered that certain particularly difficult or technical points should be examined first by a working party or group of experts. The articles dealing with the financial resources of prisoners of war (Articles 58-68) were therefore referred to a Committee of Financial Experts, with General Devijver as Chairman, which held ten meetings.

The Chairman of the Committee established to consider penal and disciplinary sanctions (Articles 82-108) was General Dillon (United States of America) ; the membership was as follows : France, Greece, Union of Soviet Socialist Republics, United Kingdom and United

States of America, as well as the representative of the International Committee of the Red Cross, Mr. Wilhelm. This Committee held sixteen meetings.

The Second Committee also established a Drafting Committee to which most Articles were referred after the first reading.

In the working Committees it was frequently necessary to resort to votes in order to reveal the various points of view and make a choice between solutions which many delegations considered as virtually equivalent.

Lastly, at its meeting on May 5, 1949, the Committee established a Committee of Medical Experts to consider a draft model agreement (annexed to the Convention) concerning direct repatriation and accommodation in neutral countries. Colonel Crawford (Canada), General Jame (France), and Colonel Sayers (United Kingdom) were appointed as members of this Committee, which also included representatives of the following countries : Afghanistan, Belgium, Bolivia, Hungary, India, Ireland, the Netherlands, Pakistan, Portugal, Rumania, Sweden, Switzerland, Turkey and Venezuela. Colonel Crawford acted as Chairman and Rapporteur. Two former members of Mixed Medical Commissions also attended the meetings, Professor Walthard and Dr. d'Erlach.

Of the thirty-six meetings of the Committee, twenty were devoted to the first reading of the Articles and sixteen to the second reading. The Special Committee referred to above met twenty-six times, and the Sub-Committee on penal and disciplinary sanctions and the Committee of Financial Experts held respectively sixteen and ten meetings. This total of eighty-eight meetings does not include the meetings of the Committee of Medical Experts.

The Conference devoted six plenary meetings to an examination of the text adopted by the Second Committee ; certain points were discussed again, but most of the Committee's proposals were accepted unanimously.

The Chairman of the Joint Committee on Articles common to all four Conventions was Mr. Maurice Bourquin, (Belgium), and the Chairman of its Special Committee was Mr. Plinio Bolla, Judge of the Federal Supreme Court (Switzerland). The report by Professor Claude Du Pasquier (Switzerland), Rapporteur of the Joint Committee, will prove another fruitful source of reference. The experts from the International Committee of the Red Cross were Mr. Frédéric Siordet and Mr. Claude Pilloud.

It is not intended to dwell at any length here on the discussions at the Conference, but a tribute should nevertheless be paid to the very

thorough deliberations which continued at Geneva for a period of almost four months ; in spite of sometimes divergent opinions, the plenipotentiaries at the Conference showed a remarkable humanitarian spirit. The discussions were dominated throughout by a common horror of war and a determination to mitigate the sufferings of war victims.

On August 12, 1949, seventeen delegations signed the four Conventions. The others signed either at a special meeting called for the purpose on December 8 of the same year, or subsequently up to the last date of signing, February 12, 1950, at which time the number of signatory States was sixty-one. Certain reservations made at the time of signing refer only to individual provisions and do not affect the authority or general structure of the instruments.

Before entering into force for any country, the Conventions must be ratified by the Governments concerned. Switzerland and Yugoslavia were the first to ratify, and six months later, on October 21, 1950, the Geneva Conventions entered into force as between those two countries. They came into operation for the other countries six months after each of them ratified. As from October 21, 1950, the new Conventions have become a part of positive international law and are thus open to accession by States which were not among the original signatories.

By the end of 1958, the following seventy-four Powers had either ratified or acceded to the Geneva Conventions of 1949 : Switzerland, Yugoslavia, Monaco, Liechtenstein, Chile, India, Czechoslovakia, the Holy See, the Philippines, Lebanon, Jordan, Pakistan, Denmark, France, Israel, Norway, Italy, Union of South Africa, Guatemala, Spain, Belgium, Mexico, Egypt, Japan, El Salvador, Luxemburg, Austria, San Marino, Syria, Viet-Nam, Nicaragua, Sweden, Turkey, Liberia, Cuba, the Union of Soviet Socialist Republics, Rumania, Bulgaria, the Ukrainian Soviet Socialist Republic, the Byelorussian Soviet Socialist Republic, the Netherlands, Hungary, Ecuador, the German Federal Republic, Poland, Thailand, Finland, the United States of America, Panama, Venezuela, Iraq, Peru, Libya, Greece, Morocco, Argentina, Afghanistan, Laos, the German Democratic Republic, the Chinese People's Republic, Iran, Haiti, Tunisia, Albania, the Vietnamese Democratic Republic, Brazil, the People's Democratic Republic of Korea, the United Kingdom of Great Britain and Northern Ireland, Sudan, the Dominican Republic, Ghana, Indonesia, Australia and Cambodia.

Can one already form a valid opinion on the Third Geneva Convention ? The Regulations annexed to the Fourth Hague Convention of 1907 contained seventeen Articles relative to prisoners of war, the

1929 Convention constituted a code of almost one hundred articles and, based on the experience of the Second World War, the present 1949 Convention contains 143 articles. The time for declarations of principle is past ; the 1929 Convention showed the advantages to be gained from detailed provisions. The 1949 Convention went so far as to impose on the contracting States obligations which are so specific that in many cases they require the modification or the supplementing of national legislation. That is undoubtedly a great step forward in humanitarian law.

Moreover, by specifying the categories of persons to whom its provisions apply, the new Convention goes beyond the 1907 Hague Regulations and beyond the 1929 Convention whose application depended on the status of belligerent as defined in the Hague Regulations.

From the Hague Regulations to the 1929 Convention, from the 1929 Convention to the present Convention, the " law of prisoners of war " has thus made considerable progress. It is no exaggeration to say that prisoners of war in present or future conflicts are covered by a veritable humanitarian and administrative statute which not only protects them from the dangers of war, but also ensures that the conditions in which they are interned are as satisfactory as possible. Obviously, rules as detailed as these were drawn up primarily with a view to lengthy conflicts, such as the last two world wars ; but they also have the tremendous advantage of defining, in practice and in relation to certain specific circumstances, the position of the human being as such in the present-day international system. In this respect, the Commentary serves a useful purpose, for it sets out the motives for the decisions of the authors of the Convention, specifies the conditions in which the various provisions are applicable, and frequently—without any hesitation—points out shortcomings observed in connection with numerous problems. The determination of the statute of the prisoner of war went beyond the stage of declarations of principle a long time ago, and of all the statements made on the international level with regard to the individual human being, it is this which has been translated into reality to the greatest extent. The fact that men can reach agreement to apply such an advanced and balanced statute to the enemy in war-time should be seen as a good omen for other endeavours aimed at giving the individual his rightful place in the modern world and thus establishing a better equilibrium. It is therefore hoped that the Commentary will also serve to enlighten the reader as to the path followed by the authors of the Convention in order to arrive at this result.

J. de P.

TITLE OF THE CONVENTION

GENEVA CONVENTION RELATIVE TO THE TREATMENT OF PRISONERS OF WAR OF AUGUST 12, 1949

The 1929 text was already entitled " Convention relative to the Treatment of Prisoners of War ". This title had been adopted by a small majority at the 1929 Conference, after lengthy discussion. Throughout the Conference, the term " Prisoners of War Code " was in constant use. Those who favoured the use of this term pointed out that it contained a clear statement of the purpose ; it was " the most striking title and the one which appealed most to the imagination of those who were to benefit from it " ; " when one affords certain guarantees to the victims of misfortune, it is useful and indeed necessary that they should be aware of that fact ". It was, nevertheless, pointed out that the Convention was neither a codification of measures which already existed in various instruments, nor a complete collection of all the regulations applicable to prisoners of war.

Another title proposed was " Convention for the Amelioration of the Condition of Prisoners of War ", which would have been akin to the Geneva Convention for the Amelioration of the Condition of the Wounded and the Sick. This proposal was also rejected, however, in order to avoid any possible confusion.

The title then finally approved was retained for the Third Convention of 1949[1].

The title did not, in fact, give rise to a very lively discussion in 1949. One National Red Cross Society had however, raised an objection, considering that the title of the Convention adopted in 1929 did not accurately reflect its contents, since certain provisions of the Convention seemed to refer to obligations as between States rather than

[1] Despite the fact that it included the word " treatment " which some delegations took to have a medical connotation; this interpretation was in fact erroneous, since the word actually has a very general meaning. See *Actes de la Conférence Diplomatique de Genève de 1929*, p. 632 and pp. 638-641 ; see also, Jean S. PICTET, *Red Cross Principles*, International Committee of the Red Cross, Geneva 1956, p. 25.

directly to the " treatment of prisoners of war " [1]. The International Committee of the Red Cross considered that it would be preferable to retain the 1929 title, which had become a tradition, and the Diplomatic Conference finally supported that view.

It should be noted that after 1949, the term " Geneva Convention " was extended to cover all four Conventions instead of merely the First Convention. The Conference considered that this would constitute an appropriate tribute to the city of Geneva, the headquarters of the International Committee of the Red Cross, and also to Switzerland as a whole [2].

PREAMBLE

The undersigned, Plenipotentiaries of the Governments represented at the Diplomatic Conference held at Geneva from April 21 to August 12, 1949, for the purpose of revising the Convention concluded at Geneva on July 27, 1929, relative to the Treatment of Prisoners of War [3] *have agreed as follows :*

The extreme brevity of the Preamble will be noted. Unlike the 1929 Geneva Conventions and the Hague Conventions of 1907, it contains no list of the Sovereigns or Heads of States of the signatory Powers or of the names of their Plenipotentiaries, and makes no mention of the presentation or verification of credentials ; nor does it include the usual statement of the motives which have led the Powers to conclude the Convention, as had still been the practice in 1929. The Preamble to the 1929 Convention referred to the duty of every Power to mitigate, as far as possible, the hardships of war and

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[1] See *XVIIth International Conference of the Red Cross, Draft Revised or New Conventions for the Protection of War Victims*, Geneva, May 1948, No. 4a, p. 51.

[2] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Berne 1950-51, four volumes, Vol. I, II-A, II-B, III ; Vol. II-B, p. 457.

[3] For brevity the third of the four Geneva Conventions, which is the subject of the present Commentary, will be called " the Convention " or " the Third Convention ". The other Conventions, where there is occasion to refer to them, will be known by their serial numbers, i.e. :

" First Convention " will mean the " Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949 " ;

" Second Convention " will mean the " Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949 " ; and

" Fourth Convention " will mean the " Geneva Convention relative to the Protection of Civilian Persons in Time of War of August 12, 1949 ".

to alleviate the fate of prisoners of war ; in addition, it contained a solemn statement of the intention of " developing the principles which have inspired the international conventions of The Hague, in particular the Convention concerning the Laws and Customs of War and the Regulations annexed to it ".

This Preamble was a greatly simplified version of the first draft text [1]. It was none the less of the utmost importance since it referred to the Hague Regulations, and in fact Articles 1 and 89 of the Convention made specific mention of those Regulations. The drafters had deemed it appropriate to omit any definition of the concept of a prisoner of war since it depended on the concept of a belligerent and the Hague Regulations gave a definition of the latter which had been universally accepted. Thus the first three Articles of the Hague Regulations determined the categories of persons to whom the 1929 Convention was applicable.

Moreover, with regard to relations between the contracting Powers, Article 89 of the 1929 Convention referred to Chapter II of the Hague Regulations and the drafters of the 1929 Convention would hardly have ventured to rescind those Regulations, which were considered as a firm legislative foundation inspired by the Declaration of the 1874 Brussels Conference. " From Brussels to The Hague, from The Hague to Geneva, the same idea has been transmitted, being each time supplemented, developed and broadened "[2].

If the idea was unchanged, the attitude of the drafters of the 1949 Convention was rather different. Article 135 of the 1949 Convention

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[1] The first draft read as follows:

(list of the Sovereigns or Heads of States)

" Affirming their desire to mitigate the hardships of war and to alleviate the fate of the victims thereof;

" Considering that it is in the general interest to extend to all States the advantage of the experience gained during the world war in regard to the treatment of prisoners of war, both through the various Conventions concluded on their behalf between the belligerents and as a result of action by the International Committee of the Red Cross;

" Being desirous, moreover, of confirming and developing the principles which have inspired the international conventions of The Hague, and in particular the Convention concerning the Laws and Customs of War and the Regulations annexed to it ;

" Recognizing the need to revise and supplement the provisions of those Regulations relative to prisoners of war, have resolved to conclude a Convention to this effect and have appointed the following as their Plenipotentiaries :

. . .

who, having communicated their full powers, found in good and due form, have agreed as follows : "

[2] See *Actes de la Conférence Diplomatique de Genève de 1929*, Geneva 1930, p. 633.

is identical to Article 89 of the 1929 Convention and maintains the reference to the Hague Regulations ; but there is a change in Article 4, which defines the persons protected by the Convention. At the Conference of Government Experts, which preceded the 1949 Diplomatic Conference, it had been decided that all references to the Hague Regulations should be deleted. There was therefore no justification for referring to them in a Preamble and it was considered simpler to abstain from inserting a Preamble and to replace it by a prefatory sentence, reproduced at the beginning of this Commentary, which merely refers to the fact that the 1949 Convention constitutes a revision of the 1929 instrument.

It is not always a matter of indifference whether a treaty does or does not open with a statement of motives and an exact definition of its object. A Preamble has no legal force ; but it frequently facilitates the interpretation of particular provisions which are less precise than they should be, by its indication of the general idea behind them and the spirit in which they should be applied. When submitting the draft Conventions to the XVIIth International Red Cross Conference in 1948, the International Committee of the Red Cross had stated that it preferred to leave the coming Diplomatic Conference to draw up such Preambles as it thought fit. But on the proposal of the French delegation, the Conference added the following Preamble to the draft Convention for the Protection of Civilian Persons in Time of War :

> The High Contracting Parties, conscious of their obligation to come to an agreement in order to protect civilian populations from the horrors of war, undertake to respect the principles of human rights which constitute the safeguard of civilization and, in particular, to apply at any time and in all places, the rules given hereunder :
>
> (1) Individuals shall be protected against any violence to their life and limb.
>
> (2) The taking of hostages is prohibited.
>
> (3) Executions may be carried out only if prior judgment has been passed by a regularly constituted court, furnished with the judicial safeguards that civilized peoples recognize to be indispensable.
>
> (4) Torture of any kind is strictly prohibited.
>
> These rules, which constitute the basis of universal human law, shall be respected without prejudice to the special stipulations provided for in the present Convention in favour of protected persons.

The decision to include the above Preamble can be explained by the fact that an entirely new Convention was being prepared, and not merely a revision of an existing Convention. The idea was a happy

one, and on reflection it appeared to the International Committee of the Red Cross that it would be a good thing to include it in the other three Conventions also. Realizing that humanitarian law affects nearly everyone, and that in a modern war, where the fighting takes place everywhere and is no longer restricted to clearly defined battlefields, any man or any woman may be faced with a situation in which they have either to invoke or to apply the Conventions, the International Committee, alive to the necessity (as expressly laid down in all the four drafts submitted to the Diplomatic Conference in Geneva) of disseminating knowledge of the new Conventions widely and in peace-time, without waiting for the outbreak of war, concluded that it was desirable to make clear to the " man in the street " the guiding principle and *raison d'être* of the Conventions by means of a Preamble or initial explanatory article.

However carefully the texts have been drawn up, however clearly they are worded, it is too much to expect every soldier and every civilian to know the details of the 449 Articles of the four Conventions and to be able to understand and to apply them. Such knowledge as that can be expected only of jurists and military and civilian authorities with special qualifications. But anyone of good faith is capable of applying more or less correctly what he is called upon to apply under one or the other of the Conventions, provided he is acquainted with the basic principle involved. Accordingly the International Committee of the Red Cross proposed to the Powers assembled at Geneva the text of a Preamble, which was to be identical in each of the four Conventions. It read as follows :

Respect for the personality and dignity of human beings constitutes a universal principle which is binding even in the absence of any contractual undertaking.

Such a principle demands that, in time of war, all those not actively engaged in the hostilities and all those placed *hors de combat* by reason of sickness, wounds, capture, or any other circumstance, shall be given due respect and have protection from the effects of war, and that those among them who are in suffering shall be succoured and tended without distinction of race, nationality, religious belief, political opinion or any other quality... [1]

The subject was discussed in great detail in Committee II, which had been entrusted with the task of drawing up the present Conven-

[1] See *Remarks and Proposals submitted by the International Committee of the Red Cross.* Document for the consideration of Governments invited by the Swiss Federal Council to attend the Diplomatic Conference at Geneva (April 21, 1949), Geneva, February 1949, p. 8.

tion. The problem proved difficult, there being divergent views on the question of what general principles it should set forth. Several delegations proposed that the Preamble should include a reference to the divine origin of man and to the Creator, regarded as the source of all moral law; there were many objections to this proposal. Several delegations came round to the point of view that it would be better to have no Preamble at all if no unanimous agreement on a text could be reached. As opinion was divided, the question of inserting a Preamble was put to the vote and the Committee finally decided in the negative by a large majority [1]. The authors of the Convention considered nevertheless that there should be a reference to the general principles which should normally have been stated in a Preamble. This reference is to be found in paragraph 4 of Article 142, which provides that in case of denunciation of the Convention, those principles shall remain in force " as they result from the usages established among civilized peoples, from the laws of humanity and the dictates of the public conscience ".

The other Committees quickly came to the same decision in respect of the Conventions for which they were responsible.

Accordingly, the essential motive which had brought sixty-four nations together at Geneva was left unexpressed. It was thought necessary to give an account of these discussions since a number of the ideas which should have been expressed in a Preamble have fortunately been included in other Articles of the Convention, especially in Article 3 dealing with armed conflicts not of an international character. In drafting this Article, its authors based themselves very largely on the general ideas contained in the various draft Preambles.

The minimum requirement of humanitarian guarantees in the case of a non-international armed conflict is *a fortiori* applicable in international conflicts. The principle proclaimed in Article 3 is common to all four Geneva Conventions and from it each of them derives its essential provisions which, in the case of the present Convention, are constituted by the whole of Part II (Articles 12 to 16).

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[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 393-398 and 561.

PART I

GENERAL PROVISIONS

The Convention is divided into six parts. Part III comprises six sections, Section II of Part III being itself split up into eight chapters.

Like all treaties, the Geneva Conventions contain clauses of a general nature and implementing provisions.

The two types of provisions were intermingled in the 1929 Convention, but at the time of the revision it was decided to arrange them methodically. Each of the four draft texts prepared by the International Committee of the Red Cross began with the principal provisions of a general character, in particular those which enunciated fundamental principles and so should, by rights, be repeated in the various Conventions.

Most of the Articles in this Part are accordingly to be found in identical, or slightly modified, form in the other three Conventions.

ARTICLE 1. — RESPECT FOR THE CONVENTION [1]

The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.

A clause of this kind appeared, in a slightly different form, in Article 82, paragraph 1, of the 1929 Convention [2]. Its prominent position at the beginning of each of the 1949 Conventions gives it increased importance. By undertaking this obligation at the very outset, the Contracting Parties drew attention to the fact that it is

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[1] With the text of each Article is given the corresponding marginal heading. These marginal headings were given their final form by the Conference Secretariat and are not part of the official text of the Conventions. They merely serve as an indication.

Article 1 is common to all four Conventions.

[2] See below, p. 681.

not merely an engagement concluded on a basis of reciprocity, binding each party to the contract only in so far as the other party observes its obligations. It is rather a series of unilateral engagements solemnly contracted before the world as represented by the other Contracting Parties. Each State contracts obligations *vis-à-vis* itself and at the same time *vis-à-vis* the others. The motive of the Convention is so essential for the maintenance of civilization that the need is felt for its assertion, as much out of respect for it on the part of the signatory State itself as in the expectation of such respect from all parties.

The Contracting Parties do not undertake merely to respect the Convention, but also to *ensure respect* for it. It is self-evident that it would not be enough for a Government to give orders or directions and leave the military authorities to arrange as they pleased for their detailed execution. It is for the Government to supervise the execution of the orders it gives [1]. Furthermore, if it is to fulfil the solemn undertaking it has given, the Government must of necessity prepare in advance, that is to say in peace-time, the legal, material or other means of ensuring the faithful enforcement of the Convention when the occasion arises. This applies to the respect of each individual State for the Convention, but that is not all : in the event of a Power failing to fulfil its obligations, each of the other Contracting Parties (neutral, allied or enemy) should endeavour to bring it back to an attitude of respect for the Convention. The proper working of the system of protection provided by the Convention demands in fact that the States which are parties to it should not be content merely to apply its provisions themselves, but should do everything in their power to ensure that it is respected universally.

The words " in all circumstances " refer to all situations in which the Convention has to be applied and these are defined in Article 2. It is clear, therefore, that the application of the Convention does not depend on whether the conflict is just or unjust. Whether or not it is a war of aggression, prisoners of war belonging to either party are entitled to the protection afforded by the Convention.

In view of the foregoing considerations and the fact that the provisions for the repression of breaches have been considerably strengthened [2] it is clear that Article 1 is no mere empty form of words but has been deliberately invested with imperative force.

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[1] Article 12, which expressly states that the Party to the conflict is responsible for the treatment given to prisoners, is based on this consideration.

[2] The Contracting Parties are no longer merely required to take the necessary legislative action to prevent or repress violations. They are under an obligation to seek out and prosecute the guilty parties, and cannot evade their responsibility.

ARTICLE 2. — APPLICATION OF THE CONVENTION [1]

In addition to the provisions which shall be implemented in peacetime, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.

General and Historical

The Hague Convention of 1899, in Article 2, stated that the annexed Regulations concerning the Laws and Customs of War on Land were applicable " in case of war ". This definition was not repeated either in 1907 at The Hague or in 1929 at Geneva; the very title and purpose of the Conventions made it clear that they were intended for use in war-time, and the meaning of war seemed to require no defining. The Hague Convention relative to the Opening of Hostilities provided that " hostilities ..... must not commence without previous and explicit warning, in the form either of a declaration of war giving the reasons on which it is based or of an ultimatum with conditional declaration of war " [2]. Since 1907 experience has shown that many armed conflicts, displaying all the characteristics of a war, may arise without being preceded by any of the formalities laid down in the Hague Convention. Furthermore, there have been many cases where Parties to a conflict have contested the legitimacy of the enemy Government and therefore refused to recognize the existence of a state of war. In the same way, the temporary disappearance of sovereign States as a result of annexation or capitulation has been put forward as a pretext for not observing one or other of the

[1] Article common to all four Conventions.

[2] Third Convention of The Hague of 1907, Article 1.

humanitarian Conventions. It was necessary to find a remedy to this state of affairs and the change which had taken place in the whole conception of such Conventions pointed the same way. The Geneva Conventions are coming to be regarded less and less as contracts concluded on a basis of reciprocity in the national interests of the parties, and more and more as a solemn affirmation of principles respected for their own sake, a series of unconditional engagements on the part of each of the Contracting Parties *vis-à-vis* the others. A State does not proclaim the principle of the protection due to prisoners of war merely in the hope of improving the lot of a certain number of its own nationals. It does so out of respect for the human person. The XVIth International Red Cross Conference accordingly drew attention in 1938 to the necessity of providing, in any future revision of the Conventions, for their application to undeclared as well as to declared wars. This became even more necessary after the cruel experience of the Second World War.

The Preliminary Conference of National Red Cross Societies, which the International Committee of the Red Cross convened in 1946, fell in with the views of the Committee and recommended that a new Article, worded as follows, should be introduced at the beginning of the Convention : " The present Convention is applicable between the High Contracting Parties from the moment hostilities have actually broken out, even if no declaration of war has been made and whatever the form that such armed intervention may take " [1].

The Conference of Government Experts recommended in its turn that the Convention should be applicable to " any armed conflict, whether the latter is or is not recognized as a state of war by the parties concerned ", and also to " cases of occupation of territories in the absence of any state of war " [2].

Taking into account these recommendations, the International Committee of the Red Cross drew up a draft text, which was adopted by the XVIIth International Red Cross Conference and subsequently became Article 2 of the Convention, as reproduced above.

There was no discussion, at the 1949 Diplomatic Conference, on the Committee's proposal (which did not include the second sentence of paragraph 3) ; the experience of the Second World War had con-

[1] *Report on the Work of the Preliminary Conference of National Red Cross Societies for the Study of the Conventions and of various Problems relative to the Red Cross* (Geneva, July 26-August 3, 1946), Geneva, 1947, p. 15.

[2] *Report on the Work of the Conference of Government Experts for the Study of the Conventions for the Protection of War Victims* (Geneva, April 14-26, 1947), Geneva, 1947, p. 8.

vinced all concerned that it was necessary. But the draft text said nothing about the relations between a belligerent, or belligerents, bound by the Conventions on the one hand, and a belligerent, or belligerents, not bound by it on the other hand. The *clausula si omnes* [1] which was included in the 1906 Geneva Convention—but which was never invoked during the First World War, although it might appropriately have been in the case of Montenegro—was omitted in 1929. But although the Convention was binding upon the Contracting States in their relations as between each other, they were still under no obligation in regard to States which were not parties to that instrument. The ideal solution would obviously have been that all the Parties to a conflict should be obliged to apply the Convention in all circumstances, i.e. even if the adversary was not a party to it, and despite the fact that the Convention would be a *res inter alios acta* for the latter.

There could be no question of reverting to the *clausula si omnes*, which had fortunately been abandoned in recent times, since it no longer corresponded to humanitarian needs. The 1929 Convention had already departed from it by stating in the second paragraph of Article 82 that " in time of war, if one of the belligerents is not a party to the Convention, its provisions shall, nevertheless, remain binding as between the belligerents who are parties thereto ". Thus the provisions concerning prisoners of war were given the binding force of which they had been deprived by the solutions adopted at the Peace Conferences. The fact that one of the belligerents was not a party to the Convention could no longer nullify its applicability.

Although from the legal point of view there was no way to extend the scope of the Convention, it was necessary to find one on the humanitarian plane. The Committee accordingly suggested to the Governments represented at the Diplomatic Conference of 1949 that the following two sentences be added to Article 2 :

In the event of an international conflict between one of the High Contracting Parties and a Power which is not bound by the present Convention, the Contracting Party shall apply the provisions thereof. This obligation shall stand unless, after a reasonable lapse of time, the Power not bound by the present Convention states its refusal to apply it, or in fact fails to apply it.[2]

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[1] Clause providing that obligations are binding on a belligerent only if *all* the belligerents on the opposing side (principal adversary and allies of that adversary) are also bound by the same obligations.

[2] See *Remarks and Proposals submitted by the International Committee of the Red Cross*, p. 9.

The Diplomatic Conference also considered two other proposals [1]— one, from the Canadian Delegation, suggesting that the Convention should also be applicable to a Power not party to the Convention so long as that Power complied with its provisions, and another, from the Belgian Delegation, which read as follows : " The Powers which are a party to the Convention shall invite the Power which is not a party to it to accept the terms of the said Convention ; as from the latter Power's acceptance of the Convention, all Powers concerned shall be bound by it."

The fact that there was no objection to this principle was a sure sign that the time was ripe for this step forward in international law. The discussion turned solely on the conditions to be fulfilled. The condition underlying both the Canadian proposal and the proposal of the International Committee of the Red Cross was resolutive, while the Belgian proposal was based on a suspensive condition. As agreement could not be reached on any of these proposals, they were discarded in favour of the compromise wording of the present text.

The Rapporteur of the Special Committee gives the following explanation of the motives which guided his Committee : " As a general rule, a Convention could lay obligations only on Contracting States. But, according to the spirit of the four Conventions, the Contracting States shall apply them, in so far as possible, as being the codification of rules which are generally recognized. The text adopted by the Special Committee, therefore, laid upon the Contracting State, in the instance envisaged, the obligation to recognize that the Convention be applied to the non-contracting adverse State, in so far as the latter accepted and applied the provisions thereof " [2].

Paragraph 1. — Armed conflicts involving the application of the Convention

By its general character, this paragraph deprives belligerents, in advance, of the pretexts they might in theory put forward for evading their obligations. There is no need for a formal declaration of war, or for the recognition of the existence of a state of war, as preliminaries

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[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-B, pp. 53-54 and 107-108.

[2] *Ibid.*, Vol. II-B, p. 108 (First Report drawn up by the Special Committee of the Joint Committee).

to the application of the Convention. The occurrence of *de facto* hostilities is sufficient.

It remains to ascertain what is meant by " armed conflict ". The substitution of this much more general expression for the word " war " was deliberate. It is possible to argue almost endlessly about the legal definition of " war ". A State which uses arms to commit a hostile act against another State can always maintain that it is not making war, but merely engaging in a police action, or acting in legitimate self-defence. The expression " armed conflict " makes such arguments less easy. Any difference arising between two States and leading to the intervention of members of the armed forces [1] is an armed conflict within the meaning of Article 2, even if one of the Parties denies the existence of a state of war. It makes no difference how long the conflict lasts, how much slaughter takes place, or how numerous are the participating forces ; it suffices for the armed forces of one Power to have captured adversaries falling within the scope of Article 4. Even if there has been no fighting, the fact that persons covered by the Convention are detained is sufficient for its application. The number of persons captured in such circumstances is, of course, immaterial.

The Convention provides only for the case of one of the Parties denying the existence of a state of war. What would the position be, it may be wondered, if both the Parties to an armed conflict were to deny the existence of a state of war ? Even in that event it would not appear that they could, by tacit agreement, prevent the Conventions from applying. It must not be forgotten that the Conventions have been drawn up first and foremost to protect individuals, and not to serve State interests. Even if the existence of a state of war is disputed, Article 3 can be applied.

Paragraph 2. — Occupied territories

This new provision is particularly pertinent for the protection of civilian persons under the Fourth Convention, but its inclusion is none the less appropriate in regard to prisoners of war, since, even in the absence of resistance, the Occupying Power might be tempted to intern all or part of the armed forces of the adversary in the interests of its future security. For that reason it was necessary to ensure that such internees would be treated as prisoners of war throughout their detention.

[1] Or assimilated thereunto, pursuant to Article 4.

PARAGRAPH 3. — CONFLICTS IN WHICH THE BELLIGERENTS ARE NOT ALL PARTIES TO THE CONVENTION

1. *Relations between belligerents party to the Convention*

This provision appears to state an elementary truth ; but that was not always the case. The Hague Conventions of 1907 and the Geneva Convention of 1906 all contained a *clausula si omnes* [1], and that provision was in force when the First World War broke out in 1914. But despite the fact that the application of the Convention might have been suspended on the ground that one of the belligerents—Montenegro—was not a party to it, all the Contracting States in general honoured their signature [2].

It was essential, however, to clarify the position and to prevent any future recurrence of a situation similar to that of 1914. It should be noted that this problem of relations between opposing Powers is quite distinct from that of the relations between allied Powers fighting under a unified command. The latter case, which is also very important, is considered later in this volume, in connection with Article 12.

2. *Relations between Contracting and non-Contracting Parties*

The second sentence, added by the Diplomatic Conference of 1949, has certainly the characteristics of a compromise, for it does not come to a decision between the suspensive and resolutive conditions. At first sight it appears to incline towards the Belgian amendment. But whereas the latter only made the Convention applicable as from the time of its formal acceptance by the non-Contracting Power, the sentence adopted by the Diplomatic Conference drops all reference to an invitation to be made to the non-Contracting Power, and substitutes for the words " as from the latter Power's acceptance " the words " if the latter accepts and applies the provisions thereof ".

What, then, is the position in the interval between the launching of hostilities and the non-contracting belligerent's acceptance ?

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[1] See above, p. 21.

[2] As stated in the Commentary on the 1929 Geneva Convention, " the facts backed by the signatories and by the humanitarian interests of all, outweighed the law." Paul DES GOUTTES, *Commentaire de la Convention de Genève du 27 juillet 1929*, Geneva, 1930, ad Article 25, p. 188.

The First Report by the Special Committee of the Joint Committee, to which reference has already been made, states : " according to the spirit of the four Conventions, the Contracting States shall apply them, in so far as possible, as being the codification of rules which are generally recognized " [1]. This passage shows how this not very clear provision should be interpreted.

The spirit and character of the Conventions lead perforce to the conclusion that the Contracting Power must at least apply their provisions from the moment hostilities break out until such time as the adverse Party has had the time and an opportunity to state his intentions. That may not be a strictly legal interpretation ; it does not altogether follow from the text itself ; but it is in our opinion the only reasonable solution. It follows from the spirit of the Conventions, and is in accordance with their character. It is also in accordance with the moral interest of the Contracting Power, inasmuch as it invites the latter to honour a signature given before the world. It is finally to its advantage from a more practical point of view, because the fact of its beginning itself to apply the Convention will encourage the non-Contracting Party to declare its acceptance, whereas any postponement of the application of the Convention by the Contracting Party would give the non-Contracting Party a pretext for non-acceptance.

There are two conditions to be fulfilled under this part of the paragraph—(*a*) acceptance and (*b*) *de facto* application of the Convention. What happens if the non-Contracting Party makes no declaration, but in actual fact applies the Convention ? Before answering this question, it must be seen what is meant by " accepting " the provisions of the Convention [1].

Is a formal and explicit declaration by a non-Contracting State indispensable ? The Rapporteur of the Special Committee seems to say that it is. " A declaration " he wrote " was necessary, contrary to the Canadian amendment, according to which an attitude on the part of the non-Contracting State in conformity with the Convention would have sufficed to make it applicable ". He added, it is true, that it was not possible to lay down any uniform procedure in the matter, and that " the Convention would be applicable as soon as the declaration was made. It would cease to be applicable as soon as the declaration was clearly disavowed by the attitude of the non-contracting belligerent " [2].

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[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-B, p. 108.

[2] *Ibid.*, p. 109.

Does it follow from this that, if the second condition—namely the application of the Convention *de facto*—is alone fulfilled, the Contracting Party is released from its obligations ?

Closely as that may seem to follow from the letter of the text, it does not appear possible to maintain such an interpretation. It would make the application of the Convention dependent on a suspensive condition even more rigid than that of the Belgian proposal, which was itself regarded as being too strict. It would bring about a paradoxical—not to say, a monstrous—situation. It would entitle a Power to disregard rules solemnly proclaimed by itself, while its adversary, though not legally bound to those rules, was scrupulously applying them ; and all this only because of the omission of the latter to make a declaration, or because of delay in the transmission of such a declaration.

Summum jus summa injuria. The saying may often be true ; but it should never be cited in reference to a humanitarian Convention. The Third Convention, like its three sister Conventions, rightly condemns reprisals against persons in the most categorical terms. But would it not be worse than any reprisals to ill-treat prisoners even before one's adversary had done so, merely because it was inferred from his silence that he was intending to do so ?

The two conditions laid down for the non-Contracting Power are that it should *accept* and *apply* the provisions of the Convention. In the absence of any further indication, there is no reason to assume that " acceptance " necessarily implies an explicit declaration. It can equally well be tacit. It may be implicit in *de facto* application. These considerations do not in any way minimize the importance of an explicit declaration by the non-Contracting Power. It is, on the contrary, most desirable that the latter should make such a declaration, and with the least possible delay. The International Committee of the Red Cross for its part, when offering its services at the beginning of a conflict, never fails to ask Parties to the conflict which are not legally bound by the Convention to declare their intention of applying it or of observing at least its principles, as the case may be.

In practice, any Contracting Power in conflict with a non-Contracting Power will begin by complying with the provisions of the Convention pending the adverse Party's declaration. It will take into account facts above all.

Furthermore, although the Convention, as a concession to legal form, provides that in certain circumstances a Contracting Power may legally be released from its obligations, its spirit encourages the Power

in question to persevere in applying humanitarian principles, whatever the attitude of the adverse Party may be. [1]

ARTICLE 3. — CONFLICTS NOT OF AN INTERNATIONAL CHARACTER [2]

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions;

(1) *Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed* hors de combat *by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.*

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons;

(a) *violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;*

(b) *taking of hostages;*

(c) *outrages upon personal dignity, in particular, humiliating and degrading treatment;*

(d) *the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.*

(2) *The wounded and sick shall be collected and cared for.*

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

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[1] This paragraph of Article 2 was applied during the Suez conflict in the autumn of 1956, when the opposing Parties were Egypt, on the one hand, and France, Israel and the United Kingdom, on the other. Of these, only the United Kingdom was not bound by the Conventions, which it had not yet ratified. Nevertheless, in reply to a telegram from the International Committee of the Red Cross the British Prime Minister stated that, pending their formal ratification, the United Kingdom Government accepted the Conventions and fully intended to apply their provisions, should the occasion arise. The ICRC informed the other States Party to the conflict of this statement, and none of the belligerents contested the applicability of the Conventions.

[2] Article common to all four Conventions.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

Historical Introduction

This Article, which is common to all four Geneva Conventions, marks a new step forward in the unceasing development of the idea on which the Red Cross is based, and in the embodiment of that idea in international obligations. It is an almost unhoped-for extension of Article 2.

The importance of the Article, in which the whole of the rules applying to non-international conflicts are concentrated, makes it necessary to say something of its origin and of its development by the Diplomatic Conference [1].

1. *Origin and development of the idea*

Up to 1949, the Geneva Conventions were designed to assist only the victims of wars between States. The principle of respect for human personality, the basis on which all the Conventions rest, had found expression in them only in its application to military personnel. Actually, however, it was concerned with people as human beings, without regard to their uniform, their allegiance, their race or their beliefs, without regard even to any obligations which the authority on which they depended might have assumed in their name or in their behalf.

There is nothing astonishing, therefore, in the fact that the Red Cross has long been trying to aid the victims of civil wars and internal conflicts, the dangers of which are sometimes even greater than those of international wars. But in this connection particularly difficult problems arose. In a civil war, the lawful Government, or that which so styles itself, tends to regard its adversaries as common criminals. This attitude has sometimes led governmental authorities to look upon relief given by the Red Cross to victims on the other side as

[1] Twenty-five meetings were devoted to it. See F. Siordet : *The Geneva Conventions and Civil War*. Supplement to the *Revue internationale de la Croix-Rouge*, Vol. III, Nos. 8, 9 and 11, Geneva, August, September and November 1950.

inadmissible aid to guilty parties. Applications by a foreign Red Cross Society or by the International Committee of the Red Cross for permission to engage in relief work have more than once been treated as unfriendly attempts to interfere in the domestic affairs of the country concerned. This conception still prevailed when the International Red Cross Conference in 1912 refused to consider a draft Convention on the rôle of the Red Cross in the event of civil war or insurrection.

The Red Cross was not discouraged. In spite of frequent lack of understanding on the part of the authorities, it was able in some cases to carry out a certain amount of humanitarian work in civil conflicts [1]. The question was again placed on the agenda of the Xth International Red Cross Conference in 1921, and a resolution was passed affirming the right of all victims of civil wars or social or revolutionary disturbances to relief in conformity with the general principles of the Red Cross. The resolution further laid down in considerable detail the duties of the relevant National Red Cross Society and, in the event of that Society being unable to take action on an adequate scale, the course to be followed by the International Committee of the Red Cross or foreign National Societies with a view to making relief available [2]. The resolution, as such, had not the force of a Convention, but it enabled the International Committee in at least two cases—the civil war at the time of the 1921 plebiscite in Upper Silesia and the civil war in Spain—to induce both sides to give some kind of undertaking to respect the principles of the Geneva Convention [3].

Observing these results, the XVIth International Red Cross Conference, held at London in 1938, passed the following resolution which did much to supplement and strengthen that of 1921 :

> The XVIth International Red Cross Conference
> ... requests the International Committee and the National Red Cross Societies to endeavour to obtain :
>
> *(a)* the application of the humanitarian principles which were formulated in the Geneva Conventions of 1929 and the Tenth Hague Convention of 1907, especially as regards the treatment of the wounded, the sick, and prisoners of war, and the safety of medical personnel and medical stores ;

[1] See *Revue internationale de la Croix-Rouge*, December 15, 1919, pp. 1427 ff.

[2] Resolution No. XIV.

[3] See the following documents of the XVIth International Red Cross Conference : Document No. 12 (*General Report of the International Committee of the Red Cross on its Activities from August 1934 to March 1938*), and Document No. 12bis (*Supplementary Report by the International Committee on its Activities in Spain*).

(b) humane treatment for all political prisoners, their exchange and, so far as possible, their release ;

(c) respect of the life and liberty of non-combatants ;

(d) facilities for the transmission of news of a personal nature and for the reunion of families ;

(e) effective measures for the protection of children, ...

The London Conference was thus envisaging, explicitly and for the first time, the application to a civil war, if not of all the provisions of the Geneva Conventions, at any rate of their essential principles. This resolution, coupled with the results achieved in the two conflicts mentioned above, encouraged the International Committee of the Red Cross to reconsider the possibility of inserting provisions relating to civil war in the Conventions themselves.

At the Preliminary Conference of National Red Cross Societies in 1946, the International Committee proposed that, in the event of civil war, the contending parties should be invited to declare their readiness to apply the principles of the Convention on a basis of reciprocity. The suggestion, modest enough but which took account of realities, was no more at that stage than an attempt to provide a practice that had already yielded satisfactory results with some kind of legal footing. It was based on the belief that an invitation to the Parties to the conflict to make an explicit declaration (which it would undoubtedly be difficult for them to refuse) would encourage them to take sides with the advocates of humanitarian ideas, and that the suffering caused by civil wars would be appreciably reduced as a result. The Preliminary Conference of National Red Cross Societies did not merely approve the suggestion : it went further. It went in fact straight to the root of the matter by a recommendation to insert at the beginning of each of the Conventions an Article to the effect that : " In the case of armed conflict within the borders of a State, the Convention shall also be applied by each of the adverse Parties, unless one of them announces expressly its intention to the contrary " [1].

Such was the view of the Red Cross movement. What would be thought of it in Government circles remained to be seen. There was reason to fear that there might be objections to the idea of imposing international obligations on States in connection with their internal affairs, and that it would be said to be impossible to bind provisional Governments, or political parties, or groups not yet in existence, by a Convention. But the Conference of Government Experts, which was

[1] See *Report on the Work of the Preliminary Conference of National Red Cross Societies for the Study of the Conventions and of various Problems relative to the Red Cross*, pp. 14 ff. and 51.

convened by the International Committee of the Red Cross in 1947, did not take that view. Far from repeating the arguments which the charitable efforts of the International Committee of the Red Cross had so often encountered in the past, they recommended at least a partial application of the provisions of the Convention in the case of civil war. As a result of their efforts an Article was drafted by the terms of which the principles of the Convention were to be applied in civil wars by the Contracting Party, subject to the adverse Party also conforming thereto [1]. This proposal fell a long way short of that of the Red Cross Societies. It spoke only of the application of the *principles* of the Convention, and then only on a basis of reciprocity.

On the strength of the opinions thus expressed, however, the International Committee added a fourth and last paragraph to Article 2 of the draft Conventions which it submitted to the XVIIth International Red Cross Conference at Stockholm. The wording was as follows :

> In all cases of armed conflict which are not of an international character, especially cases of civil war, colonial conflicts, or wars of religion, which may occur in the territory of one or more of the High Contracting Parties, the implementing of the principles of the present Convention shall be obligatory on each of the adversaries. The application of the Convention in these circumstances shall in no wise depend on the legal status of the Parties to the conflict and shall have no effect on that status.

The first part of this paragraph gave effect to the recommendation of the Red Cross Societies, and actually omitted the condition which the latter had contemplated. The second sentence embodied a wish expressed at the Conference of Government Experts. Its object was, first, to prevent the *de jure* Government from pleading non-recognition of its opponents as a reason for refusing to apply the Convention and, secondly, to prevent the other Party from basing a claim for recognition as a regular Government on the respect it had shown for the Convention.

The draft text was the subject of lengthy discussion at the Stockholm Conference, at which Governments as well as Red Cross Societies were represented. In the end the Conference adopted the proposals of the International Committee of the Red Cross for the First and Second Conventions, and in the case of the Third and Fourth Conventions made the application of the Convention subject to the proviso that the adverse Party should also comply with it.

It was in this form that the proposal came before the Diplomatic Conference of 1949.

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[1] See *Report on the Work of the Conference of Government Experts*, p. 8.

2. *The discussions at the Diplomatic Conference of 1949*

From the very outset, divergences of view became apparent [1]. A considerable number of delegations were opposed, if not to any and every provision in regard to civil war, at any rate to the unqualified application of the Convention to such conflicts. The principal criticisms of the Stockholm draft may be summed up as follows. It was said that it would cover all forms of insurrections, rebellion, and the break-up of States, and even plain brigandage. Attempts to protect individuals might well prove to be at the expense of the equally legitimate protection of the State. To compel the Government of a State in the throes of internal conflict to apply to such a conflict the whole of the provisions of a Convention expressly concluded to cover the case of war would mean giving its enemies, who might be no more than a handful of rebels or common brigands, the status of belligerents, and possibly even a certain degree of legal recognition. There was also a risk of ordinary criminals being encouraged to give themselves a semblance of organization as a pretext for claiming the benefit of the Convention, representing their crimes as " acts of war " in order to escape punishment for them. A rebel party, however small, would be entitled under the Convention to ask for the assistance and intervention of a Protecting Power. Moreover, it was asked, would not the *de jure* Government be compelled to release captured rebels as soon as order was re-established, since the application of the Convention would place them on the same footing as prisoners of war ? Any such proposals giving insurgents a legal status, and consequently support, would hamper the Government in its measures of legitimate repression.

The advocates of the Stockholm draft, on the other hand, regarded the proposed text as an act of courage. Insurgents, said some, are not all brigands. It sometimes happens in a civil war that those who are regarded as rebels are in actual fact patriots struggling for the independence and the dignity of their country. It was argued, moreover, that the behaviour of the insurgents in the field would show whether they were in fact mere felons, or, on the contrary, real combatants who deserved to receive protection under the Conventions. Again, it was pointed out that the inclusion of the reciprocity clause in all four Conventions would be sufficient to allay the apprehensions of the opponents of the Stockholm proposals. It was not possible to talk of " terrorism ", " anarchy " or " disorder " in the case of rebels who

[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-B, Article 2, pp. 9-15.

complied with humanitarian principles. Finally, the adoption of the Stockholm proposals would not in any way prevent a *de jure* Government from taking measures under its own laws for the repression of acts considered by it to be dangerous to the order and security of the State.

Faced with such widely varying opinions, the Conference referred the study of the Article to a small Committee [1], the very first meeting of which produced a whole series of amendments and proposals. One amendment proposed the rejection *en bloc* of the Stockholm text. On the other hand there was one proposal in favour of accepting it as it stood. Between these two extremes there were six amendments which proposed limiting the application of the Conventions to conflicts which, though internal in character, exhibited the features of real war. The amendments in question suggested a number of alternative or cumulative conditions, which one or other of the Parties to the conflict must fulfil for the Convention to be applicable.

A Working Party was instructed to prepare two successive drafts, which in their turn gave rise to new amendments. It seemed difficult to reach a majority in favour of any one solution.

The French Delegation must be given the credit for ending the deadlock in the Committee. Reverting to an idea previously put forward by the Italian Delegation, the French Delegation suggested that in all cases of non-international conflict the principles of the Convention should alone be applicable. The following text was proposed :

> In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall apply the provisions of the Preamble to the Convention for the Protection of Civilian Persons in Time of War.

The idea was a good one. But the suggested text had one defect. It referred to a draft Preamble which had not yet been adopted, and was, incidentally, never to be adopted [2]. Moreover, the draft Preamble simply stated that certain things were prohibited. It alluded to principles, but did not define them.

After discussion, a second Working Party was appointed with instructions to draw up a text containing a definition of the humanitarian

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[1] This was the Special Committee of the Joint Committee. The provision in question was discussed, first as Article 2, paragraph 4 (i.e. with the numbering it had in the Stockholm draft), and later as Article 2A. See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-B, pp. 40-48, 75-79, 82-84, 90, 93-95, 97-102.

[2] See above, p. 12 ff.

principles applicable, together with a minimum of mandatory rules. The definition was to be based on the principles of the Preamble which the International Committee of the Red Cross had itself proposed for all four Conventions, together with certain mandatory rules based on the draft Preamble to the Fourth (Civilians) Convention [1]. The Working Party's draft, with certain minor modifications, was the text finally adopted. But it was not immediately accepted. Certain delegates still preferred the previous draft and the USSR Delegation proposed a new text which read as follows :

> In the case of armed conflict not of an international character occurring in the territory of one of the States parties to the present Convention, each Party to the conflict shall apply all the provisions of the present Convention guaranteeing :
> — humane treatment for prisoners of war ;
> — compliance with all established rules connected with the prisoners-of-war régime ;
> — prohibition of all discriminatory treatment of prisoners of war practised on the basis of differences of race, colour, religion, sex, birth or fortune.

The Soviet proposal was based on the same idea as the French proposal—namely, limitation of the provisions applicable, but differed from it in the method employed, preferring a general wording referring to certain provisions of the Convention.

As no one text commanded a majority, the three proposals were put to the Joint Committee [2]. The proposal of the second Working Party obtained a clear majority over the others. It was finally adopted, in the form in which it appears at the beginning of the commentary on this Article, at a plenary meeting of the Conference, though not without lengthy discussion [3].

General

To borrow the phrase of one of the delegates, Article 3 is like a " Convention in miniature ". It applies to non-international conflicts only, and will be the only Article applicable to them until such time as a special agreement between the Parties has brought into force between them all or part of the other provisions of the Convention.

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[1] See p. 14.

[2] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-B, pp. 34-35.

[3] *Ibid.*, Article 2A, pp. 325-339.

It is very different from the original draft produced by the International Committee of the Red Cross, which provided for the application of the Conventions in their entirety. But the wording finally adopted was certainly the best amongst the various drafts prepared during the Conference. It has the merit of being simple and clear. It at least ensures the application of the rules of humanity which are recognized as essential by civilized nations and provides a legal basis for interventions by the International Committee of the Red Cross or any other impartial humanitarian organization—interventions which in the past were all too often refused on the ground that they represented intolerable interference in the internal affairs of a State. This text has the additional advantage of being applicable automatically, without any condition in regard to reciprocity. Its observance does not depend upon preliminary discussions on the nature of the conflict or the particular clauses to be respected. It is true that it merely provides for the application of the principles of the Convention, but it defines those principles and in addition lays down certain rules for their application. Finally, it has the advantage of expressing, in each of the four Conventions, the common principle which governs them.

PARAGRAPH 1. — APPLICABLE PROVISIONS

1. *Introductory sentence — Field of application of the Article*

A. *Cases of armed conflict.* What is meant by " armed conflict not of an international character " ?

The expression is so general, so vague, that many of the delegations feared that it might be taken to cover any act committed by force of arms—any form of anarchy, rebellion, or even plain banditry. For example, if a handful of individuals were to rise in rebellion against the State and attack a police station, would that suffice to bring into being an armed conflict within the meaning of the Article ? In order to reply to questions of this sort, it was suggested that the term " conflict " should be defined or—and this would come to the same thing—that a list should be given of a certain number of conditions on which the application of the Convention would depend. The idea was finally abandoned, and wisely so. Nevertheless, these different conditions, although in no way obligatory, constitute convenient criteria, and we therefore think it well to give a list drawn from the various amendments discussed ; they are as follows [1] :

[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-B, p. 121.

(1) That the Party in revolt against the *de jure* Government possesses an organized military force, an authority responsible for its acts, acting within a determinate territory and having the means of respecting and ensuring respect for the Convention.

(2) That the legal Government is obliged to have recourse to the regular military forces against insurgents organized as military and in possession of a part of the national territory.

(3) *(a)* That the *de jure* Government has recognized the insurgents as belligerents ; or

(b) That it has claimed for itself the rights of a belligerent ; or

(c) That it has accorded the insurgents recognition as belligerents for the purposes only of the present Convention ; or

(d) That the dispute has been admitted to the agenda of the Security Council or the General Assembly of the United Nations as being a threat to international peace, a breach of the peace, or an act of aggression.

(4) *(a)* That the insurgents have an organization purporting to have the characteristics of a State.

(b) That the insurgent civil authority exercises *de facto* authority over the population within a determinate portion of the national territory.

(c) That the armed forces act under the direction of an organized authority and are prepared to observe the ordinary laws of war.

(d) That the insurgent civil authority agrees to be bound by the provisions of the Convention.

Does this mean that Article 3 is not applicable in cases where armed strife breaks out in a country, but does not fulfil any of the above conditions ? We do not subscribe to this view. We think, on the contrary, that the scope of application of the Article must be as wide as possible. There can be no drawbacks in this, since the Article in its reduced form, contrary to what might be thought, does not in any way limit the right of a State to put down rebellion, nor does it increase in the slightest the authority of the rebel party. It merely demands respect for certain rules, which were already recognized as essential in all civilized countries, and embodied in the national legislation of the States in question, long before the Convention was signed. What Government would dare to claim before the world, in a case of civil disturbances which could justly be described as mere acts of banditry, that, Article 3 not being applicable, it was entitled to leave the wounded uncared for, to torture and mutilate prisoners and take hostages ? No Government can object to observing, in its dealings

with enemies, whatever the nature of the conflict between it and them, a few essential rules which it in fact observes daily, under its own laws, when dealing with common criminals.

Speaking generally, it must be recognized that the conflicts referred to in Article 3 are armed conflicts, with *armed forces* on either side engaged in *hostilities*—conflicts, in short, which are in many respects similar to an international war, but take place within the confines of a single country.

B. *Obligations of the Parties.* The words " each Party " mark a step forward in international law. Until recently it would have been considered impossible in law for an international Convention to bind a non-signatory Party—a Party, moreover, which was not yet in existence and which need not even represent a legal entity capable of undertaking international obligations. It had not been thought possible to conclude an agreement without reciprocal undertakings and such undertakings would imply that the contracting parties were already in existence. As we have seen, however, the present Convention no longer includes a reciprocity clause. This great step forward cleared the way for the provisions of Article 3, although, it is true, it is offset by the fact that it is no longer the Convention as a whole which will be applicable, but only the provisions of Article 3 itself.

The obligation resting on the Party to the conflict which represents established authority is not open to question. The mere fact of the legality of a Government involved in an internal conflict suffices to bind that Government as a Contracting Party to the Convention. On the other hand, what justification is there for the obligation on the adverse Party in revolt against the established authority ? Doubts have been expressed on this subject. How could insurgents be legally bound by a Convention which they had not themselves signed ? But if the responsible authority at their head exercises effective sovereignty, it is bound by the very fact that it claims to represent the country, or part of the country. The " authority " in question can only free itself from its obligations under the Convention by following the procedure for denunciation laid down in Article 142 [1].

If an insurgent party applies Article 3, so much the better for the victims of the conflict. No one will complain. If it does not apply it, it will prove that those who regard its actions as mere acts of

[1] Such denunciation would, in any case, have legal effect only if the denouncing authority was recognized internationally as the competent Government. It should also be noted that, under Article 142, denunciation does not take effect immediately.

anarchy or brigandage are right. As for the *de jure* Government, the effect on it of applying Article 3 cannot be in any way prejudicial; for no Government can possibly claim that it is *entitled* to make use of torture and other inhuman acts prohibited by the Convention, as a means of combating its enemies.

Care has been taken to state, in Article 3, that the applicable provisions represent a compulsory minimum. The words " as a minimum " must be understood in that sense. At the same time they are an invitation to exceed that minimum. The time may come when, in accordance with the law of nations, the adversary may be bound by humanitarian obligations which go farther than the minimum requirement stated in Article 3. For instance, if one Party to a conflict is recognized by third parties as being a belligerent, that Party would then have to respect the Hague rules.

2. *Sub-paragraphs (1) and (2) — Extent of the obligation*

A. *Sub-paragraph (1) : Humane treatment.* — We find expressed here the fundamental principle underlying the four Geneva Conventions. It is most fortunate that it should have been set forth in this Article, in view of the decision to dispense with a Preamble.

The value of the provision is not limited to the field dealt with in Article 3. Representing, as it does, the minimum which must be applied in the least determinate of conflicts, its terms must *a fortiori* be respected in the case of international conflicts proper, when all the provisions of the Convention are applicable. For " the greater obligation includes the lesser ", as one might say.

In view of the fact that four Conventions were being drawn up, each providing protection for a particular category of war victims, it might be thought that each Convention should merely have referred to the relevant category of victims. It was thought preferable, however, in view of the indivisible nature of the principle proclaimed, and its brevity, to enunciate it in its entirety and in an absolutely identical manner in all four Conventions. In this Commentary, we shall confine ourselves to points which more particularly concern the treatment of prisoners of war, who are covered by the Third Convention.

Taken literally, the phrase " including members of armed forces who have laid down their arms " can be interpreted (in the French version) in one of two ways, depending on whether the words " who have laid down their arms " are taken as referring to " members "

or " armed forces ". The discussions at the Conference brought out clearly that it is not necessary for an armed force as a whole to have laid down its arms for its members to be entitled to protection under this Article. The Convention refers to individuals and not to units of troops, and a man who has surrendered individually is entitled to the same humane treatment as he would receive if the whole army to which he belongs had capitulated. The important thing is that the man in question will be taking no further part in the fighting.

We shall endeavour to explain later, when discussing Article 13, the sense in which " humane treatment " should be understood. The definition is not an easy one. On the other hand, there is less difficulty in enumerating things which are incompatible with humane treatment. That is the method followed in the Convention when it proclaims four absolute prohibitions. The wording adopted could not be more definite: " To this end, the following acts *are and shall remain prohibited at any time and in any place whatsoever...* " No possible loophole is left ; there can be no excuse, no attenuating circumstances.

Items *(a)* and *(c)* concern acts which world public opinion finds particularly revolting—acts which were committed frequently during the Second World War. One may ask whether the list is a complete one. At one stage of the discussions, additions were considered—with particular reference to the biological " experiments " carried out on detained persons. The idea was rightly abandoned, since biological experiments are among the acts covered by *(a)*. Besides, it is always dangerous to try to go into too much detail—especially in this domain. However great the care taken in drawing up a list of all the various forms of infliction, it would never be possible to catch up with the imagination of future torturers who wished to satisfy their bestial instincts ; and the more specific and complete a list tries to be, the more restrictive it becomes. The form of wording adopted is flexible, and at the same time precise. The same is true of item *(c)*.

Items *(b)* (taking of hostages) and *(d)* (sentences and executions without a proper trial) prohibit practices which have in the past been fairly general in war-time. But although they were common practice, they are nevertheless shocking to the civilized mind. The taking of hostages is contrary to the modern idea of justice in that it is based on the principle of collective responsibility for crime and strikes at persons who are innocent of the crime which it is intended to prevent or punish.

Sentences and executions without previous trial are by definition open to error. " Summary justice " may be effective on account of

the fear it arouses, but it adds too many innocent victims to all the other innocent victims of the conflict. All civilized nations surround the administration of justice with safeguards aimed at eliminating the possibility of judicial errors. The Convention has rightly proclaimed that it is essential to do this even in time of war. We must be very clear about one point ; it is only " summary " justice which it is intended to prohibit. No sort of immunity is given to anyone under this provision. There is nothing in it to prevent a person presumed to be guilty from being arrested and so placed in a position where he can do no further harm ; and it leaves intact the right of the State to prosecute, sentence and punish according to the law.

As can be seen, Article 3 does not protect an insurgent who falls into the hands of the opposing side from prosecution in accordance with the law, even if he has committed no crime except that of carrying arms and fighting loyally. In such a case, however, once the fighting reaches a certain magnitude and the insurgent armed forces meet the criteria specified in Article 4.A.(2), the spirit of Article 3 certainly requires that members of the insurgent forces should not be treated as common criminals.

Reprisals do not appear here in the list of prohibited acts. Does that mean that reprisals on prisoners of war, while formally prohibited under Article 13, are allowed in the case of non-international conflicts, Article 3 being the only Article which then applies ? As we have seen, the acts referred to under items *(a)* to *(d)* are prohibited absolutely and permanently, no exception or excuse being tolerated. Consequently, any reprisal which entails one of these acts is prohibited, and so, speaking generally, is any reprisal incompatible with the " humane treatment " demanded unconditionally in the first clause of subparagraph (1).

It should be noted that the acts prohibited in items *(a)* to *(d)* are also prohibited under other Articles of the Convention, in particular Articles 13, 16, 44, 45, 52 and 82-108.

As already mentioned, Article 3 has an extremely wide field of application, embracing persons who do not take part in the hostilities as well as members of the armed forces who have laid down their arms or have been placed *hors de combat.*

All the persons referred to in Article 3 without distinction are entitled to humane treatment. Criteria which might be employed by an ill-intentioned Detaining Power as a basis for discrimination against one class of persons or another are enumerated in the provision, and their validity denied. Article 4 of the 1929 Convention had already banned all differences of treatment other than those based on " the

military rank, the state of physical or mental health, the professional abilities, or the sex of those who benefit from them ".

To the same end, Article 16 of the present Convention gives a list of similar criteria. Memories of the crimes perpetrated during the last World War led the authors of the 1949 Conventions to adopt this formula. It will be seen that the idea of nationality has not been included here, although it is mentioned in Article 16. That does not in any way mean that people of a given nationality may be treated in an arbitrary manner ; everyone, whatever his nationality, is entitled to humane treatment. It would be the very denial of the spirit of the Geneva Conventions to avail oneself of the fact that the criterion of nationality had been set aside as a pretext for treating foreigners, in a civil war, in a manner incompatible with the requirements of humane treatment, for torturing them, or for leaving them to die of hunger. It was certainly not the intention of the Diplomatic Conference to allow this, and while from the judicial point of view, nationality may be held to be an aggravating or a mitigating circumstance, the same is not true in regard to humane treatment in the sense of this Article ; in this case, nationality is one of the " other similar criteria ".

B. *Sub-paragraph (2) ; Care of the wounded and sick* [1].—Article 3 here reaffirms, in generalized form, the fundamental principle underlying the original Geneva Convention of 1864. The clause, which is numbered separately, even though it is already included in the preceding provision, is concise and particularly forceful. It expresses a categorical obligation which cannot be restricted and needs no explanation.

PARAGRAPH 2. — RIGHT OF HUMANITARIAN INITIATIVE

On various occasions, the International Committee of the Red Cross has offered its humanitarian services in time of civil war or international conflict alike, whenever it deemed such action necessary in behalf of victims. An offer of this kind does not constitute a precedent for subsequent cases. This paragraph is, however, more than a decorative provision ; it has great moral and practical value, and the International Committee itself asked for nothing more. Article 3 in fact constitutes an adapted version of Article 9 of the Convention to the scale of this " Convention in miniature ".

[1] Articles 29 to 32 of the Convention relate to the medical safeguards afforded to prisoners of war.

Although the International Committee of the Red Cross has been able to do a considerable amount of humanitarian work in certain civil wars, in others the doors have been closed against it, the mere offer of charitable services being regarded as an unfriendly act—an attempt to interfere in the internal affairs of the State. Article 3 precludes any such inference, an impartial humanitarian organization now being entitled under the Convention to offer its services. The Parties to the conflict may, of course, decline the offer if they can do without it. But they can no longer look upon it as an unfriendly act, or resent the fact that the organization making the offer has tried to come to the aid of the victims of the conflict.

It is obvious that outside help can only, and should only, be supplementary. It is for the Parties to the conflict to conform to Article 3 and ensure the observance of all its provisions.

For offers of service to be legitimate and acceptable, they must come from an organization which is both *humanitarian* and *impartial*, and the services offered and rendered must be *humane* and *impartial* also. The International Committee of the Red Cross is mentioned here for two reasons—firstly on its own account, as an organization called upon, by its statutes and traditions, to intervene in cases of conflict, and, secondly, as an example of what is meant by a humanitarian and impartial organization [1].

Paragraph 3. — Special agreements

In the case of armed conflict not of an international character, and subject to what has been stated above regarding the recognition by third parties of a state of belligerence, the Parties to the conflict are legally only bound to observe Article 3, and may ignore all the other Articles. But each one of them is completely free—and should be encouraged—to apply all or part of the remaining Articles of the Convention. An internal conflict may, as it continues, become to all intents and purposes a real war. The situation of thousands of sufferers is then such that it is no longer enough for Article 3 to be respected. Surely the most practical step is not to negotiate special agreements in great detail, but simply to refer to the Convention as it stands, or at all events to certain of its provisions.

The provision does not merely offer a convenient possibility, but makes an urgent request, points out a moral duty: " The Parties to the conflict should further endeavour... "

[1] For further reference, see the commentary on Article 9 below.

Is there no danger of the paragraph becoming inoperative as a result of the fear of increasing the power of the rebel party, which was so often expressed during the discussions ? Will a *de jure* Government not be afraid that the conclusion of such agreements may increase the authority of those who have risen in revolt against it, by constituting an implicit recognition of the existence and belligerent status of the party concerned ? It should be remembered that although the Government must endeavour to conclude such agreements, it is not expressly required to do so. It is also free to make the express stipulation that adherence to such an agreement in no way confers the status of a belligerent on the opposing party. Besides, in practice the conclusion of the agreements provided for in paragraph 3 will depend on circumstances. They will generally only be concluded because of an existing situation which neither of the parties can deny.

Lastly, it must not be forgotten that this provision, like those which precede it, is governed by the last clause of the Article.

Paragraph 4. — Lack of effect on the legal status of the Parties to the conflict

This clause is essential. Without it Article 3 would probably never have been adopted. It meets the fear that the application of the Convention, even to a very limited extent, in cases of civil war may interfere with the *de jure* Government's suppression of the revolt by conferring belligerent status, and consequently increased authority and power, upon the adverse Party. The provision was first suggested at the Conference of Government Experts in 1947 [1] and was reintroduced in much the same words in all the succeeding draft Conventions. It makes it absolutely clear that the object of the clause is a purely humanitarian one, that it is in no way concerned with the internal affairs of States, and that it merely ensures respect for the few essential rules of humanity which all civilized nations consider as valid everywhere and in all circumstances.

Consequently, the fact of applying Article 3 does not in itself constitute any recognition by the *de jure* Government that the adverse Party has authority of any kind ; it does not limit in any way the Government's right to suppress a rebellion by all the means—including arms—provided by its own laws ; nor does it in any way affect that Government's right to prosecute, try and sentence its adversaries, according to its own laws.

[1] See *Report on the Work of the Conference of Government Experts*, p. 9.

In the same way, the fact of the adverse Party applying the Article does not give it any right to any new international status, whatever it may be and whatever title it may give itself or claim [1].

ARTICLE 4. — PRISONERS OF WAR

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, fulfil 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*

[1] Since 1949, the International Committee of the Red Cross has several times had occasion to invoke Article 3 in cases of various internal conflicts, and to offer its assistance to the combatants. This offer was often accepted and the International Committee was able to visit prisoners and detainees held by both sides, and to give assistance to them.

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 :*

(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.*

Historical and General

In ancient times the concept of " prisoner of war " was unknown. Captives were the " chattels " of their victors who could kill them or reduce them to bondage. Throughout the ages, innumerable captives

owed humane treatment no doubt to the mercy of their victors. It is a fact, too, that sovereigns or military commanders have been known to ordain that their armies deal humanely with the prisoners who fell into their hands. More than once, philosophical or religious doctrines checked the savagery which prisoners might have been led to expect. The French Revolution, inspired by the idea of the Encyclopedists of the eighteenth century, actually decreed that " prisoners of war are under the safeguard of the Nation and the protection of the laws. Any unwarranted severity, insult, violence or murder committed against prisoners shall be punished according to the same laws and penalties as if such excesses had been committed against French citizens " [1]. However, more than a century had to elapse, and the Hague Convention of 1899 (completed and made more explicit by that of 1907) to be reached, before the States were ready to limit their respective sovereign rights concerning the treatment of prisoners of war, and before prisoners were granted their own statute in international law, protecting them from arbitrary treatment by the Detaining Power, and which may also be invoked by them against that Power [2].

At the 1899 and 1907 Peace Conferences, the lengthiest and most important discussions were centred around the provisions relating to *belligerent status* [3]. The question is of the utmost significance. Once one is accorded the status of a belligerent, one is bound by the obligations of the laws of war, and entitled to the rights which they confer.

[1] Decree of May 4 and June 20, 1792 (Art. I and II).

[2] See *Report of the International Committee of the Red Cross on its activities during the Second World War (September 1, 1939–June 30, 1947)*, Vol. I, General Activities, Geneva, May 1948, p. 216 ; see also Henri COURSIER, *Etudes sur la formation du droit humanitaire*, Geneva, 1952, pp. 55-59.

[3] The first three Articles of the 1907 Regulations read as follows :

"*Article 1 :* The laws, rights and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions :

(1) To be commanded by a person responsible for his subordinates ;

(2) To have a fixed distinctive emblem recognizable at a distance ;

(3) To carry arms openly ; and

(4) To conduct their operations in accordance with the laws and customs of war.

" In countries where militia or volunteer corps constitute the army, or form part of it, they are included under the denomination ' army '.

"*Article 2* : The inhabitants of a territory which has not been occupied, who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves in accordance with Article 1, shall be regarded as belligerents if they carry arms openly and if they respect the laws and customs of war.

"*Article 3 :* The armed forces of the belligerent parties may consist of combatants and non-combatants. In the case of capture by the enemy, both have a right to be treated as prisoners of war."

The most important of these is the right, following capture, to be recognized as a prisoner of war, and to be treated accordingly.

Delegates to the 1874 Brussels Conference had already expressed divergent opinions [1], and the difference in views had become particularly apparent in regard to the rights of the population of an invaded country. Some delegates laid particular stress on the necessities of war and the interest of the population, and considered that recognition of belligerent status should be made subject to very strict conditions. Others, taking a broader view, thought that it would be sufficient to have rules such as would preclude " banditry " and maintain loyalty during the conflict.

In 1899 the same discussions took place and the same arguments were presented ; but in the end the majority held the view that the Regulations should make provision for as many matters as possible since they contained the instructions to be given to the armed forces and each provision would thus help to limit abuses of power.

To complement those provisions, the Conference decided—and this is of the utmost importance—that all questions which are not expressly covered by the Regulations should be solved in accordance with the rules of the law of nations. This decision was recorded in the Preamble, reading as follows :

Until a more complete code of the laws of war is issued, the High Contracting Parties think it right to declare that, in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity, and the requirements of the public conscience ;

They declare that it is in this sense especially that Articles 1 and 2 of the Regulations adopted must be understood.

In accordance with these principles and with the provisions of Articles 1 and 2 of the 1907 Hague Regulations, those who take up arms are classified in three categories :

I. *Belligerents are persons belonging to organized military forces, whether the army or militias and volunteer corps, provided that such militias or volunteer corps fulfil the following conditions :*

[1] The Hague Convention concerning the laws and customs of war on land owes its existence to the Russian Tsar Alexander II ; on his orders, in 1874, the Russian Minister for Foreign Affairs submitted to the European Governments a " Draft International Convention on the Laws and Customs of War ", which was examined at the Brussels Conference. This Conference in turn drew up a " Draft International Declaration " containing numerous rules governing relations between the belligerent armies and with the population of occupied territory. Although this draft was never ratified by the Governments, it was the first international instrument specifying the customs of war, and twenty-five years later it was taken as a basis for the discussions at the first Peace Conference.

(*a*) that of being commanded by a person responsible for his subordinates [1] ;

(*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.

The qualification of belligerent is subject to these four conditions being fulfilled.

II. *The status of belligerent also applies, in accordance with Article 2 of the Regulations, to inhabitants of a non-occupied territory who, on the approach of the enemy, spontaneously take up arms to resist the invading forces.*

This refers to a mass rising. The enemy is obliged to recognize the belligerent status of the inhabitants when they carry arms openly and respect the laws and customs of war, even though they may not have had time to form themselves into regular armed units as required by Article 1.

III. *The third category includes all those who, whether fighting in organized units or individually, are unable to avail themselves of the provisions of Articles 1 and 2 of the Regulations, and who, in accordance with the Preamble to the Convention, are under the protection and empire of the principles of international law.*

In particular, this category includes armed units who do not meet the requirements of Article 1 of the Regulations, the inhabitants of a part of the territory already taken over by the enemy who take up arms to fight against the enemy, as well as persons who, from time to time, participate on their own initiative in war operations and then return to their peaceful pursuits, and lastly, persons who take isolated action in the unoccupied part of the territory in order to be of service to their country [2].

The Hague Regulations also make provision for non-combatant members of the armed forces ; in case of capture, they are entitled to the same treatment as combatants (Article 3). This category includes members of the various administrative branches of the armed forces ; the services which are explicitly protected by the First Geneva Convention, such as doctors and medical personnel, receive the special treatment to which that Convention entitles them. Lastly, Article 13 of the Regulations refers to individuals who follow an army without

[1] See Albert MECHELYNCK, *La Convention de La Haye concernant les lois et coutumes de la guerre sur terre*, Ghent, 1915, p. 119.

[2] *Ibid.*, pp. 120-121.

directly belonging to it, but whom the combatant Powers have the right to detain for reasons of security. All such persons have the right to *at least* the same treatment as prisoners of war, provided they can prove that they are attached to an army.

Contrary to the solution adopted in 1929, the drafters of the 1949 Convention considered, from the outset, that the Convention should specify the categories of protected persons and not merely refer to the Hague Regulations [1].

Article 4 is in a sense the key to the Convention, since it defines the people entitled to be treated as prisoners of war. It was therefore essential that the text should be explicit and easy to understand. In addition, the experience gained during the Second World War had to be taken into account, and reference made to certain categories of combatants in terms which would leave no room for doubt [2].

The present Article was discussed at great length during the 1949 Diplomatic Conference and there was unanimous agreement that the categories of persons to whom the Convention is applicable must be defined, in harmony with the Hague Regulations.

The four conditions which these Regulations impose on militias and corps of volunteers were reproduced and it was made clear that these conditions apply to militias and corps of volunteers not forming part of the regular armed forces, thus solving one of the most difficult questions—that of " partisans ".

During the preparatory work for the Conference, and even during the Conference itself, two schools of thought were observed. Some delegates considered that partisans should have to fulfil conditions even stricter than those laid down by the Hague Regulations in order to benefit by the provisions of the Convention. On the other hand, other experts or delegates held the view that resistance movements should be given more latitude. The problem was finally solved by the

[1] See *Report on the Work of the Conference of Government Experts*, pp. 103-104.

[2] The authors of the 1929 Convention, on the other hand, had referred to the Hague Regulations. Article 1 of that Convention reads as follows :

" The present Convention shall apply without prejudice to the stipulations of Part VII :

(1) to all persons referred to in Articles 1, 2 and 3 of the Regulations annexed to The Hague Convention of the 18th October, 1907, concerning the Laws and Customs of War on Land, who are captured by the enemy ;

(2) to all persons belonging to the armed forces of belligerents who are captured by the enemy in the course of operations of maritime or aerial war, subject to such exceptions (derogations) as the conditions of such capture render inevitable. Nevertheless these exceptions shall not infringe the fundamental principles of the present Convention ; they shall cease from the moment when the captured persons shall have reached a prisoners-of-war camp."

assimilation of resistance movements to militias and corps of volunteers " not forming part of the armed forces " of a Party to the conflict. However, contrary to the interpretation generally given to the corresponding provision in the Hague Regulations, it was recognized that such units might operate in occupied territory.

That was an important innovation which grew out of the experience of the Second World War.

PARAGRAPH A. — PERSONS WHO HAVE FALLEN INTO THE POWER OF THE ENEMY

Basic principle

Under this paragraph recognition as a prisoner of war depends on two essential conditions [1] :

(a) to belong to one of the categories specified in sub-paragraphs (1) to (6) of paragraph A ;

(b) to have fallen into the power of the enemy.

The existence of a state of belligerence is no longer officially in question ; the term " enemy " covers any adversary during an " armed conflict which may arise between two or more of the High Contracting Parties " pursuant to the first paragraph of Article 2 [2]. The words " fallen into the power of the enemy " replace the word " captured " which appeared in the 1929 Convention, the first expression having a wider significance and also covering the case of soldiers who became prisoners without fighting, for example following a surrender [3]. During the Second World War, certain Detaining Powers refused to grant the status of prisoner of war to " surrendered enemy personnel "—i.e. to members of enemy armed forces who had fallen into their power following a mass capitulation—on the ground that the signatories of the Conventions of Geneva and The Hague had not considered the possibility of mass surrender. This change in wording is designed to preclude any ambiguity.

An essential question of interpretation arises in this connection.

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[1] Paragraph B, which will be commented upon later, indicates other categories of persons who are also to be treated as prisoners of war.

[2] See above, pp. 22-23.

[3] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 237. This terminology was also used in the other provisions of the Convention where this concept had to be expressed. (See in particular Article 5, paragraph 1, Article 69, Article 78, paragraph 1, Article 87, paragraph 2, Article 122, paragraph 1).

Article 4 is independent from the laws and customs of war as defined in the Hague Conventions, but there was never any question when the Convention was drafted of abrogating the Hague law. In other words, the present Convention is not limited by the Hague Regulations nor does it abrogate them, and cases which are not covered by the text of this Convention are nevertheless protected by the general principles declared in 1907 [1].

1. *Sub-paragraph (1) — Members of the armed forces*

Here the expression " members of the armed forces " replaces the term " army " used in Article 1 of the Hague Regulations. It refers to all military personnel, whether they belong to the land, sea or air forces, and there is no longer provision for derogations in the case of the two latter branches such as had been provided in Article 1, sub-paragraph (2), of the 1929 Convention.

At the Conference of Government Experts, the question arose as to the advisability of giving a more exact definition of armed forces by stating as in the Hague Regulations that the term covers both combatants and non-combatants. It was finally considered that this fact was usually implicit in any general reference to armed forces, and moreover the matter had raised almost no difficulties during the Second World War. Any attempt at a stricter definition might result in restriction [2].

It had been proposed that the mention of militias or volunteer corps forming part of the armed forces should be deleted, as these were covered by the expression " armed forces ". The Conference of Government Experts pointed out, however, that certain countries still

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[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-B, pp. 267-268. The list of circumstances which may accord the status of prisoner of war is not necessarily exhaustive and there is no reason to conclude that persons not in any of the categories listed in the Article cannot be considered as prisoners of war. Such persons might be outside the provisions of the Convention but are not to be excluded from the law of nations in general. Their situation would be considered in accordance with those principles and would remain " under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity, and the requirements of the public conscience ". This is, in fact, expressely provided for in the present Convention in Article 142, paragraph 4, concerning denunciation by a Contracting Party. Furthermore, the Convention contains a safety clause for the benefit of persons not covered by the present Convention, in Article 3 above, which grants definite guarantees, although much more limited in nature, in the case of a non-international conflict.

[2] See *Report on the Work of the Conference of Government Experts*, p. 106

had militias and volunteer corps which, although part of the armed forces, were quite distinct from the army as such. The mention of militias and volunteer corps was therefore maintained as it appears in the Hague Regulations, although strictly speaking it was probably not essential.

The drafters of the 1949 Convention, like those of the Hague Convention, considered that it was unnecessary to specify the sign which members of armed forces should have for purposes of recognition. It is the duty of each State to take steps so that members of its armed forces can be immediately recognized as such and to see to it that they are easily distinguishable from members of the enemy armed forces or from civilians. The Convention does not provide for any reciprocal notification of uniforms or insignia, but merely assumes that such items will be well known and that there can be no room for doubt. If need be, any person to whom the provisions of Article 4 are applicable can prove his status by presenting the identity card provided for in Article 17.

This sub-paragraph relates to the armed forces of a Government whose legal status is not contested by the other Party. The case of members of regular armed forces who profess allegiance to a Government or an authority not recognized by the Detaining Power is referred to under (3) below.

2. — *Sub-paragraph (2)—Partisans*

The opening years of the Second World War witnessed immense changes in the political system of Europe. Many countries were occupied, armistices were concluded and alliances reversed. Some Governments ceased to be, others went into exile and yet others were brought to birth. Hence arose an abnormal and chaotic situation in which relations under international law became inextricably confused. In consequence, national groups continued to take an effective part in hostilities although not recognized as belligerents by their enemies, and members of such groups, fighting in more or less disciplined formations in occupied territory or outside their own country, were denied the status of combatant, regarded as " francs-tireurs " and subjected to repressive measures. The International Committee of the Red Cross always made every effort to secure for " partisans " captured by their adversaries the benefit of treatment as prisoners of war, provided of course that they themselves had conformed to the conditions laid down in Article 1 of the Regulations annexed to the Fourth Hague Convention of 1907.

Apart from various applications to individual authorities, on August 17, 1944, the International Committee addressed a Memorandum [1] to all belligerent States. Some of the Governments concerned gave affirmative replies; others made certain reservations and this reaction strengthened all the more the desire of the International Committee of the Red Cross to see a Diplomatic Conference go thoroughly into the matter and reach a solution inspired by the broadest sentiments of humanity [2].

A. *Origin of the provision.*—Both during the preparatory work and in the course of the 1949 Diplomatic Conference, the discussions regarding this provision were among the most lively of all and it might well have been that no agreement could have been reached. The Occupying Powers, on the one hand, and the occupied countries, on the other, held conflicting views. The former considered that resistance movements should have to fulfil more numerous conditions than those

[1] This Memorandum read as follows:

" Certain aspects of the present struggle have induced the International Committee to envisage the consequences of acts of war committed by or against combatant formations whom their adversaries have not recognized as belligerents, but regard as partisans. The Committee are of opinion that when, in the course of war, situations arise analogous to those of war, but not explicitly covered by international Conventions, the fundamental principles of international law and of humanity should nevertheless be regarded as applicable.

The International Committee have always devoted especial attention to the treatment of prisoners of war, and are of opinion that all combatants, without regard to the authority to whom they belong, should enjoy the benefit of the provisions applicable to prisoners of war, if they fall into enemy hands. But this benefit must be conditional on conformity on their part to the laws and usages of war, especially the following:

(1) They must be commanded by a person responsible for his subordinates,

(2) They must carry a distinctive badge, and

(3) They must bear arms openly.

The International Committee also attach especial importance to securing universal respect for the principles of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, and to enabling auxiliary Red Cross organizations to discharge their functions for the benefit of all sick and wounded alike, without discrimination.

The International Committee are of opinion that the principles stated must be applied, irrespective of all juridical arguments as to the recognition of the belligerent status of the authority to whom the combatants concerned belong.

In view of the situation hereinafter described, the International Committee, as always when armed forces are in conflict, are ready to serve as impartial intermediaries. In particular, they are ready to forward distinctive badges and notify the wearing of such emblems by combatants not in uniform, as soon as it receives such information from either party for communication to the other."

[2] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pp. 517-519; see also, for particular steps and representations by the International Committee of the Red Cross, *ibid.*, pp. 519-535.

laid down by the Hague Regulations if they were to benefit by the provisions of the Convention. According to the other view, the recognition of partisans should not be bound by excessively restrictive conditions which might, moreover, result not in damping the ardour of partisans, but in increasing the cruelty and brutality of the fighting.

At the Conference of Government Experts and at the 1949 Diplomatic Conference, there was unanimous agreement about the necessity for partisans to fulfil the conditions laid down in Article 1 of the Hague Regulations and to have an adequate military organization so as to ensure that those conditions could be fulfilled.

On the other hand, no agreement could be reached at the Conference of Government Experts with regard to the condition for partisans to gain the effective, albeit temporary, control of a region. It was feared that this condition might be considered effective by the Occupying Power only if large territories were wholly occupied and administered by partisans. In most cases, however, the Occupying Power would gain control of the lines of communication of a given region and would therefore deny that partisans controlled the said area [1]. Other delegations nevertheless maintained that control of territory should be a valid criterion, because it was preferable that recognition should depend on conditions which could be verified easily.

Finally, one delegation proposed that protection under the Convention should be granted to partisans who fulfilled the conditions of the Hague Regulations and on whose behalf their Government or responsible leader had notified the Occupying Power of their opening hostilities. Should this condition fail, the control of a territory could then only be stipulated [2].

The draft text submitted by the International Committee to the XVIIth International Red Cross Conference, held at Stockholm in 1948, reflected the various tendencies which had emerged at the Conference of Government Experts. This text read as follows :

Persons belonging to a military organization constituted in an occupied territory with a view to combating the Occupying Power, on condition :

(a) that this organization has notified its participation in the conflict to the Occupying Power, either through its responsible commander, or through the intermediary of a Party to the conflict, or that it has secured the effective, albeit temporary, control of a determined area ;

(b) that its members are placed under the orders of a responsible commander; that they constantly wear a fixed distinctive emblem, recognizable at a distance ; that they carry arms openly ; that they act in obedience to

[1] See *Report on the Work of the Conference of Government Experts*, p. 109.
[2] *Ibid.*, p. 110.

the laws and customs of warfare ; and in particular that they treat nationals of the Occupying Power who may have fallen into their hands, according to the provisions of the present Convention [1].

The XVIIth International Red Cross Conference deleted the requirement of territorial control at the end of sub-paragraph (*a*) of the draft text, and retained the principle of notification " either through its responsible leader, through the Government which it acknowledges or through the mediation of a Party to the conflict ".

At the 1949 Diplomatic Conference, this Article was referred to a Special Committee where it was the subject of much discussion [2]. The following joint Anglo-Belgian amendment was eventually proposed :

(6) Persons belonging to a military organization or to an organized resistance movement constituted in an occupied territory to resist the Occupying Power and which has effective command of its lower formations and units, on condition :

(*a*) that the Government or the responsible Authorities which the organization acknowledges have notified the Occupying Power through a means by which they are able to make and reply to communications, of its participation in the conflict and of the distinctive emblem which its members wear ;

(*b*) that the members of this organization are under the command of a responsible leader ; that they wear at all times a fixed distinctive emblem, recognizable at a distance, that they carry arms openly, that they conform to the laws and customs of war, and in particular, that they treat nationals of the Occupying Power who fall into their hands in accordance with the provisions of the present Convention [3].

Opinion was divided in the Committee between the Stockholm text, which did not require that a resistance movement should be *organized*, and the above draft, and its members could not reach a decision.

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[1] See *XVIIth International Red Cross Conference, Draft Revised or New Conventions for the Protection of War Victims*, p. 53.

[2] Committee II decided at its sixth meeting, on May 2, 1949, to appoint a Special Committee to examine points of substance which had arisen in connection with the following Articles : 4, 12, 28, 34, 50, 52, 58, 59, 60, 62, 63, 64, 65, 66, 67, 71, 84, 115, 118, 119, 125, as well as the United Kingdom amendment to Article 16 and the Austrian amendment to Article 119.

The delegations of the following countries were members of the Committee : Australia, Belgium, Canada, Denmark, Finland, France, Greece, Hungary, India, Israel, Italy, Netherlands, Spain, Switzerland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom and United States of America. A representative of the International Committee of the Red Cross took part in the debates in an expert capacity. (*Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 413.)

[3] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. III. pp. 58 and 62, Nos. 84 and 92.

The Danish Delegation then proposed the insertion of an additional paragraph in order to extend the status of prisoner of war to civilian persons acting in lawful defence, or participating in the defence of their native land in the event of illegal aggression or occupation [1]. The draft amendment also provided that in any case civilians would be assured of the ordinary procedural guarantees and the application of the minimum criteria specified in Article 3. The Special Committee eventually decided that this proposal fell within the scope of the Fourth Convention, relative to civilians. And in view of the analogy between certain provisions of the Danish amendment and the second paragraph of Article 5 below, Committee II finally rejected it [2].

This discussion had done nothing to reconcile the different views, and at the fourteenth meeting of the Special Committee, eight delegations voted for the Stockholm draft, while four delegations preferred the Anglo-Belgian amendment.

The Netherlands delegate then proposed, as a compromise solution, that the wording of Article 1 of the Hague Regulations should be used.

The first sub-paragraph in the Stockholm draft was split up so as to make a distinction between militias and volunteer corps " forming part of the armed forces " (sub-paragraph (1)) and " members of *other* militias and members of *other* volunteer corps " (sub-paragraph (2)). This distinction did not exist in the Stockholm draft, which simply mentioned in the first sub-paragraph " militias and volunteer corps which are regularly constituted ". The new text thus corresponded to that in the Hague Regulations, since the conditions specified in (*a*), (*b*), (*c*), (*d*), were identical. It was considered that there was sufficient guarantee of the internal organization of such militias and volunteer corps, and the reference included in the Anglo-Belgian amendment to effective command of lower formations and units was therefore dropped. The principle of notification, which appeared in the Stockholm draft and, even more categorically, in the Anglo-Belgian amendment, was also deleted and was replaced by the requirement that such militias and volunteer corps should belong to a Party to the conflict. This was found acceptable by the authors of the Anglo-Belgian amendment [3].

B.—*The contents of the provision.*—As we have seen, in the absence of any possible agreement on a provision to be applicable only to

[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. III, pp. 58-59.

[2] For the discussion, see *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 425-426 and 434-435.

[3] A text was finally adopted at the twenty-sixth meeting of the Special Committee. See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 466-467, 478-479 ; Vol. II-B, p. 342.

resistance movements operating in occupied territory, the delegates to the 1949 Conference reverted, at the suggestion of the Netherlands Delegation, to the principle stated in Article 1 of the 1907 Hague Regulations, which made a distinction between militias and volunteer corps forming part of the army and those which are independent.

The latter category, which includes organized resistance movements, is entitled to benefit by the Convention provided, of course, the general implementing conditions (Article 2) are fulfilled. Resistance movements must be fighting on behalf of a " Party to the conflict " in the sense of Article 2, otherwise the provisions of Article 3 relating to non-international conflicts are applicable, since such militias and volunteer corps are not entitled to style themselves a " Party to the conflict ".

International law has advanced considerably concerning the manner in which this relationship shall be established. The drafters of earlier instruments were unanimous in including the requirement of express authorization by the sovereign, usually in writing, and this was still the case at the time of the Franco-German war of 1870-1871. Since the Hague Conferences, however, this condition is no longer considered essential. It is essential that there should be a *de facto* relationship between the resistance organization and the party to international law which is in a state of war, but the existence of this relationship is sufficient. It may find expression merely by tacit agreement, if the operations are such as to indicate clearly for which side the resistance organization is fighting [1]. But affiliation with a Party to the conflict may also follow an official declaration, for instance by a Government in exile, confirmed by official recognition by the High Command of the forces which are at war with the Occupying Power [2]. These different cases are based on the experience of the Second World War, and the authors of the Convention wished to make specific provision to cover them [3].

In our view, the stipulation that organized resistance movements and members of other militias and members of other volunteer corps which are independent of the regular armed forces must belong to a Party to the conflict, refutes the contention of certain authors who

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[1] It may be indicated by deliveries of equipment and supplies, as was frequently the case during the Second World War, between the Allies and the resistance networks operating in occupied territories.

[2] See Declaration by General Eisenhower of July 15, 1944, recognizing the French Forces of the Interior and taking them under his command.

[3] See in this connection, Jürg H. SCHMID, *Die völkerrechtliche Stellung der Partisanen im Kriege, Zürcher Studien zum Internationalen Recht*, Polygraphischer Verlag A.G., Zürich 1956, pp. 109-112 and 112 ff.

have commented on the Convention that this provision amounts to a *ius insurrectionis* for the inhabitants of an occupied territory [1]. In fact, as we have seen, the intention of the authors, and the final solution adopted, was to return to the concept of the Hague Regulations. It is true that the phrase " organized resistance movements " was added to " militias " and " volunteer corps ". The Conference of Government Experts had generally agreed that the first condition preliminary to granting prisoner-of-war status to partisans was their forming a body having a military organization. The implication was that such an organization must have the principal characteristics generally found in armed forces throughout the world, particularly in regard to discipline, hierarchy, responsibility and honour. In the view of the experts, this stipulation should provide an additional guarantee that the conflict between partisans and occupying forces was an open and loyal one. One may wonder whether the expression " organized resistance movements " is specific enough. One may also feel that the term " resistance " covers not only open conflict against the Occupying Power, but also other forms of opposition to the latter [2]. No amendment was made to this wording, however, which constitutes a clear reference to the events of the Second World War and to the resistance movements which were active during that conflict. Moreover, the structure and internal organization of those movements were perhaps stronger than those usually expected of independent militias and volunteer corps. There has therefore been no substantial modification of the Hague Regulations and in fact the four conditions contained in sub-paragraphs (*a*) to (*d*) are identical with those stated in the Regulations.

Such militias and volunteer corps are protected by the Convention when operating " in or outside their own territory, even if this territory is occupied ". They can thus operate over the whole of the enemy territory including the corresponding air space and the territorial waters and, of course, on the high seas ; some authors even consider that their activity may extend over the whole territory under enemy control. With regard to the territory in which resistance organizations are set up, the provision is very flexible (" their own territory, even if this territory is occupied "). This latter phrase is of very great importance and provides an explicit guarantee to resistance movements such as those which grew up during the Second World War. The fact

[1] For some of these authors, see *Etudes sur la IIIe Convention de Genève de 1949. Prisonniers de Guerre*, J. de PREUX, *Revue internationale de la Croix-Rouge*, January 1954, p. 31.

[2] See *Remarks and Proposals submitted by the International Committee of the Red Cross*, p. 38.

that this constitutes a break away from the traditional rules of The Hague has been commented upon by several authors [1]. Under those rules it was generally considered that in practice partisans could only be recognized during the period of invasion. Once the enemy territory was occupied, its population had to respect the measures taken by the occupant in order to restore and ensure public order and safety (pursuant to Article 43 of the Hague Regulations). The sanctions which the occupant might impose included the death penalty, without any special consideration in the case of partisans whose organization was in conformity with Article 1 of the Regulations.

This is no longer the case. Under the present provision, it is incumbent upon the occupant to treat as prisoners of war all captured members of organized resistance movements operating in occupied territory, in accordance with the stated principles, and to apply the Convention to them *in toto*. This is undoubtedly a very important concession to resistance movements such as those which existed during the Second World War.

As we have said already, if resistance movements are to benefit by the Convention, they must respect the four special conditions contained in sub-paragraphs (*a*) to (*d*) which are identical to those stated in Article 1 of the Hague Regulations.

(*a*) *that of being commanded by a person responsible for his subordinates :* in fact, during the Second World War, resistance movements were usually commanded by regular officers of the armed forces, but that is not a requirement and the leader may be either civilian or military. He is responsible for action taken on his orders as well as for action which he was unable to prevent. His competence must be considered in the same way as that of a military commander. Respect for this rule is moreover in itself a guarantee of the discipline which must prevail in volunteer corps and should therefore provide reasonable assurance that the other conditions referred to below will be observed.

(*b*) *that of having a fixed distinctive sign recognizable at a distance* [2]: for partisans a distinctive sign replaces a uniform ; it is therefore an essential factor of loyalty in the struggle and must be worn constantly, in all circumstances. During the Second World War, this rule was not always respected by the resistance organizations but there should be no room for doubt on this matter. The Conference of Government Experts proposed that partisans should be required to " habitually

[1] See Jürg H. SCHMID, *op. cit.*, pp. 123 and sqq.

[2] See in this connection, *ibid.*, pp. 128-132, which contains many references.

and constantly display a fixed distinctive sign recognizable at a distance " [1]. This proposal was not adopted by the 1949 Diplomatic Conference, which preferred merely to use the terminology of the Hague Regulations without in any way wishing to set aside this interpretation of the term " fixed " [2], which moreover coincided with the intention of the drafters of the Regulations.

If it is to be distinctive, the sign must be the same for all the members of any one resistance organization, and must be used only by that organization. This in no way precludes the wearing of additional emblems indicating rank or special functions.

The International Committee of the Red Cross was anxious that the matter should be regulated as satisfactorily as possible and had gone so far as to propose to the Conference of Government Experts that the nature of the sign should be specified in a conventional text, as well as its size and the manner in which it should be worn (for instance, a green arm-band with national emblem, 10 cm. wide, worn on the left arm). The matter might be settled by a special agreement under Article 6. This suggestion was not adopted, however. Consequently, the term " recognizable at a distance " is open to interpretation. In our view, " the distinctive sign should be recognizable by a person at a distance not too great to permit a uniform to be recognized " [3]. Such a sign need not necessarily be an arm-band. It may be a cap (although this may frequently be taken off and does not seem fully adequate), a coat, a shirt, an emblem or a coloured sign worn on the chest. If the partisans are on board a vehicle or an engine of war, tank, aeroplane or boat, the distinctive sign must of course be shown on the vehicle concerned. This is in line with the long-established regulations of international law regarding the flag in the case of war at sea.

Lastly, there is no requirement that the distinctive sign must be notified, as several delegations to the 1949 Diplomatic Conference would have wished. It is nevertheless open to the interested parties to make such a notification through the International Committee, in the same way as the Committee offered its services in its Memorandum of August 17, 1944, referred to above [4]. Such a notification may also be made through the Protecting Power of the Party to the conflict to which the resistance organization is affiliated. Titles and ranks may also be communicated in this way, as provided in Article 43.

[1] See *Report on the Work of the Conference of Government Experts*, p. 108.

[2] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 479.

[3] Rolin, quoted by SCHMID, *op. cit.* p. 131.

[4] See above, p. 53, Note 1.

(*c*) *that of carrying arms openly :* although the difference may seem slight, there must be no confusion between carrying arms " openly " and carrying them " visibly " or " ostensibly ". Surprise is a factor in any war operation, whether or not involving regular troops. This provision is intended to guarantee the loyalty of the fighting, it is not an attempt to prescribe that a hand-grenade or a revolver must be carried at belt or shoulder rather than in a pocket or under a coat.

The enemy must be able to recognize partisans as combatants in the same way as members of regular armed forces, whatever their weapons. Thus, a civilian could not enter a military post on a false pretext and then open fire, having taken unfair advantage of his adversaries.

(*d*) *that of conducting their operations in accordance with the laws and customs of war :* this is, of course, an essential provision which embraces those just listed above. It is obvious, however, that the concept of the laws and customs of war is rather vague and subject to variation as the forms of war evolve. The Stockholm draft therefore attempted to clarify the intention of the Parties on at least one point by including the express obligation for partisans to " treat nationals of the Occupying Power who fall into their hands in accordance with the provisions of the present Convention ".

This provision was deleted by the drafters of the Convention, who did not wish to depart from the terms of the Hague Regulations. Partisans are nevertheless required to respect the Geneva Conventions to the fullest extent possible. In particular, they must conform to international agreements such as those which prohibit the use of certain weapons (gas). In all their operations, they must be guided by the moral criteria which, in the absence of written provisions, must direct the conscience of man ; in launching attacks, they must not cause violence and suffering disproportionate to the military result which they may reasonably hope to achieve. They may not attack civilians or disarmed persons and must, in all their operations, respect the principles of honour and loyalty as they expect their enemies to do.

3. *Sub-paragraph (3) — Members of regular armed forces who profess allegiance to an authority not recognized by the Detaining Power*

During the Second World War, certain States refused to recognize as belligerents combatant units which professed allegiance to a Government or authority which these States did not recognize. A case in point was that of the French followers of General de Gaulle, as well

as that of Italian troops who fought against the German forces in Southern Italy from Spetember 1943 onwards.

The Franco-German armistice of 1940 stipulated that French nationals who continued to bear arms against Germany would not enjoy the protection of the laws of war [1]. In fact, following representations by the International Committee of the Red Cross, General de Gaulle's troops were treated as prisoners of war, and the German authorities informed the International Committee that they would not apply to those French combatants the provisions of the armistice. But representations on behalf of Italian troops who were in a similar situation at the end of 1943 remained unanswered [2].

At the Conference of Government Experts, delegations immediately approved the International Committee's proposal for a special clause to cover " members of armed forces claiming to be under an authority not recognized by the enemy " [3]. It was feared, however, that the proposal might be open to abusive interpretation, and the Conference therefore decided to add that such forces must, in order to benefit by the Convention, be fighting " in conjunction " with a State recognized as a belligerent State by the enemy. This clause was deleted at Stockholm, and was subsequently amended by the Special Committee of Committee II at the 1949 Diplomatic Conference, which considered it preferable to insert the stipulations mentioned in paragraph 2 (*a*), (*b*), (*c*) and (*d*) above [4]. Other proposals included one for the deletion of the provision, and another for the reinstatement of the Stockholm draft. The latter suggestion was eventually approved [5].

This provision must be interpreted, in the first place, in the light of the actual case which motivated its drafting—that of the forces of General de Gaulle which were under the authority of the French National Liberation Committee.

The expression " members of regular armed forces " denotes armed forces which differ from those referred to in sub-paragraph (1) of this paragraph in one respect only : the authority to which they profess allegiance is not recognized by the adversary as a Party to the

[1] Article 10, paragraph 3, of the Armistice Agreement between France and Germany, dated June 22, 1940.

[2] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pp. 519-520 and 532-533. In this connection, it should be noted that the Free French authorities denied the validity of the armistice, especially after November 11, 1942, when the whole of France was occupied by the German forces. See SCHMID, *op. cit.*, p. 115, Note 85.

[3] See *Report on the Work of the Conference of Government Experts*, pp. 104 and 106-107.

[4] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 465.

[5] *Ibid.*, pp. 479-480 and p. 577.

conflict. These " 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 organized hierarchy and they know and respect the laws and customs of war. The delegates to the 1949 Diplomatic Conference were therefore fully justified in considering that there was no need to specify for such armed forces the requirements stated in sub-paragraph (2) (*a*), (*b*), (*c*) and (*d*).

The distinguishing feature of such armed forces is simply the fact that in the view of their adversary, they are not operating or are no longer operating under the direct authority of a Party to the conflict in accordance with Article 2 of the Convention.

One solution in order to bring these armed forces *legally* within the scope of the Convention was to associate them with a belligerent fighting against the Power concerned. During the Second World War, the German authorities accepted this solution and stated that they would consider the Free French Forces to be " fighting for England ". The Conference of Government Experts also supported this solution [1].

Another procedure which was proposed by the International Committee of the Red Cross, was that such forces should be recognized provided that they were *constituted* in a regular manner " irrespective of the Government or authority under whose orders they might claim to be " [2]. In order to preclude any abusive interpretation which might have led to the formation of armed bands such as the " Great Companies " of baneful memory [3], the drafters of the 1949 Convention specified that such armed forces must " profess allegiance to a Government or authority not recognized by the Detaining Power ". It is not expressly stated that this Government or authority must, as a minimum requirement, be recognized by third States, but this condition is consistent with the spirit of the provision, which was founded on the specific case of the forces of General de Gaulle.

It is also necessary that this authority, which is not recognized by the adversary, should either consider itself as representing one of the High Contracting Parties, or declare that it accepts the obligations stipulated in the Convention and wishes to apply them.

The present provision naturally covers armed forces which continue operations under the orders of a Government in exile which is not recognized by the adversary, but has been given hospitality by another State. In our view, it also covers armed forces which continue to fight

[1] See *Report on the Work of the Conference of Government Experts*, pp. 106-107.
[2] *Ibid.*, p. 106.
[3] Mercenaries who devastated France in the XIVth century, during the peaceful periods of the Hundred Years War.

in a " national redoubt ", under the orders of an authority or Government which has its headquarters in that part of the country while the occupying authorities may have recognized a Government, which may or may not support them, in that part of the country occupied by their troops. It is of little consequence whether or not another State is engaged in the same struggle as these " regular armed forces ". As we have seen, the authors of the Convention deliberately dropped the requirement that such armed forces should be fighting in conjunction with a State recognized as a regular belligerent.

4. *Sub-paragraph (4) — Persons who accompany the armed forces without actually being members thereof*

This provision is an up-to-date version of Article 81 of the 1929 Convention, which in turn was based on Article 13 of the Hague Regulations.

The Conference of Government Experts considered that the text of Article 81 of the 1929 Convention had become obsolete (in particular the word " sutlers " is no longer appropriate) and should include a reference to certain other classes of persons who were more or less part of the armed forces and whose position when captured had given rise to difficulties during the Second World War.

The list given is only by way of indication, however [1], and the text could therefore cover other categories of persons or services who might be called upon, in similar conditions, to follow the armed forces during any future conflict.

The Government Experts, like the drafters of Article 81 of the 1929 Convention, considered it preferable to maintain the system whereby prisoner-of-war status is granted only to persons holding identity cards, even if some prisoners (as in the Second World War) were deprived of this status owing to the loss of their cards [2]. The text submitted to the Stockholm Conference referred to this condition in categorical terms: " Persons who follow the armed forces... on condition that they are bearers of an identity card . . . " [3]. We believe that the 1949 Diplomatic Conference was well founded in not accepting this wording. The Conference considered that the capacity in which

[1] See *Report on the Work of the Conference of Government Experts*, pp. 112-113.

[2] *Ibid.*, p. 113.

[3] See *XVIIth International Red Cross Conference, Draft Revised or New Conventions for the Protection of War Victims*, p. 52.

the person was serving should be a determining factor ; the possession of a card is not therefore an indispensable condition of the right to be treated as a prisoner of war, but a supplementary safeguard [1].

After some discussion, the Stockholm draft which, in the case of persons accompanying the armed forces, made possession of an identity card an absolute condition of the right to be treated as a prisoner of war, was modified and the resulting text included in the Convention is more flexible [2].

The application of this provision is therefore dependent on authorization to accompany the armed forces, and the identity card merely serves as proof. The identity card corresponds virtually to a soldier's uniform or a partisan's arm-band ; in case of doubt, the question must be settled pursuant to Article 5, paragraph 2, hereafter [3].

5. *Sub-paragraph (5) — Members of crews of the merchant marine and the crews of civil aircraft*

In the past, it was generally recognized that in time of war merchant seamen were liable to capture. This view subsequently changed and the XIth Hague Convention of 1907 made provision to the contrary in Article 6, which specified that merchant seamen " are not made prisoners of war, on condition that they make a formal promise in writing not to take, while hostilities last, any service connected with the operations of the war ".

Maritime warfare as practised during the First World War made these stipulations obsolete. Merchant seamen, though not intended to take an active part in hostilities, were nevertheless armed and might take part in offensive operations [4].

Even so, when the Diplomatic Conference of Geneva drew up the 1929 Prisoners of War Convention, it was not inclined to sanction this practice ; it preferred to adhere to the Hague Regulations and to omit any reference to the capture of merchant seamen. During the Second World War, however, the merchant marine was exposed to

[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 417.

[2] *Ibid.*, p. 418.

[3] See also Annex IV to the Convention, which gives as an example a model identity card for persons to whom the present provision refers. See below, p. 669.

[4] Article 8 of the XIth Hague Convention, 1907, stipulated that the provisions of Article 6 of the same Convention did not apply to ships taking part in the hostilities.

the same practices as in the First World War [1]. Captured merchant seamen were treated sometimes as prisoners of war and sometimes as civilian internees, but they received no pay and were not compelled to work. This unsatisfactory situation obviously had to be remedied and the Conference of Government Experts was unanimous in proposing that they should qualify for the status of prisoner of war [2]. This proposal was finally accepted by the 1949 Diplomatic Conference, but not without some difficulty [3].

The term " members of crews " covers only members of the merchant marine who have mustered on a ship, but not those who, after completing their time of service, are on board ship as passengers and still less those who are on leave, for instance in their homes [4]. Fishermen are excluded, since Article 3 of the XIth Hague Convention, 1907, stipulates that fishing boats cannot be captured [5].

In some countries, pilots and apprentices [6] are not members of merchant marine crews ; the 1949 Convention therefore makes specific reference to them, as was not the case in the Stockholm text [7].

Lastly, the phrase " who do not benefit by more favourable treatment under any other provisions of international law " is a reference to Article 6 of the XIth Hague Convention which, as we have seen, provides that merchant seamen may not be made prisoners of war [8].

[1] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pp. 552-553. See also, for action by the International Committee of the Red Cross, *ibid.*, pp. 553-554.

[2] See *Report on the Work of the Conference of Government Experts*, pp. 110 and 111. Some delegations suggested at the Conference of Government Experts that these merchant seamen should be free to choose between prisoner-of-war and civilian internee status ; this suggestion was not approved, on the ground that the Detaining Power would thus be obliged to adopt two different kinds of internment for merchant service crews.

[3] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 238-239 and 418-419.

[4] *Ibid.*, p. 419.

[5] The first two paragraphs of Article 3 of the XIth Hague Convention, 1907, relative to certain restrictions on the exercise of the right of capture in maritime war, read as follows :

" Vessels used exclusively for fishing along the coast or small boats employed in local trade are exempt from capture, as well as their appliances, rigging, tackle, and cargo.

They cease to be exempt as soon as they take any part whatever in hostilities."

[6] The French text here uses the term " commandants ", while in the English version the word " masters " is used. The captain is undoubtedly a member of the crew and the French equivalent of " master " might be " patron ". In any case, the French translation of the original English text appears to be unsatisfactory.

[7] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 419.

[8] Only twenty-nine countries are bound by that Convention.

6. *Sub-paragraph (6) — Mass levies*

Although the situation to which Article 2 of the Hague Regulations refers almost never occurred during the Second World War [1], the stipulation was kept and was inserted with appropriate slight changes in the present Article 4.

At the 1949 Diplomatic Conference, some delegations proposed certain amendments to the text in order to broaden its scope, but other delegations were strongly opposed to any deviation from the Hague rules [2].

This provision has therefore the traditional significance of Article 2 of the 1907 Regulations. According to those rules, it is not necessary for the inhabitants who take up arms to have been surprised by invasion ; sub-paragraph (6) is also applicable to inhabitants who have been warned, provided they did not have sufficient time to organize themselves in accordance with sub-paragraphs (1) and (2) above. The provision is also applicable to populations which act in response to an order by their Government, given over the wireless, for instance [3].

Two of the requirements of sub-paragraph (2), applicable to organized resistance movements, are not specified in this sub-paragraph, which covers the special case of inhabitants of a territory who have not had time to organize themselves. These conditions are that of being commanded by a person responsible for his subordinates and that of having a distinctive sign.

In the absence of any distinctive sign, the requirement of carrying arms " openly " is of special significance and has a more precise implication than in sub-paragraph (2) above ; this requirement is in the interest of combatants themselves who must be recognizable in order to qualify for treatment as prisoners of war. They must therefore carry arms visibly [4].

The provision is not applicable to inhabitants of a territory who take to the " maquis ", but only to mass movements which face the invading forces. With the arms available today, the case is not likely

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[1] See *Report on the Work of the Conference of Government Experts*, p. 107. One might, however, mention the case of Crete ; see in this connexion WALTZOG, *Recht der Landkriegsführung*, Berlin, 1942, p. 23.

[2] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 239 and pp. 420-421.

[3] See Albert MECHELYNCK, *op. cit.*, p. 120.

[4] See in this connection Jürg H. SCHMID, *op. cit.*, p. 139.

to arise in the open countryside, but it is more probable in a built-up area where even rudimentary methods are of some value.

It should, however, be emphasized that a mass levy can only be considered to exist during a very short period, i.e. during the actual invasion period. If resistance continues, the authority commanding the inhabitants who have taken up arms, or the authority to which they profess allegiance, must either replace them by sending regular units, or must incorporate them in its regular forces. Otherwise, the mass levy could not survive the total occupation of the territory which it has tried in vain to defend.

PARAGRAPH B. — MILITARY PERSONNEL IN OCCUPIED TERRITORY AND MILITARY PERSONNEL INTERNED IN A NEUTRAL COUNTRY

1. *Sub-paragraph (1) — Military personnel in occupied territory*

This provision makes the Convention applicable to a category of persons which was hitherto not specifically included in the conventional law of nations—demobilized military personnel in occupied territory who are arrested by the Occupying Power because of their service in the armed forces of the occupied State.

During the Second World War, the Occupying Power, for security reasons, frequently arrested demobilized military personnel in occupied territory, especially officers. These men were granted prisoner-of-war status but usually only after repeated representations by the International Committee of the Red Cross and the Governments concerned. In the report which the International Committee prepared for the Government Experts, it therefore proposed that the entitlement of such persons to prisoner-of-war status should be explicitly mentioned and the Conference supported this suggestion [1].

This provision supplements Articles 42 to 56 of the 1907 Hague Regulations ; its application is subject to the condition that hostilities continue outside the territory occupied by the enemy Power, either against the State of which the military personnel concerned are nationals, or against the allies of that State.

Two possible cases are envisaged : military personnel who are re-captured after trying to rejoin the active forces, and those who do not obey an internment order. In fact, the two cases were linked by

[1] See *Report on the Work of the Conference of Government Experts*, pp. 104 and 111.

the Stockholm Conference in Article 92 of the Convention, which provides that prisoners of war who attempt to escape shall be liable only to disciplinary punishment. During the Second World War, however, many demobilized members of the armed forces who were resident in occupied territory were shot without proper trial for having tried to rejoin their former comrades. Moreover, demobilized military personnel who refused to obey an internment order were punished more severely than prisoners of war captured in attempting to escape [1]. The application of Article 92 (unsuccessful escape) to these categories of military personnel was only a partial solution to the problem and for that reason the 1949 Diplomatic Conference preferred the more general wording of the present provision [2]. In fact, as one delegate to the Conference pointed out, the question relates to the proper status of an army demobilized by the Occupying Power, while a portion of those same armed forces continue the struggle. It is logical to treat its members as civilians until such time as they are recalled in order to be interned ; but from that moment, it is equally logical to treat them as prisoners of war.

Any breach of parole will be judged by the Occupying Power, pursuant to Article 21, paragraph 3. Any attempt to rejoin the armed forces to which the prisoner of war belongs must be considered as an attempt to escape, to which Articles 91 to 93 are applicable. Refusal to obey an internment order must not be judged more harshly than an attempt to escape.

2. *Sub-paragraph (2) — Military internees in neutral countries*

A. *History of the provision.* — Prior to the 1949 Geneva Convention, the situation of military internees in neutral countries was governed only by Articles 11 and 12 [3] of the Vth Hague Convention of 1907 concerning the rights and duties of neutral Powers and persons in war on land, and also by Article 77 of the 1929 Geneva Convention relative to the Treatment of Prisoners of War. The latter provision requires neutral Powers to institute an official bureau to give information about the prisoners of war in their territory.

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[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 431.

[2] *Ibid.*, p. 432.

[3] These two Articles provide that the neutral Power shall in general be responsible for the internment and subsistence of the persons concerned, the resulting expenses to be made good at the conclusion of peace.

Although the matter did not on the whole give rise to difficulties during the last war, the Conference of Government Experts considered, as proposed by the International Committee of the Red Cross, that it should be specified that military internees in neutral or non-belligerent countries should enjoy the advantages resulting from the Convention, subject to such derogations as might be justified by the fact that those countries were not adversaries as far as the internees were concerned [1]. The International Committee prepared a draft in accordance with this recommendation ; this draft, which was accepted by the XVIIth International Red Cross Conference, provided that special agreements should be concluded on certain matters such as the rôle of the Protecting Power, free medical care, the financial resources of internees, and penal and disciplinary sanctions [2].

At the 1949 Diplomatic Conference, an amendment was proposed, stating that the penal and disciplinary system specified in the Convention should apply to internees, and defining the functions of the Protecting Power. This amendment was adopted by the Conference [3]. In a plenary meeting, one delegation suggested that the Power on which internees depend should act as a Protecting Power only if it had diplomatic relations with the neutral State [4]. There was a long discussion concerning a situation in which there were no such diplomatic relations [5]. Eventually, the Conference approved the amendments proposed, but the final wording of the provision does not seem to cover the case completely.

B. *Scope of the provision*

(a) *First sentence—General scope of the obligation.* The obligation to treat as prisoners of war persons interned in a neutral country constitutes only a minimum standard of treatment. In fact, military internees are as a rule better off in a neutral country than in enemy territory and moreover, certain provisions concerning them are already

[1] See *Report on the Work of the Conference of Government Experts*, p. 104. See also, for an account of the work of the International Committee in behalf of internees in neutral countries during the Second World War, *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pp. 555-566.

[2] See *XVIIth International Red Cross Conference, Draft Revised or New Conventions for the Protection of War Victims*, p. 53.

[3] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 436.

[4] *Ibid.*, Vol. III, p. 62, No. 93.

[5] *Ibid.*, Vol. II-B, p. 341.

contained in international law. The Vth Hague Convention refers to the maintenance of internees and Article 12 of that Convention provides that " in the absence of a special Convention ", the neutral Power shall supply the interned with the food, clothing and relief required by humanitarian considerations and that at the conclusion of peace the expenses caused by the internment shall be made good.

(b) *Second sentence—Responsibility in the diplomatic field.* This sentence provides that where diplomatic relations exist between a neutral Power and the Parties to the conflict, the diplomatic personnel of the latter shall be allowed to perform towards internees " the function of a Protecting Power as provided in the present Convention ". At first sight, the text is perfectly clear ; nevertheless, it is inconsistent with the first sentence of the paragraph, providing for the application of Articles 8, 10 and 126, which are the principal provisions relating to the functions of Protecting Powers. Does this sentence authorize diplomatic personnel to exercise the functions specified in Articles 8, 10 and 126, or, on the contrary, are they prevented from doing so, on the assumption that the exception stated in the first sentence is valid here also ? In our view the second interpretation should be adopted. As far as the internees are concerned, a neutral State is not an enemy State and the reasons which justify neutral protection for prisoners of war in the hands of the enemy no longer apply in the case of internees in a neutral country. One may consider that this is why, in the first sentence of the paragraph, the drafters of the Convention excepted Articles 8, 10 and 126, which in particular give the Protecting Power the right of scrutiny. That being so, it is unlikely that the drafters of the Convention, having in the first sentence of the paragraph precluded any intervention by a third State in order to inspect the conditions of internment, would on the other hand have intended in the second sentence of the same paragraph to vest such right of scrutiny in the Power on which the internees depend.

In conclusion, we believe that the phrase " functions of a Protecting Power as provided in the present Convention " includes all the provisions relating to the functions of the Protecting Power with the exception of Articles 8, 10 and 126.

If the functions provided in Articles 8, 10 and 126 are excluded, there remain a large number of functions to be exercised by the diplomatic staff, some of which are of very great importance [1]. But

[1] For the list of these functions, see below, p. 98, note 2.

although the Convention is expressly intended to safeguard the exercise of these functions, since it entrusts them to the diplomatic services of the country of origin of the internees, it does not say who shall exercise them in the event that no diplomatic relations exist between that State and the interning State. As a first solution, the case might be covered by special agreements concluded pursuant to Article 6, but it seems superfluous to have recourse to this provision. The neutral State appointed as a Protecting Power will automatically extend its functions to the neutral country in which the internees are held. If this were not possible, i.e. if the Protecting Power had no representative in the neutral country concerned, it would be for the latter, according to the spirit of Article 10, to find a substitute for a Protecting Power, chosen for instance from among the impartial humanitarian organizations.

One reservation must be made under this heading ; as we have said, Article 126 does not seem applicable, but the fourth paragraph of this Article provides that, in certain circumstances, the International Committee of the Red Cross shall enjoy the same prerogatives as the Protecting Powers. It would, however, in our view, be abusive to conclude from this that the delegates of the International Committee could not perform their duties in behalf of military internees held on the territory of neutral or non-belligerent Powers. The " golden rule " contained in Article 9 states : " The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of prisoners of war and for their relief ". One should also remember the *ratio legis* of the present provision. The only reason why the Protecting Power cannot intervene is the fact that the internees are not in enemy hands, but it was not the intention of the drafters of this text to prevent any humanitarian intervention by the Red Cross in behalf of internees.

Paragraph C.—Reservation concerning the status of medical personnel and chaplains

This provision was submitted to a plenary meeting of the Diplomatic Conference at the request of the Drafting Committee [1]. It was necessary, in order to prevent any contradiction between Article 4

[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-B, pp. 341-342.

and Article 33, which states in the first paragraph that " members of the medical personnel and chaplains while retained by the Detaining Power with a view to assisting prisoners of war, shall not be considered as prisoners of war ".

ARTICLE 5. — BEGINNING AND END OF APPLICATION

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.

PARAGRAPH 1. — GENERAL PROVISIONS REGARDING APPLICATION AND DURATION

The general principle for application of the 1929 Convention to persons referred to in Articles 1, 2 and 3 of the 1907 Hague Regulations is stated in Article 1, paragraphs 1 and 2, of that Convention. The Convention applies to such persons " who are captured by the enemy ", and, in addition, " to all persons belonging to the armed forces of belligerents who are captured by the enemy in the course of operations of maritime or aerial war, subject to such exceptions (derogations) as the conditions of such capture render inevitable. Nevertheless, these exceptions shall not infringe the fundamental principles of the present Convention ; they shall cease from the moment when the captured prisoners shall have reached a prisoners-of-war camp."

This text therefore laid down the principle that the Convention should be applied from the moment of capture ; this was, however, a source of considerable difficulties for the Detaining Power [1]. The International Committee therefore proposed that the exceptions authorized by the 1929 Convention should be extended to all warlike

[1] See *Report on the Work of the Conference of Government Experts*, p. 113. In this connection, one may cite the historic example of Dieppe : after a Canadian corps landed there in August 1942, German prisoners were handcuffed for some hours, in order to prevent any escape. A wave of reprisals and counter-reprisals followed. On that occasion, the British Government took the view that the Convention was not applicable to captured military personnel as long as they were still on the battlefield.

operations and that it should further be stipulated that such exceptions could not impair the essential rights conferred upon prisoners of war. The Government Experts felt, however, that by thus making two classes of stipulations (i.e. fundamental principles and technical provisions), there was a danger of the latter being considered as more or less optional, whereas they might be as vital for the daily welfare of the prisoners of war as the former. The Conference finally agreed that it was preferable to maintain the principle of strict application of the Convention immediately on capture, and to refrain from any explicit mention of possible exceptions. This solution had a twofold advantage: on the one hand, no grounds would be furnished to Detaining Powers for the non-fulfilment of their obligations; and on the other, those belligerent States which for material reasons might be forced to make exceptions would be obliged to justify their action [1].

In fact, the Convention does make a concession in Article 24 (permanent transit camps) to the difficulties which may confront the Detaining Power at the time of capture. But although that provision states that transit or screening camps of a permanent kind must be fitted out under conditions similar to those described in the Convention, and although it is specified that prisoners therein shall have the same treatment as in other camps, the existence of such transit or screening camps is none the less authorized. The existence of this provision in the Convention is an acknowledgment that during a certain period prisoners of war do not receive the full treatment to which they are entitled. This matter will be further commented upon under Article 24.

The Convention applies to prisoners of war "until their final release and repatriation". The time at which they must be released and repatriated is determined by Article 118, paragraph 1, which provides that "prisoners of war shall be released and repatriated without delay after the cessation of active hostilities" [2]. What is the meaning of the term "*final* release and repatriation" [3]? It means that the prisoner must continue to be treated as such until such time as he is reinstated in the situation in which he was before being captured. Thus it might happen that prisoners of war would be repatriated to an occupied country and that subsequently the Occupying Power might wish to take measures concerning them for security

[1] See *Report on the Work of the Conference of Government Experts*, p. 114, See also *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 245.

[2] For the commentary on this provision, see below, p. 541 ff.

[3] In this connection see R.-J. WILHELM: *Can the Status of Prisoners of War be altered?* Geneva, 1953, pp. 10-12.

reasons. In accordance with Article 4, paragraph B (1), such military personnel must upon re-internment be given the treatment provided under the Convention. Similarly, there could be no question of the Detaining Power assuming the rights of the States which it might have annexed or occupied and then demobilizing and " liberating " prisoners of war in order to transform them into civilian workers.

The rule contained in the present paragraph was not stated in such a categorical manner in the 1929 Convention, and in addition to the two cases to which we have just referred, exceptions to this rule frequently occurred during the Second World War [1].

The present Article 5 is the essential provision which prevents the " transformation " of prisoners of war.

One category of military personnel which was refused the advantages of the Convention in the course of the Second World War comprised German and Japanese troops who fell into enemy hands on the capitulation of their countries in 1945 [2]. The German capitulation was both political, involving the dissolution of the Government, and military, whereas the Japanese capitulation was only military. Moreover, the situation was different since Germany was a party to the 1929 Convention and Japan was not. Nevertheless, the German and Japanese troops were considered as surrendered enemy personnel and were deprived of the protection provided by the 1929 Convention relative to the Treatment of Prisoners of War. The Allied authorities took the view that unconditional surrender amounted to giving a free hand to the Detaining Powers as to the treatment they might give to military personnel who fell into their hands following the capitulation. In fact, these men were frequently in a very different situation from that of their comrades who had been taken prisoner during the hostilities, since very often they had not even gone into

[1] This led the International Committee of the Red Cross to send the following appeal :

" The International Committee of the Red Cross desire to draw the particular attention of the belligerents to the situation with regard to rights the prisoners of war have acquired, both under the terms of the Hague and Geneva Conventions, and according to the general principles of international law, regardless of the time of capture during the present conflict.

It would appear that, according to information received by the International Committee, certain categories of prisoners have, as a result of diverse circumstances, been deprived of their prisoner-of-war status and of the conventional rights arising therefrom. The Committee, therefore, earnestly recommend that the Powers concerned ensure that the provisions by which the prisoners benefit be safeguarded under all circumstances and until the termination of hostilities ". *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, p. 546.

[2] See R.-J. WILHELM, *op. cit.*, pp. 5-8 ; see also *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, p. 539 ff.

action against the enemy. Although on the whole the treatment given to surrendered enemy personnel was fairly favourable, it presented certain disadvantages : prisoners in this category had their personal property impounded without any receipt being given ; they had no spokesman to represent them before the Detaining Power; officers received no pay and other ranks, although compelled to work, got no wages ; in any penal proceedings they had the benefit of none of the guarantees provided by the Convention. Most important of all, these men had no legal status and were at the entire mercy of the victor. Fortunately, they were well treated but this is no reason to overlook the fact that they were deprived of any status and all guarantees.

Under the present provision, the Convention applies to persons who " fall into the power " of the enemy. This term is also used in the opening sentence of Article 4 above, replacing the expression " captured " which was used in the 1929 Convention (Article 1). It indicates clearly that the treatment laid down by the Convention is applicable not only to military personnel taken prisoner in the course of fighting, but also to those who fall into the hands of the adversary following surrender or mass capitulation.

The second category of military personnel who were deprived of the status of prisoner of war comprised those charged with breaches of the laws of war [1]. The " principal war criminals ", such as were tried at Nuremberg, mostly enjoyed procedural guarantees and received treatment which was at least equivalent to that accorded to detainees under common law. On the other hand, a large number of military personnel accused of lesser crimes were deprived of these advantages and did not receive the treatment specified in the Convention, and their situation was thus considerably worsened. The new Convention opposes any such withdrawal of benefits and provides, in Article 85, that " Prisoners of war prosecuted... for acts committed prior to capture shall retain, even if convicted, the benefits of the present Convention " [2].

Lastly, it should be noted that prisoners of war who were recaptured after attempting to escape were sometimes sent to camps for political detainees and were thus completely excluded from the protection of the 1929 Convention. This was a flagrant violation of the well-established principle that in such cases a prisoner of war shall be liable only to a disciplinary punishment, and this principle is now recognized in Article 92 [3].

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[1] See R.-J. WILHELM, *op. cit.*, pp. 12-15.

[2] See the commentary on Article 85.

[3] See the commentary on Article 92.

The discussion of the so-called " voluntary " transformation of prisoners of war is referred to in the commentary on Article 7, below, pp. 87 ff.

PARAGRAPH 2. — PERSONS WHOSE STATUS IS IN DOUBT

This would apply to deserters, and to persons who accompany the armed forces and have lost their identity card.

The provision is a new one ; it was inserted in the Convention at the request of the International Committee of the Red Cross. The International Committee submitted the following text, which was approved at the Stockholm Conference :

Should any doubt arise whether any of these persons belongs to one of the categories named in the said Article, that person shall have the benefit of the present Convention until his or her status has been determined by some responsible authority [1].

At Geneva in 1949, it was first proposed that for the sake of precision the term " responsible authority " should be replaced by " military tribunal " [2]. This amendment was based on the view that decisions which might have the gravest consequences should not be left to a single person, who might often be of subordinate rank. The matter should be taken to a court, as persons taking part in the fight without the right to do so are liable to be prosecuted for murder or attempted murder, and might even be sentenced to capital punishment [3]. This suggestion was not unanimously accepted, however, as it was felt that to bring a person before a military tribunal might have more serious consequences than a decision to deprive him of the benefits afforded by the Convention [4]. A further amendment was therefore made to the Stockholm text stipulating that a decision regarding persons whose status was in doubt would be taken by a " competent tribunal ", and not specifically a military tribunal.

Another change was made in the text of the paragraph, as drafted at Stockholm, in order to specify that it applies to cases of doubt 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 [5]. The clarification contained in Article 4

[1] See *XVIIth International Red Cross Conference, Draft Revised or New Conventions*, p. 54.

[2] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 388.

[3] *Ibid.*, Vol. III, p. 63, No. 95.

[4] *Ibid.*, Vol. II-B, p. 270.

[5] *Ibid.*, pp. 270-271.

should, of course, reduce the number of doubtful cases in any future conflict.

It therefore seems to us that this provision should not be interpreted too restrictively; the reference in the Convention to "a belligerent act" relates to the principle which motivated the person who committed it, and not merely the manner in which the act was committed.

ARTICLE 6. — SPECIAL AGREEMENTS [1]

In addition to the agreements expressly provided for in Articles 10, 23, 28, 33, 60, 65, 66, 67, 72, 73, 75, 109, 110, 118, 119, 122 and 132, the High Contracting Parties may conclude other special agreements for all matters concerning which they may deem it suitable to make separate provision. No special agreement shall adversely affect the situation of prisoners of war, as defined by the present Convention, nor restrict the rights which it confers upon them.

Prisoners of war shall continue to have the benefit of such agreements as long as the Convention is applicable to them, except where express provisions to the contrary are contained in the aforesaid or in subsequent agreements, or where more favourable measures have been taken with regard to them by one or other of the Parties to the conflict.

General Background

Although war interrupts diplomatic relations between the belligerents, it does not involve the cessation of all legal relations between them. As a delegate to the 1949 Diplomatic Conference aptly put it: "the legal phenomenon continues during and in spite of war, testifying in this way to the lasting quality of international law".

Apart from the agreements which put an end to hostilities, the belligerents conclude an appreciable number of other agreements during the actual course of a war [2], which are concerned in particular with the treatment which the nationals of each of the Parties are to receive when in enemy hands. Agreements of this nature were con-

[1] Article common to all four Conventions. See First and Second Conventions, Article 6; Fourth Convention, Article 7.

[2] See on this subject R. Monaco: *Les Conventions entre belligérants*. Recueil des Cours de l'Académie de droit international de La Haye, 1949, II (T. 75), pp. 277-362.

cluded between the belligerents before the Geneva Convention relative to the Treatment of Prisoners of War existed. During the 1914-1918 war, it became apparent that the 1907 Hague Regulations were inadequate, and a great many agreements concerning prisoners of war were negotiated and concluded between the belligerents in the course of the conflict. The provisions of the 1929 Prisoners of War Convention were very largely based on those agreements.

The most important among them were : the agreements concluded between Turkey, on the one hand, and Great Britain and France, on the other hand, on December 23, 1917, and March 23, 1918; the Franco-German agreements of March 15 and April 26, 1918, the Austro-Serbian agreement of June 1, 1918, the Arrangement between Great Britain and Germany of July 14, 1918, the Austro-Italian Convention of September 21, 1918, and the German-American Arrangement of November 11, 1918.

By the 1929 Convention, in Article 83, paragraphs 1 and 2, the High Contracting Parties reserved to themselves the right to conclude special conventions "on all questions... concerning which they may consider it desirable to make special provision ". Prisoners of war were to continue to enjoy the benefits of such agreements " until their repatriation has been effected, subject to any provisions expressly to the contrary contained in the above-mentioned agreements or in subsequent agreements, and subject to any more favourable measures by one or other of the belligerent powers concerning the prisoners detained by that Power ".

Unfortunately, during the Second World War the interpretation which the belligerent States gave to these provisions was not always to the advantage of prisoners of war. Prisoners lost some of their essential rights as a consequence of a number of these agreements, and the International Committee therefore proposed, at the Conference of Government Experts, that the Convention should expressly state that special agreements concluded between belligerents should in no circumstances reduce the standard of treatment of prisoners of war. Although there were some reservations, the Commission supported this view and it was approved by the Diplomatic Conference [1].

[1] See *Report on the Work of the Conference of Government Experts*, p. 259 ; see also *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-B, p. 109.

PARAGRAPH 1. — NATURE, FORM AND LIMITATION OF SPECIAL AGREEMENTS

1. *First sentence. — Nature and form of special agreements*

A preliminary indication of the nature of special agreements is given by the list of Articles of the Convention which expressly mention the possibility of agreements being concluded between the Parties concerned. They refer to the following points :

(a) appointment of an impartial organization as a substitute for the Protecting Power (Article 10, paragraph 2) ;

(b) marking of prisoner-of-war camps (Article 23, paragraph 4) ;

(c) disposal of profits made by canteens in case of general repatriation (Article 28, paragraph 3) ;

(d) corresponding ranks of the medical personnel of the Parties to the conflict (Article 33, paragraph 2 (b)) and procedure for the relief of retained personnel (Article 33, paragraph 3) ;

(e) amount of advances of pay due to prisoners (Article 60, paragraph 2) ;

(f) reciprocal notification at specified intervals of the amount of the accounts of prisoners of war (Article 65, paragraph 4) ;

(g) winding up of accounts on the termination of captivity (Article 66, paragraph 2) ;

(h) adjustment between Parties to the conflict of the advances of pay issued to prisoners (Article 67) ;

(i) conditions for the sending of individual parcels or collective shipments to prisoners (Article 72, paragraph 4) ;

(j) procedure for the receipt and distribution of collective relief shipments (Article 73, paragraphs 1, 2 and 3) ;

(k) payment of costs of special transport (Article 75, paragraph 4) ;

(l) direct repatriation or internment in a neutral country of able-bodied prisoners of war who have undergone a long period of captivity (Article 109, paragraph 2) ;

(m) conditions for the repatriation of prisoners accommodated in a neutral country, and status of such prisoners (Article 110, paragraph 3) ;

(n) apportioning of costs of repatriation of prisoners of war after the cessation of active hostilities (Article 118, paragraph 4 (b)) ;

(o) establishment of commissions for the purpose of searching for dispersed prisoners of war and assuring their repatriation (Article 119, paragraph 7) ;

(p) forwarding of personal effects of deceased prisoners of war (Article 122, paragraph 9) ;

(q) enquiry procedure concerning alleged violations of the Convention (Article 132, paragraph 2).

The above list, which appears in the Convention, is merely by way of indication, for there are other Articles in the Convention which refer to agreements between the belligerents, either to encourage such arrangements or on the contrary prohibit them;

(a) prohibition of any derogation from the provisions relating to substitutes for Protecting Powers if one of the Powers is restricted in its freedom to negotiate (Article 10, paragraph 5) ;

(b) establishment of conciliation procedure for the application or interpretation of the Convention (Article 11, paragraph 2) ;

(c) limitation on correspondence addressed to prisoners of war (Article 71, paragraph 1) ; acceptance of correspondence written in a language other than the native language (Article 71, paragraph 3) ;

(d) payment of costs connected with transport of relief shipments (Article 74, paragraph 4) ;

(e) determination of offences punishable by the death penalty (Article 100, paragraph 2) ;

(f) internment of prisoners in a neutral country (Article 111) ;

(g) visits to camps by compatriots (Article 126, paragraph 3).

Lastly, there are other cases in which, although the Convention does not include any express provision, agreements between the belligerents might be necessary :

(a) conditions for the acceptance of liberty on parole or promise (Article 21, paragraph 3) ;

(b) establishment of rate of working pay (Article 62, paragraph 1) ;

(c) procedure for transfer of funds to the dependants of prisoners of war (Article 63, paragraph 3) ;

(d) delay in execution of the death penalty (Article 101) ;

(e) procedure for burial (Article 120) ;

(f) action by relief societies and the International Committee of the Red Cross (Article 125).

This list shows at once that the term " special agreements " is used to denote a wide variety of arrangements. Sometimes it is a matter of arrangements for individual cases (repatriation), sometimes of actual regulations (distribution of relief consignments), sometimes of a quasi-political agreement (substitute for the Protecting Power).

It will be readily realized that the position of prisoners of war can be much improved by special agreements concluded between the belligerents in cases other than those provided for in the Convention itself. The Parties to the conflict would in fact be free to replace internment by a more liberal regime, such as residence under supervision in a certain area, or general evacuation to a neutral country ; the latter solution would present a great many advantages if one or more neutral States indicated their willingness to accept prisoners from one or other of the belligerents [1].

Apart from the above lists, the term " special agreements " should therefore be understood in a very broad sense. One must not forget that legislation applicable to prisoners of war, and the present Conventions, grew up from agreements of this kind. The belligerents must therefore remain at liberty to develop and steadily improve the status of prisoners of war.

A. *Form of the agreements.*—For an agreement between two or more belligerents to be regarded as a " special agreement " within the meaning of Article 6, there is no need for it to deal exclusively with matters covered by the Third Convention. Such matters may form part of an agreement of much wider scope between the Parties. An armistice agreement, for example, may contain not only military and territorial clauses but also one or more clauses relating to prisoners of war.

It is also possible that an agreement may deal at one and the same time with prisoners of war, medical personnel and civilians.

Special agreements are generally not subject to formal requirements, such as signature and ratification, which are essential in the case of international treaties. They clearly fall into the category of conventions in simplified form, their special features being that, in the first place, the Head of the State does not formally intervene and,

[1] In this connection, see Article 111 below.

secondly, they may take various forms : sometimes they are concluded by an exchange of notes or letters, or they may even be verbal agreements. In war-time, it is sometimes necessary to take immediate steps to implement agreements in circumstances which make it impracticable to observe the formalities required at other times ; such agreements are valid if the contracting authorities have not exceeded their powers. This will for example be the case where local arrangements of a temporary nature are made for the exchange of prisoners.

Even when there is no urgency, the absence of formalities is justified by the fact that special agreements are generally measures taken in application of the Convention. The latter binds the States concerned and it is only natural that its application should be within the competence of executive bodies. This absence of formalities means that agreements may even be made verbally ; reciprocal declarations of intention will often be exchanged through a third party [1]. Apart from those concluded on the actual battlefront between the military commanders, the agreements will generally be arranged through the Protecting Powers or their substitutes, or through the International Committee of the Red Cross.

B. *Time of conclusion.*—Certain special agreements are meaningless unless they are concluded while hostilities are actually in progress. The examples given by the Convention leave no doubt on the subject ; but in some cases agreements may be concluded before hostilities break out ; this applies in particular to those mentioned in Articles 10, paragraph 1 ; 11, paragraph 2 ; 23, paragraph 4 ; 33, paragraph 2 (b) ; 132, paragraph 2. This possibility is expressly referred to in Article 10, which uses the expression " the High Contracting Parties " and not " the Parties to the conflict ", which occurs in most of the other Articles. It is also conceivable, as we have already pointed out, that certain agreements could be concluded by one or more belligerent Powers with neutral States which are also party to the Convention, with a view to arranging, for example, for prisoners of war to be accommodated in hospitals or even interned in a neutral country. Furthermore, certain agreements can obviously be concluded after the close of hostilities, in particular those which concern the arrangements for repatriation. All such agreements, no matter when they are concluded, are subject to the rules laid down in Article 6.

[1] The special agreements concluded between Italy and the United Kingdom provide a good example of this form of agreement. They are, so far as we know, the only agreements of the 1939-1945 war which have been published. They appeared in Italy under the title: *Testo delle Note Verbali che integrano e modificano la Convenzione di Ginevra del 1929...*, Rome, 1941 and 1942.

2. *Second sentence. — Prohibited special agreements*

A. *Agreements in derogation of the Convention.*—In the light of experience gained in connection with the 1929 Convention, the Diplomatic Conference felt it necessary to introduce this provision into all four Conventions in 1949.

During the Second World War certain belligerent Governments—in particular those whose territory was occupied—concluded agreements which deprived prisoners of war of the protection of the Convention in certain respects, such as supervision by the Protecting Power, work connected with military operations or penal or disciplinary sanctions [1]. Specifically, the authors of the Convention had in mind the case of French prisoners in Germany.

In response to offers made by the German Government, in agreement with the Vichy Government, these prisoners abandoned some of their rights in exchange for certain material advantages, but in the end they suffered rather serious disadvantages. Although it is less explicit than the present paragraph, it would seem that Article 38 of the 1929 Convention should have prevented agreements of this kind. Be that as it may, in order to prevent any ambiguity, the International Committee of the Red Cross recommended, when the preliminary work began, that the following words should be added to the provisions dealing with special agreements: " These agreements shall in no circumstances adversely affect the situation of the prisoners of war, as defined by the present Convention, nor impair the rights which it grants them."

The Committee's proposal was approved by the Conference of Government Experts in 1947 [2], but even then certain experts opposed it on the ground that it imposed excessive restrictions on the sovereign power of States ; they also claimed that it would often be very difficult to say in advance whether or not an agreement could harm the interests of the protected persons. The same arguments were put forward at the 1949 Diplomatic Conference [3], but the Conference voted by a substantial majority in favour of maintaining the safeguard proposed by the International Committee of the Red Cross.

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[1] See R.-J. WILHELM, *op. cit.*, pp. 16-21.

[2] See above p. 79.

[3] See *Memorandum by the Government of the United Kingdom* (Document No. 6), Point 9, pp. 5-6.

B. *Scope of the safeguard clause* [1].—Special agreements may neither adversely affect the situation of prisoners of war, nor " restrict the rights " which the Convention confers upon them.

It will not always be possible to decide at once whether or not a special agreement adversely affects the situation of prisoners of war. When the drafters of the Convention added the second phrase, they had in mind particularly the situation of prisoners of war in Germany who were " transformed " into civilian workers because of the shortage of labour in that country during the war. But what is the position, for instance, if their situation is improved in certain ways and made worse in others ? Some of the agreements mentioned above may have appeared to bring them advantages at the time of conclusion ; the drawbacks only became apparent later and as a result of circumstances. The criterion " adversely affect the situation " is not, therefore, in itself sufficiently clear. That is why the second condition is of value.

In what sense should the word " rights " conferred by the Convention be understood ? The question is examined here in relation to special agreements between belligerents. A proposal aimed at prohibiting only those agreements which restricted " fundamental rights " was rejected by the Diplomatic Conference on the ground that the Convention lays down a minimum standard of treatment for prisoners of war and it would be difficult to draw a distinction between rights which were fundamental and those which were not [2]. The reference is therefore to the whole body of safeguards which the Convention affords to prisoners of war.

The States may not by special agreement restrict, i.e. derogate from, their obligations under the Conventions to the disadvantage of prisoners of war. On the other hand, nothing prevents them from undertaking further and wider obligations.

C. *Special problems.—(a)* If, as a result of a change in circumstances, the application of a provision under the Convention entailed serious disadvantages for the prisoners, would the " safeguard clause " debar the Powers concerned from endeavouring to remedy the situation by an agreement departing from that provision ?

This is a question which the States concerned cannot settle on their own account. If such a situation were to arise in actual practice, it would be for the neutral organizations responsible for looking after the interests of the prisoners to give their opinion ; basing their decision, in

[1] See R.-J. WILHELM, *Le caractère des droits accordés à l'individu dans les Conventions de Genève*, Geneva, 1950, pp. 13 ff.

[2] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-B, pp. 73-74.

such contingency, on the rule (inherent in the safeguard clause) of not adversely affecting the situation of prisoners, they could tolerate certain measures of derogation which the States concerned might take, either separately or by mutual agreement, with a view to remedying the situation.

(b) If two belligerents were to agree to subject their nationals to treatment contrary to the Convention, it would be difficult for the prisoners themselves—no matter how great their interest in defending their " rights " (and this point will be considered under Article 7)—to oppose the conclusion and consequences of such an agreement. But it would then be the duty of the organizations responsible for supervising the proper application of the Convention to remind the belligerents of their obligations. Other factors too will doubtless enter into consideration—such as pressure of public opinion, pressure by Powers party to the Convention but not involved in the conflict, the fear of the members of the Government in power of being subsequently disavowed or even punished, and court decisions. The correct application of the Convention is not a matter for the belligerents alone ; it concerns the whole community of States and nations bound by the Convention. The Geneva legislation goes farther than a simple treaty providing for reciprocal concessions. It protects a humanitarian heritage which is not, and must not be allowed to be, at the mercy of temporal political interests. The individual is considered in his own right. The State is not the only subject of law, and this step forward by the Geneva Conventions constitutes an important advance in present-day international law.

PARAGRAPH 2.—DURATION OF SPECIAL AGREEMENTS

This provision did not really seem essential [1].

The present Convention makes express provision concerning its duration in Article 5. It is impossible for the belligerents to waive the application of the Convention even in an instrument of capitulation.

Should the standard of treatment accorded to prisoners of war have been improved as a result of special agreements, they will continue to have the benefit of those agreements so long as the Convention applies

[1] It had been introduced in the 1929 Prisoners of War Convention at the request of Germany, since the Armistice Agreement of November 1918 (Article 10) had abrogated the agreements concluded between the belligerents to supplement the brief stipulations of the Hague Regulations of 1907 in regard to prisoners of war. In accordance with Article 83, paragraph 2, of the 1929 Convention, subject to any more favourable measures contained in an armistice agreement, the agreements concluded between belligerents must continue to be applicable. See *Actes de la Conférence de 1929*, p. 511.

to them, or so long as no other agreement has been concluded which would accord them more favourable treatment. But this benefit may only be withdrawn from prisoners of war if the relevant provisions are expressly abrogated in a later agreement. If an agreement concluded for a specific period expires without being replaced by a new agreement, the conventional text will automatically be applicable once more.

It should also be noted that the " contents " (not necessarily the text) of any special agreement concluded pursuant to the present Article must be posted in every prisoner-of-war camp (Article 41, paragraph 1).

ARTICLE 7. — NON-RENUNCIATION OF RIGHTS [1]

Prisoners of war may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreements referred to in the foregoing Article, if such there be.

This Article, although entirely new, is closely linked with the preceding Article, and has the same object—namely, to ensure that prisoners of war in all cases without exception enjoy the protection of the Convention until they are repatriated. It is the last in the series of Articles designed to make that protection inviolable—Article 1 (application in all circumstances), Article 5 on the duration of application, and Article 6 prohibiting agreements in derogation of the Convention.

1. *Renunciation of protection under the Convention*

The series of Conferences which prepared the revision of the 1929 Convention had to consider the difficult situation sometimes encountered by nationals of States which as a result of war undergo profound modifications in their legal or political structure (through occupation, *debellatio*, a change of Government, or civil war) [2]. We have already quoted the example of an occupied country concluding an agreement with the Occupying Power, the terms of which may adversely affect its nationals in the hands of the latter. Article 6 should now obviate that danger.

As experience showed during the Second World War, however, agreements of derogation may in certain cases appear to be licit. If, for

[1] Article common to all four Conventions. See First and Second Conventions, Article 7 ; Fourth Convention, Article 8.

[2] See, in particular, *Report on the Work of the Preliminary Conference of National Red Cross Societies*, p. 70.

instance, they take the form of an authorization by the national Government permitting prisoners of war to opt freely for a status other than that laid down by the Convention, they appear to transfer to the prisoners themselves the responsibility for deciding their status.

In this connection, we should also consider the situation of nationals of a State which, as a result of the circumstances of war, ceases to exist legally, whether for the time being or definitively. In this case, the Detaining Power might be even more strongly tempted to modify the status of prisoners under the Convention if they were agreeable, having no partner with whom such modifications might be discussed. This might apply in the case of the transformation of prisoners of war into civilian workers [1]. Together, Articles 6 and 7 effectively forbid any transformation of the status of prisoners of war, either by governmental action or in accordance with the prisoner's own wishes.

One special case to which Article 7 applies is that of enlistment in the armed forces of the Detaining Power [2]. Although this particular problem did not often arise during the Second World War, there were a number of cases during the 1914-1918 conflict, and it might occur at some future time. One must also consider applications to take the nationality of the occupying country ; if such requests are granted, the applicants lose all entitlement to benefit by the Conventions, as they can no longer be considered as enemy nationals [3]. Freedom to change one's nationality is among the rights of man, but in time of war this right carries with it a very real danger. When the Occupying Power gives persons under its control the opportunity to change their nationality, such a step is usually in the interest of that Power. Moreover, experience has proved that the persons concerned may be subjected to pressure in order to influence their choice ; the pressure may vary in its intensity and be more or less overt, but it nevertheless constitutes a violation of their moral and sometimes even of their physical integrity. In any case, change of nationality deprives the person concerned of the protection accorded under the Convention. To meet this danger, and to meet a general desire, the International Committee of the Red Cross included this provision in the drafts ; in its proposal, however, the prohibition was applied to the use of pressure to influence the will of the individual. This might have been construed as implying that prisoners of war could renounce the benefits of the Convention, provided that their choice was made

[1] See above, p. 85.

[2] See R.-J. WILHELM, *Can the status of prisoners of war be altered?* pp. 21-22.

[3] See R.-J. WILHELM, *Le caractère des droits accordés à l'individu dans les Conventions de Genève*, p. 28.

completely freely and without any pressure. The Diplomatic Conference, like the XVIIth International Red Cross Conference, preferred to avoid that interpretation. Accordingly, it adopted the more categorical wording of the present Article 7, which does not mention constraint, thus intimating to the States party to the Conventions that they could not be released from their obligations towards prisoners of war, even if the latter of their own free will expressed a desire to that effect.

A. *Reasons for absolute prohibition.*—Such an absolute rule was not agreed to without opposition. Reference has already been made above to the case of combatants who had been forced to enlist and who, after being taken prisoner, went over to the other side in order to participate in the " liberation " of the country which, in their hearts, they had never ceased to consider as their native land. Other delegations wondered whether Conventions designed to protect the individual should be carried to the point where in a sense they deny him the essential attribute of the individual, namely liberty.

In the end, however, the Diplomatic Conference unanimously adopted the absolute prohibition mainly because it is difficult, if not impossible, to prove the existence of duress or pressure [1].

Two further points call for notice :

In the first place, the Conference did not overlook the fact that the rule as drafted might entail " harsh " consequences for some persons. It adopted the rule because it seemed to safeguard the interests of the majority. If provision were made for exceptions in the case of certain individuals, would that not at once open a dangerous breach in the structure of the Convention ?

The Conference also accepted the view that in war-time prisoners in the hands of the enemy are not really in a sufficiently independent and objective state of mind to realize fully the implications of a renunciation of their rights.

[1] The Norwegian representative, who stated these motives the most forcibly, said amongst other things that the question was being examined of prisoners of war or civilians in the hands of a Power being able, through an agreement concluded with the latter, to renounce finally for the whole duration of the war the rights conferred on them by the Convention. To say that such agreements would not be valid if obtained by duress was not sufficient in his view ; everyone knew that it was extremely difficult to produce proof of there having been duress or pressure. Generally, the Power which obtained the renunciation would have no difficulty in asserting that it was obtained with the free consent of those concerned, and the latter, for their part, might confirm this alleged fact. The only genuine means of ensuring the protection they were seeking would be to lay down a general rule that any renunciation of rights conferred by the Convention should be deemed completely devoid of validity. (See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-B, pp. 17-18.)

B. *The wishes of the prisoners of war in the application of the Convention.*—A number of provisions in the Third Convention nevertheless take into account the wishes of prisoners of war. They include those relating to release on parole (Article 21, paragraph 2), the assembling of prisoners in camps (Article 22), recreation (Article 38), dangerous labour (Article 52), religious duties and attendance at the services of their faith (Article 34), and the repatriation of wounded or sick prisoners of war (Article 109, paragraph 3). In all these cases, the wishes expressed by prisoners would lead to a more flexible application of the Convention and not to the partial or total loss of any rights.

Nor does Article 7 express an entirely novel principle as compared with the earlier Geneva Conventions. As in the case of the provision on special agreements, it embodies the reasonable interpretation implicit in those Conventions. States which are party to them are required to apply them when certain objective conditions exist ; but there is nothing in the texts which would justify those States in taking refuge behind the will of the " prisoners of war " to withhold application either in entirety or in part. The authors of those solemn instruments were prompted by a keen desire to provide war victims with complete protection. Had they wanted to make concessions to the wishes of those victims, they would not have failed to provide safeguards and forms of procedure permitting those wishes to be expressed freely, knowing as they did how great the possibilities of misrepresentation were in wartime. They did not do so, however [1].

2. *Nature of the rights conferred upon prisoners of war*

A. *The basic concepts.*—In the comments on Article 6, the meaning to be attached to the expression " rights which the Convention confers on prisoners of war " in relation to the Contracting States was indicated. It is now necessary to define its meaning in relation to the individual, since the expression recurs in the same form in Article 7 [2].

The initiators of the Geneva Conventions wished to safeguard the dignity of the human person, in the profound conviction that im-

[1] In this connection the example was quoted of certain social legislation which applies to the persons concerned independently of their wishes. See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-B, p. 18. Reference might also be made in municipal law to the rules for the protection of the person, some of which, considered as being in the common interest, can in no case be waived by the individuals concerned. For instance, Article 27 of the Swiss Civil Code lays down that " No one may renounce, even in part, the exercise or enjoyment of his rights ".

[2] Here the phrase " the rights which it confers " used in Article 6, has been replaced by " the rights secured " which is much stronger ; in the French text, similarly, " accorde " has been replaced by " assure ".

prescriptible and inviolable rights are attached to it even when hostilities are at their height [1].

At the outset, however, the treatment which belligerents were required to accord to persons referred to in the Convention was not presented, nor indeed clearly conceived, as constituting a body of " rights " to which they were automatically entitled. In 1929 the principle was more clearly defined and the word " right " appeared in several provisions of the 1929 Prisoners of War Convention. It was not, however, until the Conventions of 1949 (in particular in Articles 6 and 7) that the existence of " rights " conferred on prisoners of war was affirmed. In this connection, we would refer to the unanimous recommendation of the Red Cross Societies, meeting in conference in Geneva in 1946, to confer upon the rights recognized by the Conventions " a personal and intangible character " allowing the beneficiaries " to claim them irrespective of the attitude adopted by their home country " [2].

B. *Practical aspect of the rights.*—One might feel that there is a risk that these rights which are " secured " to prisoners of war might remain merely theoretical unless any violation thereof entails a penalty.

In that respect, a study of the Geneva Conventions from 1864 to 1949 shows a very clear evolution. Let us take the case of penalties. The Convention of 1864 contains nothing on the subject. The Conventions of 1906 (Articles 27-28) and of 1929 (Articles 28-30) laid the emphasis mainly on the legislative measures to be taken, should the penal laws prove inadequate. It is only the Convention of 1949 that indicates in Articles 129 to 131, with the requisite precision, the obligation incumbent on all States party to the Conventions, belligerent or neutral, to seek out those who are guilty and to punish breaches of the Conventions. These Conventions also define the rôle of the Protecting Power (Article 8), and recognize the right of the International Committee of the Red Cross to undertake activities in behalf of prisoners of war (Articles 9, 10 and 126).

Article 78 recognizes the " unrestricted right " of prisoners of war to apply to the representatives of the Protecting Powers. A prisoner

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[1] See Max HUBER, *The Red Cross, Principles and Problems*, Lausanne, 1941, pp. 11 and 12, and Jean S. PICTET, *La Croix-Rouge et les Conventions de Genève*, lectures delivered before the Academy of International Law at The Hague, 1950, p. 30.

[2] See *Report on the Work of the Preliminary Conference of National Red Cross Societies*, p. 71.

does not, therefore, merely have rights ; he is also provided with the means of ensuring that they are respected.

So far this commentary has dealt only with the relationship between prisoners of war and the belligerents in whose hands they are. What, then, is the position when the violations are the consequence of an agreement signed by the State of origin of the prisoners of war ? Would it not be possible for the State of origin to be prosecuted by the prisoners of war who have suffered prejudice, in those countries at least in which individual rights may be maintained before the courts ? It would seem that the reply to this question must be in the affirmative.

Undoubtedly, owing to the still undeveloped character of international law, the safeguards protecting the rights conferred on persons to whom the Convention relates are by no means as complete as those of national legislation. Article 7 nevertheless emphasizes that as a corollary to the individual character of the rights secured to them by the Convention, prisoners of war should by their own attitude contribute to the maintenance and reinforcement of the inalienable character of their rights, abiding loyally by the provisions regarding their status as laid down in the Convention, and refusing to accept the slightest deviation from that status [1].

ARTICLE 8. — PROTECTING POWERS [2]

The present Convention shall be applied with the co-operation and under the scrutiny of the Protecting Powers whose duty it is to safeguard the interests of the Parties to the conflict. For this purpose, the Protecting Powers may appoint, apart from their diplomatic or consular staff, delegates from amongst their own nationals or the nationals of other neutral Powers. The said delegates shall be subject to the approval of the Power with which they are to carry out their duties.

The Parties to the conflict shall facilitate to the greatest extent possible the task of the representatives or delegates of the Protecting Powers.

The representatives or delegates of the Protecting Powers shall not in any case exceed their mission under the present Convention. They shall, in particular, take account of the imperative necessities of security of the State wherein they carry out their duties.

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[1] At the time of the repatriation of prisoners of war in Korea, in 1953, Article 7 was frequently invoked in conjunction with Article 118. See below, the commentary on Article 118.

[2] Article common to all four Conventions. See First and Second Conventions, Article 8 ; Fourth Convention, Article 9.

General

1. *Historical background*

This provision already existed in the 1929 Convention relative to the Treatment of Prisoners of War (Article 86), and was introduced into all four 1949 Conventions.

A Protecting Power is, of course, a State instructed by another State (known as the Power of Origin) to safeguard its interests and those of its nationals in relation to a third Power (known as the Detaining Power). This concept corresponds to a time-honoured practice which has fine achievements to its credit but is not yet codified.

The origin of this concept goes back to the XVIth century. Only the principal sovereigns then maintained embassies. The subjects of lesser princes, when living abroad, were not protected. That had certain disadvantages, especially where the national customs and outlook on life were very different from those of their home country. Certain great Powers then claimed, and asserted by treaties concluded with the countries of residence, the right to take under the protection of their embassies foreign nationals without national representation of their own.

Later, the initiative passed to the Power of Origin, which, as it became progressively more alive to its duties towards its nationals abroad, began of its own initiative to have recourse to the good offices of a third Power. This practice spread, ranging from temporary representation limited to certain specified functions, to general representation of the interests of the Power of Origin in all countries where the Protecting Power maintained diplomatic or consular staff. The juridical position of the Protecting Power was differently regarded by different countries. Some countries considered themselves as deputizing for the Power of Origin, and negotiated officially in its name ; others restricted themselves to authorizing their consuls to lend their good offices to foreigners under their protection. In war-time, however, the rôle of a Protecting Power was usually restricted to the custody of diplomatic and consular premises and archives, and the occasional forwarding of documents.

Such was the situation in 1914, at the outbreak of the First World War. During the conflict, there was a particular problem which drew the world's attention and led to the expansion of the idea of the Protecting Power—the problem, namely, of prisoners of war. Never had such multitudes of captives remained so long in enemy hands.

They were, of course, protected by the Hague Regulations of 1907. But those rules were summary, and however important they might be as principles of conduct, they often required clarification in practice, and this lack of precision resulted in their not always being respected as they should have been. The world was roused. The International Committee of the Red Cross, acting on past precedents, founded at the outset the Central Information Agency which, with its seven million index-cards, secured a great deal of publicity. The Committee went further still. Basing itself on the Hague Regulations which authorized the distribution of relief, it sent missions to visit the camps.

If a purely private institution could in this way exercise unofficial but not ineffective control over the application of the Hague Regulations, why should not the Protecting Power be able to do the same ? In actual fact, despite many difficulties and the unpopularity of duties which tended to make the general public regard them as enemy agents, the representatives of several Protecting Powers were able to visit the camps and they frequently obtained great improvements in the treatment of prisoners of war. As a result of their efforts, special agreements were also concluded between the adverse Parties with a view to establishing rules for the implementation of the Hague Regulations.

As soon as the war was over, the International Committee of the Red Cross took the initiative of suggesting, in the light of the experience gained, that the Geneva Convention should be revised and that moreover a new Convention should be drawn up in order to clarify and supplement the Hague Regulations as a veritable prisoners-of-war code.

The Diplomatic Conference of 1929, to which the drafts prepared by the International Committee of the Red Cross were submitted, considered that the rôle of the Protecting Powers should be clearly defined, in view of the fact that the Detaining Powers had not always facilitated the activities of the representatives of the enemy State's interests. After lengthy discussions, Article 86 of the 1929 Convention was adopted, providing a legal basis for the activities of the Protecting Powers [1].

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[1] See *Actes de la Conférence diplomatique de 1929*, pp. 512 ff.
The text of this Article reads as follows :
" The High Contracting Parties recognize that a guarantee of the regular application of the present Convention will be found in the possibility of collaboration between the Protecting Powers charged with the protection of the interests of the belligerents ; in this connection, the Protecting Powers may, apart from their diplomatic personnel, appoint delegates from among their own nationals or the nationals of other neutral Powers. The appointment of these

The Article was excellent. It paid a tribute to the work achieved by certain Protecting Powers in the past, while at the same time legalizing such work in the future. It eliminated many material or political obstacles in the path of the Protecting Powers, and mitigated the ill-will which they had so often encountered. Henceforward their representatives would not be likely to be suspected of sympathy with the enemy. Their intervention would be in conformity with an international agreement.

This Article, however, did not embody the idea of obligatory control by a neutral and independent agency which the International Committee of the Red Cross had included in its draft [1].

Article 86 of the Prisoners of War Convention was not the only one that mentioned the Protecting Powers. They were expressly referred to in a dozen special provisions, which, for instance, authorized them to receive and forward documents.

The Second World War clearly showed the value of this Article. It is true that there were neutral States which took a high view of their protecting mission. It is also true that various circumstances facilitated their task. Many belligerents, departing from former practice, chose one and the same Protecting Power to represent them in relation to all their enemies. Furthermore, the extension of the conflict greatly reduced the number of neutral Powers with the result that a great many Protecting Power mandates came to be concentrated in the hands of those remaining.

It became more and more common for these neutral Powers to find themselves responsible for representing the respective interests of two opposing Parties at one and the same time [2]. This gave them additional authority, and incidentally altered their rôle ; for once a

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delegates shall be subject to the approval of the belligerent with whom they are to carry out their mission.

The representatives of the Protecting Power or their recognized delegates shall be authorized to proceed to any place, without exception, where prisoners of war are interned. They shall have access to all premises occupied by prisoners and may hold conversation with prisoners, as a general rule without witnesses, either personally or through the intermediary of interpreters.

Belligerents shall facilitate as much as possible the task of the representatives or recognized delegates of the Protecting Power. The military authorities shall be informed of their visits.

Belligerents may mutually agree to allow persons of the prisoners' own nationality to participate in the tours of inspection. "

[1] Although Article 88 stated : " The foregoing provisions do not constitute any obstacle to the humanitarian work which the International Committee of the Red Cross may perform for the protection of prisoners of war with the consent of the belligerents concerned."

[2] At one time Switzerland alone was Protecting Power for no fewer than thirty-five belligerent countries.

Power represented the interests of two opposing belligerents, it became not so much the special representative of each of them, as the common agent of both, or a kind of umpire. This enabled it to bring directly into play that powerful instrument, the argument of reciprocity, to obtain the improvements desired.

The value of the supervision envisaged and authorized by Article 86 of the Prisoners of War Convention had thus proved itself. But the existence of a Protecting Power was still necessary and millions of prisoners of war had been deprived of one through circumstances. In the absence of any control, the particularly serious nature of some of the violations of the Convention which were committed modified the conception of what that control should be. The idea of the private interest of each of the belligerents was replaced by the conception of the overriding general interest of humanity, which demanded such control, no longer as a right, but as a duty.

The International Committee of the Red Cross, encouraged by the opinions of the Preliminary Conference of National Red Cross Societies in 1947 and the Conference of Government Experts in 1947, directed its attention to three points :

1. The extension to all the Conventions of the supervision exercised by the Protecting Power.

2. Arrangements for providing a substitute for a Protecting Power no longer able to act.

3. Compulsory supervision.

The draft resulting from the study of these questions, as approved and completed by the XVIIth International Red Cross Conference at Stockholm, served as a basis for the work of the Diplomatic Conference of 1949. This draft reproduced the essential features of Article 86 of the 1929 Convention with the exception of the provisions dealing with visits to camps which are included in Article 126. But it replaced its optional form (" possibility of collaboration between the Protecting Powers ") by an imperative form (" The present Convention *shall be* applied with the co-operation and *under the supervision* of the Protecting Powers... "); moreover, it added a separate draft Article providing for the compulsory replacement of Protecting Powers which ceased to function [1].

[1] See the commentary on Article 10 below.

2. Discussions at the Diplomatic Conference of 1949

Surprisingly enough, the Stockholm draft gave rise to hardly any objections at the Diplomatic Conference [1]. The new form proposed: "The Convention *shall be* applied with the co-operation and under the supervision..." was not so much as discussed, the necessity for increased supervision being evident to everyone. The English translation of the word " contrôle " was the subject of the longest discussion ; the English-speaking delegations were all without exception opposed to the adoption of the English word " control " which is much stronger and has a connotation of domination that it does not have in French. It must be admitted, however, that the French word " contrôle " is being increasingly used with the English meaning. Four translations were in turn suggested and discussed at length before agreement was finally reached on the word " scrutiny ". The discussion was not purely academic for it enabled the Conference to define precisely the powers which it intended to confer on the Protecting Power [2].

The need for increased control being once admitted, there was no further difficulty. No one thought of contesting the Protecting Power's right to appoint additional staff. On the contrary, as the Protecting Power was no longer merely " authorized " but was instructed to exercise supervision, the importance of its disposing of a sufficiently large and qualified staff was admittedly increased. It was to this end that the Conference placed the consular staff of the Protecting Power on the same footing as its diplomatic staff, the draft text having referred only to the latter. On the other hand, the Conference could not agree to adopt the last sentence of paragraph 1 which had been hastily and generously added at the Stockholm Conference to the original draft submitted by the International Committee of the Red Cross. That sentence read as follows : " The said Power may only refuse its approval if serious grounds are adduced." In normal times—and the more so in time of war—a Government may refuse to accept or to give official recognition to the diplomatic or consular representatives of another State without being obliged to state its reasons for so doing. It would not be logical for occasional delegates, appointed temporarily and in an auxiliary capacity, to have a privileged status in this respect.

[1] In the Stockholm draft, the provision under study appeared as Article 7 (Article 6 of the First Convention and Article 7 of the Second and Fourth Conventions). It was therefore discussed by the Diplomatic Conference of Geneva as Article 6/7/7/7 before becoming Article 8/8/8/9 in the final text.

[2] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-B, ad Articles 6/7/7/7, pp. 19-20 and 57-58.

PARAGRAPH 1. — GENERAL RÔLE OF THE PROTECTING POWERS

1. *First sentence.* — *" The present Convention shall be applied with the co-operation... "*

This is a command. The English text, which is authentic equally with the French, makes this absolutely clear [1].

The command is addressed in the first instance to the Parties to the conflict. They are bound to accept the co-operation of the Protecting Power; if necessary, they must demand it. In the course of the discussion, there was ample evidence of the desire of those participating to establish a stricter control procedure and to make it obligatory.

But the command is also addressed to the Protecting Power, if the latter is a party to the Convention. The Protecting Power is obliged to participate, so far as it is concerned, in the application of the Convention.

What does the rôle of the Protecting Power involve, and what should be understood by " co-operation " and " scrutiny " ?

It should be noted first of all that it is not only Article 8 which mentions the intervention of the Protecting Power. Express reference is made to it in some thirty other Articles [2].

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[1] The French text reads : " *La Convention sera appliquée avec le concours...* " The words " *shall be* " in the English text show that the future imperative has been used and not the simple future.

[2] These are as follows :

(a) Among the general provisions common to all four Conventions :

Art. 10 :	substitutes for Protecting Powers;
Art. 11, para. 1 :	loan of good offices in cases of disagreement as to the application or interpretation of the Conventions ;
Art. 128 :	communication of translations of Conventions during hostilities.

(b) Among the provisions peculiar to the Third Convention :

1. Acting as an intermediary :

Art. 23, para. 3 :	transmission of information concerning the geographical location of camps ;
Art. 62, para. 1 :	transmission of working rates of pay ;
Art. 63, para. 3 :	transmission of notifications of payment ;
Art. 66, para. 1 :	transmission of lists of credit balances ;
Art. 68, para. 1 :	transmission of claims for compensation ;
Art. 69 :	transmission of notification of measures taken in regard to correspondence and relief ;
Art. 77, para. 1 :	transmission of legal documents ;
Art. 120, para. 1 :	transmission of death certificates ;
Art. 122, para. 3 :	transmission of identity particulars.

It may also be noted that the Second Convention contains only one provision of its own in which the Protecting Power is mentioned, whereas the First and Fourth Conventions contain respectively three and thirty-three such provisions.

The following question therefore arises : do the co-operation and the scrutiny laid down in principle in Article 8 consist solely of the activities referred to in the Articles listed above, or is the Protecting Power assigned a general mission in Article 8 giving it the right—and the duty—to intervene in cases other than these particular ones ?

The reply to this question emerges clearly enough from the general desire, expressed during the discussions at the 1949 Diplomatic Con-

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2. Supervision, and means to facilitate supervision :
   - Art. 56, para. 3 : inspection of record of labour detachments ;
   - Art. 78, para. 2 : receipt of complaints and requests by prisoners of war, and reports on situation in camps ;
   - Art. 79, para. 4 : approval by Detaining Power of elected prisoners' representatives ;
   - Art. 81, para. 4 and 6 : communication with prisoners' representatives, examination of reasons for dismissal ;
   - Art. 96, para. 5 : inspection of record of disciplinary punishments ;
   - Art. 126, para. 1 : visits to camps and places of internment.
3. Activities connected with the financial resources of prisoners of war :
   - Art. 58, para. 1 : determination of allowances in ready money ;
   - Art. 60, para. 4 : consideration of limitations on advances of pay ;
   - Art. 65, para. 2 : inspection of prisoners' accounts.
4. Activities connected with correspondence and relief for prisoners of war :
   - Art. 71, para. 1 : limitations on correspondence ;
   - Art. 72, para. 3 : limitations on relief ;
   - Art. 73, para. 3 : supervision of distribution of relief ;
   - Art. 75, para. 1 : supply of special means of transport ; use of other means of distribution for relief shipments (Article 9 of Regulations in Annex III) ;
5. Activities of a judicial character :
   - Art. 100, para. 1 : notification of offences punishable by the death sentence ;
   - Art. 101 : receipt of detailed communication concerning death sentence, six months before execution ;
   - Art. 104, para. 1 : receipt of notification of judicial proceedings ;
   - Art. 105, para. 2 : judicial assistance ;
   - Art. 107, para. 1 : notification of findings, sentence and right of appeal.
6. Activities in case of transfer of prisoners of war to another Power :
   - Art. 12, para. 3 : notification to State of origin in the event that such Power fails to carry out its obligations.
7. Activities connected with Mixed Medical Commissions :
   Participation in appointment (Art. 2 of Regulations in Annex II).
   Substitution for International Committee of the Red Cross for appoint ment (Art. 5 of Regulations in Annex II).

ference, to establish a genuine supervisory organization with wide powers [1]. Moreover, in the text of the provision, the words " their mission *as defined* in the present Convention " have been replaced by " their mission *under* the present Convention ", thus emphasizing that there has been no attempt at giving an exhaustive " definition " of the duties of the Protecting Powers in these particular Articles alone.

The first sentence of Article 8 is therefore not inserted merely for purposes of style. It entitles a Protecting Power to undertake any intervention or initiative which may enable it to verify the application of any provision of the Convention, or improve the application of the Convention. All the occasions upon which a Protecting Power would have to intervene cannot be envisaged here, nor can the conditions under which interventions take place. They will be determined by the circumstances of the conflict and the means at the disposal of the Protecting Power. Part II of the Convention (Articles 13 to 16) provides for scrutiny of the general treatment accorded to prisoners of war by the Detaining Power. Similarly, in Part III, Articles 17 to 108 lay down the conditions for captivity. Scrutiny by the Protecting Power is of the utmost importance, whether in relation to evacuation, transfer, quarters and food, labour, financial resources, relief, or penal or disciplinary sanctions.

The Protecting Power's task may thus be an extremely heavy one, involving problems of recruiting staff, let alone that of finding suitable premises and material resources. In most cases such services will be installed in the premises of the embassy or legation of the country whose interests are protected ; these are, incidentally, premises and installations which the Protecting Power will generally be responsible for safeguarding and administering. The expenses incurred in such work should certainly be borne by the Power whose interests are protected. Special arrangements will be made in each individual case.

The procedure for appointing a Protecting Power is not laid down in the Convention. It is in practice a simple matter. The belligerent Power which wishes its interests to be protected asks a neutral Power if it is willing to represent it. Should the neutral Power agree, it asks the enemy Power for authorization to carry out its duties. If the enemy Power gives its consent, the neutral Power then starts its work as a Protecting Power. The enemy Power is not obliged to accept any neutral Power automatically. It may consider, for reasons determined only by itself, that the requesting Power, although neutral,

[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-B, ad Art. 6/7/7/7, pp. 344 ff.

will not carry out its protective mission in an impartial manner. Nevertheless, it cannot refuse all the neutral Powers in turn ; that would be entirely contrary to the spirit of the Convention and to international usage.

The Protecting Power will naturally carry out its duties throughout the territory of the belligerent State and its dependencies, unless otherwise arranged. What is the position in regard to occupied territories ? The activities of the Protecting Power are gradually extended to such territories as they are occupied. But another Proing Power could conceivably be appointed specially for the occupied territories. What is the position if the occupation extends to the whole territory of the State ? In such cases Protecting Powers have sometimes considered that their duties were at an end. The neutral Powers protecting the interests of Germany considered, for example, that their duties were at an end when the German Government disappeared following the capitulation in May 1945.

It may be wondered whether such an attitude on the part of the neutral Powers should not be deemed incompatible with the spirit of the new Convention and whether the neutral Powers, having received a regular mandate from a recognized Government, should not continue their activities as long as there are still protected persons within the meaning of the Convention. Although the Protecting Powers act as the special representatives of a given Government so far as their general activities are concerned, they are the representatives not of that Government alone but of all the States party to the Geneva Conventions when carrying out their functions under those Conventions. In any case, if the neutral Power appointed considered that its duties were at an end in such a contingency, the provisions of Article 10 would come into play and a substitute would have to be found.

2. *Second and third sentences : Executive agents*

All members of the diplomatic and consular staff of the Protecting Power are *ipso facto* entitled, in virtue of their capacity as official representatives of their Government, to engage in the activities arising out of the Convention. This rule covers not only members of the staff who were occupying their posts when hostilities broke out, but also those who are appointed later. It makes no difference whether they are employed solely on the work of the Protecting Power as such, or whether they carry out other diplomatic or consular duties as well. No formalities are required except those which their diplomatic or consular rank would entail in normal times (*agrément, exequatur*).

Special consent is required only for the auxiliary delegates, specially appointed by the Protecting Power, who do not have diplomatic or consular status.

Paragraph 2. — Facilities

This provision was also taken from Article 86 of the 1929 Convention, and there is no need to comment upon it. In Article 86, it referred only to visits to camps. Here it is quite general, and applies to *all* the activities of the Protecting Power. It is expressly confirmed by Article 126.

Paragraph 3. — Limits

This paragraph is the result of a compromise. It was adopted to give satisfaction to the supporters of an amendment which, in the opinion of the majority, was too restrictive and might virtually paralyse any activity on the part of the Protecting Power. While trying to give the fullest possible scope to the needs of humanity, the delegates at the Conference could not ignore the requirements of national security.

Although it permits no sanctions other than the withdrawal of *exequatur* or a request for the recall of the official at fault, this clause none the less serves as a solemn reminder to the Protecting Power of the nature of its mission, which is to co-operate with the belligerent Power as the party primarily responsible for the application of the Convention. The Protecting Power is no longer merely entrusted with the duty of exercising the right of scrutiny as the authorized agent of one of the Parties to the conflict. It must also *co-operate* in applying the Convention in order to ensure that prisoners of war are accorded the humane treatment specified therein. Thus, when instructing its agents, the Protecting Power should not forget to remind them that all their efforts should be directed towards the strict application of the Convention, without the slightest irregularity which, throwing suspicion on them, and perhaps on their colleagues and Government, might restrict or compromise the effectiveness of their work ; for that would increase the suffering caused by the war.

Conclusions

As it stands, Article 8 is not perfect. But if one thinks of the tremendous advance which it represents in humanitarian law, it can be considered satisfactory.

This Article presupposes the existence of a Protecting Power appointed by the Power of origin. It does not, however, make the appointment obligatory, and in no way modifies the status of a protecting authority in time of war, as determined by international usage. As we shall see later, Article 10 permits the High Contracting Parties to agree to entrust to an organization which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers.

By making a duty of what formerly was merely the optional exercise of a right, Article 8 reinforces the Convention's effectiveness. It does even more that that : it calls in a third Power, a neutral Power and as such immune from the passions of war, and invokes the aid of this third Power in respecting fundamental principles [1].

Article 1 reads as follows : " The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances." This undertaking applies to a Protecting Power which is a party to the Convention as it does to the belligerent Powers. It is right that this should be so. It illustrates the joint responsibility of nations in the defence of the protective barrier which they have raised against the evils of war by signing the Geneva Conventions.

ARTICLE 9. — ACTIVITIES OF THE INTERNATIONAL COMMITTEE OF THE RED CROSS [2]

The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of prisoners of war and for their relief.

Historical Background

This provision reproduces Article 88 of the 1929 Convention in a more general form applicable to all four 1949 Conventions. Its origin goes back to the activities of the International Committee of the Red Cross during the First World War. At the beginning of the conflict

[1] If the Protecting Power is not a party to the Convention, this mission under the Convention is obligatory only in so far as the Protecting Power explicitly accepts it ; in fact, however, there are very few Powers which are not party to the Convention.

[2] Article common to all four Conventions. See First and Second Conventions, Article 9 ; Fourth Convention, Article 10.

in 1914, the International Committee, following earlier precedents, opened an Agency which, by centralizing information on prisoners of war, re-established contact between prisoners of war and their families and helped to trace those who were missing. In addition, taking advantage of the fact that the Hague Regulations authorized approved relief societies to carry out their charitable activities, the Agency sent delegates to visit internment camps. These visits not only enabled it to ascertain the needs of the prisoners of war and bring them relief and moral comfort, but also served as a means of checking the application of the Hague Regulations of 1907 [1]. Incomplete as it was, this spontaneous and gratuitous supervision often helped to bring about considerable improvements in the situation of prisoners of war.

The terms of reference established by Article 88 for the activities of the International Committee were wide from one point of view and restricted from another. Wide because they did not specify the tasks to be carried out by the International Committee of the Red Cross, and so did not limit them. Restricted because this vagueness, and the fact that the provisions were not mandatory in character, meant that the International Committee of the Red Cross could not impose the action it wished to take upon the Parties concerned.

Reflection showed, however, that that was all that was necessary. In the first place, it would at that time have been almost inconceivable to entrust official duties to an organization which was not an international institution of an intergovernmental character but, in law, merely a private association of Swiss citizens. In the second place, had specific duties been entrusted to the International Committee of the Red Cross and its activities imposed upon the belligerent parties, the latter might have been tempted to shift to the Committee the responsibility for carrying out their own obligations.

The wording adopted did not affect the independence of the International Committee of the Red Cross and the very fact that the Committee was specifically mentioned in the Article amounted to recognition of its activities.

It was on the basis of this provision that the International Committee of the Red Cross undertook and successfully carried out a considerable amount of work during the Second World War. There is no point in describing that work here, even briefly [2]. A few figures will suffice :

[1] See above, on Article 8, pp. 93 ff.

[2] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, in three volumes, Geneva, 1948. Volume I — General activities, 736 pages ; Volume II — The Central Agency for Prisoners of War, 320 pages ; Volume III — Relief activities, 539 pages.

Central Prisoners of War Agency: approximately 40,000,000 index cards;

Number of visits to prisoner-of-war camps: 11,000;

Relief transported by the International Committee of the Red Cross and distributed in prisoner-of-war camps: 450,000 tons (equivalent to 90,000,000 parcels of 5 kilogrammes each).

And above all let us remember that this work, with all that it entailed in the way of initiative, negotiations and efforts (even including the formation of a fleet to carry the relief), was only possible thanks to the 1929 Convention [1].

Although it was only in the 1929 Prisoners of War Convention that its right of initiative was recognized, the International Committee of the Red Cross tried to intervene in behalf of other war victims. There again, however, its unremitting efforts in behalf of those detained in concentration camps met with constant refusal and even hostility [2], although it was successful, in certain cases, in protecting thousands of human beings and, alone or in co-operation with others, was able to carry out some major projects in connection, more particularly, with the supply of relief for civilian populations.

The 1947 Conference of Government Experts realized that Article 88 did not cover the activities of the International Committee of the Red Cross in the field of relief and considered that the provision should therefore be expanded.

At the Diplomatic Conference the discussion on this provision was very short [3]. No one contested the principle involved. On the contrary, the draft was expanded to include a reference to " any other impartial humanitarian organization " after the words " the International Committee of the Red Cross ". This addition was only too well justified, and the Article thus amended was accordingly adopted in plenary assembly without discussion or opposition.

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[1] Thus at a time when certain prisoner-of-war camps were being visited daily by its delegates and received whole trainloads of relief supplies, access to other camps or sections of camps was barred to the International Committee of the Red Cross, and it could not secure the entry into them of a single gramme of food, owing to the fact that they contained prisoners of war whose countries of origin were not bound by the Convention in their relations with the Detaining Power. See *Report of the International Committee of the Red Cross on its activities during the Second World War*, especially Volume I, Part III, Chapters XI and XII. See also *Inter Arma Caritas*: The Work of the International Committee of the Red Cross during the Second World War, Geneva, 1947.

[2] See *Documents sur l'activité du Comité international de la Croix-Rouge en faveur des civils détenus dans les camps de concentration en Allemagne (1939-1945)*. See also *Inter Arma Caritas*, Chapter VIII.

[3] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-B, pp. 20-21, 29, 60, 111 and 346.

COMMENTS ON THE ARTICLE

In the 1929 Convention, the right of initiative of the International Committee of the Red Cross was mentioned in connection with specific activities—Articles 79 (Central Prisoners of War Agency), 86 and 87 (Organization of control).The reference to this right among the general Articles of the new Conventions gives it much greater scope. It means that *none* of the provisions of the Convention excludes humanitarian activities on the part of the International Committee of the Red Cross. That is of importance in the case of the present Convention, which mentions the International Committee of the Red Cross in connection with a large number of specific provisions [1].

[1] In addition to Article 3, which constitutes a convention applicable to conflicts not of an international character, these provisions are as follows :

Art. 11, para. 2 : Conciliation procedure, participation by a person delegated by the International Committee of the Red Cross ;

Art. 56, para. 3 : Record of labour detachments, to be communicated to the delegates of the International Committee of the Red Cross ;

Art. 72, para. 3 : Right of the International Committee of the Red Cross to propose limits on relief shipments, on account of exceptional strain on transport or communications ;

Art. 73, para. 3 : Right of the International Committee of the Red Cross to supervise distribution of collective relief, and prohibition of restriction on this right by special agreements between the Parties to the conflict ;

Art. 75, paras. 1 & 2 *(a)* and *(b)* : Organization by the International Committee of the Red Cross of special means of transport for relief shipments ;

Art. 79, para. 1 : Election of prisoners' representatives entrusted, *inter alia*, with representing prisoners of war before the International Committee of the Red Cross ;

Art. 81, para. 4 : Facilities accorded to prisoners' representatives for communication with the International Committee of the Red Cross ;

Art. 123, paras. 1 and 4 : Right of initiative of the International Committee of the Red Cross in proposing the organization of a Central Agency, without restricting the humanitarian activites of the International Committee ;

Art. 125, para. 3 : Recognition and respect, at all times, of the International Committee of the Red Cross in the field of assistance for prisoners of war ;

Art. 126, para. 4 : Prerogatives of delegates of the International Committee of the Red Cross.

In addition, a number of provisions make specific reference to the Central Prisoners of War Agency : Art. 30, para. 4 (medical certificate) ; Art. 54, para. 2 (working pay ; occupational accidents and diseases) ; Art. 68, para. 2 (claims for compensation) ; Art. 70, para. 1 (capture cards) ; Art. 74, para. 2 (exemption from postal and transport charges) ; Art. 75, para. 2 (special means of transport) ; Art. 77, para. 1 (legal documents) ; Art. 120, para. 1 (wills) ; Art. 122, para. 3 (National Bureaux) ; Art. 124 (exemption from charges) ; Annex IV.B. (capture card).

Thus, in addition to those activities for which specific provision is made, all other humanitarian activities are covered in theory. They are, however, covered subject to certain conditions relating to the character of the organization undertaking them, the nature and object of the activities concerned and, lastly, the consent of the Parties to the conflict.

1. *Approved organizations*

The humanitarian activities authorized must be undertaken by the International Committee of the Red Cross or by any other *impartial humanitarian* organization. The International Committee is mentioned in two capacities—firstly on its own account, because of its special character and its earlier activities (which it is asked to renew should occasion arise, and which it is desired to facilitate) ; and secondly, as an example of what is meant by " impartial humanitarian organization ". It must be remembered that the International Committee of the Red Cross is today, as when it was founded, simply a private association with its headquarters at Geneva, composed solely of Swiss citizens recruited by co-optation. It is therefore neutral by definition and is independent of any Government and any political party. Being the founder body of the Red Cross and the promoter of all the Geneva Conventions, it is by tradition and organization better qualified than any other body to help effectively in safeguarding the principles expressed in the Conventions.

The organization must be *humanitarian* ; in other words it must be concerned with the condition of man, considered solely as a human being, regardless of his value as a military, political, professional or other unit. It must also be *impartial.* Article 9 does not require it to be international. As the United States delegate at the Conference remarked, it would have been regrettable if welfare organizations of a non-international character had been prevented from carrying out their activities in time of war [1]. The International Committee of the Red Cross is not itself international so far as its membership is concerned, but only in its activities. Furthermore, the Convention does not require the organization to be neutral, but it is obvious that impartiality benefits greatly from neutrality.

2. *Activities authorized*

In order to be authorized, the organization's activities must be purely humanitarian in character; that is to say they must be con-

[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-B, p. 60.

cerned with human beings as such, and must not be affected by any political or military consideration. Within those limits, any subsidiary activity which helps to implement the principles of the Convention is not only authorized but desirable under Article 9. Such activities may take the form of:

1. representations, interventions, suggestions and practical measures affecting the *protection* accorded under the Convention;
2. the sending of medical and other personnel and equipment;
3. the sending and distribution of relief (foodstuffs, clothing and medicaments), in short, anything which can contribute to the humane treatment of those to whom the Convention is applicable.

These activities must be impartial, but it should be noted that impartiality does not necessarily mean mathematical equality. If a rescue worker has only ten dressings to distribute to a hundred wounded, the condition of impartiality does not in any way mean that he must divide each dressing into ten equal—but unusable—fragments, and even less that he must not distribute them for fear of being unfair. It means that he must not allow his choice to be governed by prejudice or by considerations regarding the person of those to whom he gives or refuses assistance. The condition of impartiality is fulfilled, when the hundred wounded are dispersed, if the rescuer gives the dressings to the first ten wounded he is able to reach, irrespective of who they are, or, when they are all within his reach, if he is guided in his choice by the apparent gravity of the wounds, making no distinction between friends, allies and enemies. The ideal would be to be able to base the distribution of relief solely on the actual needs.

During the Second World War the action of the International Committee of the Red Cross itself, although impartial, was in actual fact very unequal. Should the International Committee have refrained from making its 11,000 visits to camps to which it had access, on the grounds that other camps were closed to it ? Or course not. Its impartiality resided in the fact that it had offered its services equally to all the belligerent Powers. In the same way the 450,000 tons of relief sent to prisoner-of-war camps and distributed under the Committee's auspices were very unequally divided amongst prisoners of different nationalities. The reason in this case was that the International Committee of the Red Cross was not the donor, but merely an intermediary—the only channel by which the parcels could pass through the blockade. Should it then have refused to transmit parcels which mothers had prepared for their sons, or the packages which a certain National Red Cross Society was sending to compatriots, simply because other mothers could not send such parcels or because

those sent by other National Societies were more meagre ? The answer again is no. The action of the International Committee of the Red Cross was impartial in that it was equally available as an intermediary to *all* mothers and *all* National Societies. But that did not prevent it from drawing the attention of the donor Societies, on several occasions, to inequalities which it had noted or, when whole camps were hurriedly closed during the last days of the conflict, from obtaining authority to distribute the parcels, whatever their origin or destination, to convoys of prisoners of war who were suffering from hunger and cold by the roadside.

All these humanitarian activities are subject to one final condition —the consent of the Parties to the conflict concerned. This condition is harsh but inevitable. The belligerent Powers do not have to give a reason for their refusal. But being bound to apply the Convention, they alone must bear the responsibility if they refuse help in carrying out their commitments.

The " Parties concerned " must be taken to mean those upon which the possibility of carrying out the action contemplated depends. For example, when relief consignments are forwarded, it is necessary to obtain the consent not only of the State to which they are being sent, but also of the State from which they come, of the countries through which they pass in transit and, if they have to pass through a blockade, of the Powers which control that blockade.

3. *Scope of the Article*

During the Second World War, it was on this right of initiative that the International Committee based all its activities in behalf of prisoners of war, according to the requirements of circumstances and the means at its disposal.

Article 9 is therefore an essential provision. Despite the specific provisions in the Convention relating to collective relief, special means of transport and the distribution of relief, no one can foretell what a future war may be. It is therefore right that a door should be left open for any initiative or action which, whatever the circumstances, may help in protecting and supporting prisoners of war.

Lastly, Article 9 is of great value from the point of view of principle, since it provides a corner for something which no legal text can prescribe, but which is nevertheless one of the most effective means of combating war—namely charity, or in other words the spirit of peace. And through this Article, which is common to all of them, the four Geneva Conventions of 1949 perpetuate Henry Dunant's gesture on

the field of battle. Article 9 is more than a tribute paid to Henry Dunant, it is an invitation to all men of good will to renew his gesture [1].

ARTICLE 10. — SUBSTITUTES FOR PROTECTING POWERS [2]

The High Contracting Parties may at any time agree to entrust to an organization which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers by virtue of the present Convention.

When prisoners of war do not benefit or cease to benefit, no matter for what reason, by the activities of a Protecting Power or of an organization provided for in the first paragraph above, the Detaining Power shall request a neutral State, or such an organization, to undertake the functions performed under the present Convention by a Protecting Power designated by the Parties to a conflict.

If protection cannot be arranged accordingly, the Detaining Power shall request or shall accept, subject to the provisions of this Article, the offer of the services of a humanitarian organization, such as the International Committee of the Red Cross, to assume the humanitarian functions performed by Protecting Powers under the present Convention.

Any neutral Power or any organization invited by the Power concerned or offering itself for these purposes, shall be required to act with a sense of responsibility towards the Party to the conflict on which persons protected by the present Convention depend, and shall be required to furnish sufficient assurances that it is in a position to undertake the appropriate functions and to discharge them impartiality.

No derogation from the preceding provisions shall be made by special agreements between Powers one of which is restricted, even temporarily, in its freedom to negotiate with the other Power or its allies by reason of military events, more particularly where the whole, or a substantial part, of the territory of the said Power is occupied.

Whenever in the present Convention mention is made of a Protecting Power, such mention applies to substitute organizations in the sense of the present Article.

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[1] On the basis of this Article, and also Article 125, paragraph 3, below, the Swiss Federal Council has, for its part, formally recognized the international rôle of the ICRC and requested the Swiss authorities to facilitate its action in all circumstances.

[2] Article common to all four Conventions. See First and Second Conventions, Article 10; Fourth Convention, Article 11.

General Background

This Article supplements Article 8.

Protecting Powers are not, we must repeat, a creation of the Geneva Conventions. They are an institution—or more precisely a practice only—of international law, much older than the Conventions. The appointment of a Protecting Power is a private matter between the Power of Origin, which appoints, the Protecting Power, which is appointed, and the State of residence, in which the functions of the Protecting Power are to be exercised. The 1949 Conventions do not enter into the matter. All they do is to designate the Protecting Power—in this case a private agent—as the third party entitled to be entrusted, not by the Power of Origin alone, but this time by all the High Contracting Parties, with a higher mission, that of participating in the application of the Conventions and supervising their observance.

The exercise of the Protecting Power's functions accordingly presupposes the juridical existence and capacity to act of the three parties to the contract. In the event of one of the parties ceasing to exist, or merely not being recognized by one of the other two, or again, in the event of its losing its capacity to act, the Protecting Power's mandate automatically comes to an end.

This occurred on numerous occasions in the Second World War. When the Protecting Power itself ceased to function, the gap could be filled by the Power of Origin appointing another neutral State to take its place. Thus, towards the end of the war, Switzerland and Sweden between them were acting as Protecting Powers for practically all the belligerent States. But when it was one of the two belligerents whose legal or actual existence, or capacity to act, ceased, millions of men and women in the power of the enemy were left at his mercy for better or for worse.

The International Committee of the Red Cross could not allow its interest in the victims of war to be overridden by juridical considerations. In its eyes the victims of war are always human beings in distress, whether the country to which they belong is, or is not, recognized by its opponent. The care their often difficult situation calls for does not depend on the entry into force or the lapsing of a Convention.

The International Committee accordingly set itself with varying and generally limited success to make its traditional humanitarian assistance available to prisoners of war whose right to protection under

the 1929 Convention was in dispute [1]. It did more. In certain cases where there was no Protecting Power, the Committee was able, either on its own initiative or at the request of one of the parties, to engage in certain activities normally reserved to the Protecting Power [2]. On several occasions, for example, it visited civilian internees to whom the Protecting Power had not access for one reason or another.

The International Committee of the Red Cross took all these points into consideration when it undertook the study of the existing Conventions with a view to revising them, and the drafting of a new one. After considering various solutions and consulting the Conference of Government Experts in 1947 [3], the Committee drafted an Article, common to all four Conventions, which was approved by the Stockholm Conference and taken as the basic text of the Diplomatic Conference of 1949 [4].

This text was the subject of difficult, and frequently confused, discussions. To the principle there was little opposition; but the wording gave rise to numerous amendments [5].

Some delegations felt that the second paragraph was not sufficiently precise. They wished to draw a distinction between the different cases in which a substitute was to be found for a Protecting Power. A neutral State and a humanitarian organization could not, they argued, be placed on the same footing as substitutes.

The International Committee of the Red Cross stated that it was willing, where there was no Protecting Power, to take its place, so far as possible, in carrying out the *humanitarian* tasks devolving upon Protecting Powers under the Convention, but that the independence

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[1] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, Part III, Chapter XIII, pp. 515 ff.

[2] *Ibid.*, Vol. I, Part III, Chapter VII, pp. 352 ff.

[3] See *Report on the Work of the Conference of Government Experts*, pp. 263-298.

[4] The text (Article 8/9/9/9 of the Stockholm draft), ran as follows :

" The Contracting Parties may, at any time, agree to entrust to a body which offers all guarantees of impartiality and efficacy the duties imposed on the Protecting Powers by the present Convention.

Furthermore, if persons protected by the present Convention do not benefit, or cease to benefit, by the activities of a Protecting Power, or of the said body, the Party to the conflict in whose hands they may be shall be under the obligation to make up for this lack of protection by inviting either a neutral State, or an impartial humanitarian body, such as the International Committee of the Red Cross, to assume in their behalf the duties devolving by virtue of the present Convention on the Protecting Powers.

Whenever the Protecting Power is named in the present Convention, such reference also designates the bodies replacing it in the sense of the present Article."

[5] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-B, pp. 346 ff.

which must characterize its action would not permit of its acting as the agent of a particular Power. Moreover, although most of the duties falling on a Protecting Power under the Geneva Conventions were of a humanitarian nature, there were other duties, outside the Conventions, of an administrative or even a political character, which it could not carry out.

The trend of the discussion was now towards the idea of distinguishing between substitutes proper for Protecting Powers and the humanitarian organizations to whose services recourse must be had if there were no substitute available.

Other delegations were afraid that the substitute, being appointed by the Detaining Power, would not have the requisite independence, or would lose sight of the interests of the Power of Origin. Others again were apprehensive of an Occupying Power evading the provisions of the Article by the conclusion of a special agreement with the Government of the occupied country, where that Government was dominated, and perhaps even set up, by the occupant.

Another view, first expressed by the Conference of Government Experts in connection with the new Civilians Convention, was put forward on several occasions by the French Delegation. It was to the effect that, in the event of a general war in which there were no neutral States left, the provisions of the Article would remain inoperative unless some special organization were set up in peace-time.

These various views were embodied in three main amendments or proposals, as follows :

1. An elaborate amendment submitted by the United Kingdom, which proposed splitting up the second paragraph of the Stockholm draft into three separate parts, dealing in turn with three possible ways (conceived as successive, and not alternative, possibilities) of replacing the Protecting Power [1].

2. A French proposal to insert in all four Conventions the provision adopted at Stockholm for prisoners of war only. The object of the amendment was to prevent the conclusion of special agreements between the Occupying Power and the adverse Government, since the latter's liberty of action would be restricted.

3. Another French proposal for a new Article setting up a " High International Committee ", consisting of thirty persons of established impartiality, and capable of replacing a Protecting Power.

[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-B, pp. 65-66.

The United Kingdom amendment was discussed line by line. Parts of it were adopted ; others were rejected. It was then redrafted, and led ultimately to the division of the second paragraph of the Stockholm text into two distinct parts, which became paragraphs 2 and 3 of the Article in its final form. The United Kingdom amendment also led to the adoption of the new paragraph 4.

The first French proposal, which was adopted, resulted in the insertion, in all four Conventions, of paragraph 5, which was originally meant to figure only in the Third Convention. The second French proposal was accepted by some ; but others pointed out the various practical difficulties which it would involve. It was accordingly put in the form of a simple recommendation, and as such adopted as Resolution 2 [1].

Finally, paragraphs 1, 5 and 6 were approved unanimously in the Joint Committee, while paragraphs 2, 3 and 4, and the Article as a whole were approved only by a majority. At the plenary meeting of the Conference the Article was finally adopted by 30 votes to 8. Opposition, which was persistent and recurred at every stage of the discussion, was confirmed by reservations at the time of signature [2]. It was directed above all against paragraphs 2 and 3. Numerous delegations were unwilling to allow a Detaining—that is to say, an enemy—Power to appoint a substitute of its own choice without the agreement of the Power of Origin. It may have been due to the confused nature of the discussions, or to the defects unavoidable in the translation of oral discussions, that this view was put forward, founded, as it is, on a misunderstanding of the scope of paragraphs 2 and 3. The opponents of the text based their contentions on the idea that if the Protecting Power chosen by the Power of Origin ceased to function, it would follow automatically that the adverse Power would alone be qualified to find it a successor [3].

It is true that, in the enumeration of the successive cases of absence of protection, one case appears to be omitted, i.e. that if one

[1] See p. 676. See also *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-B, ad Article 7A, especially pp. 27, 130 and 487.

[2] Fifteen delegations have so far made reservations on this point when signing, ratifying, or acceding to the Convention. The Czechoslovak reservation reads as follows: " The Government of the Czechoslovak Republic will not consider as legal a request by the Detaining Power that a neutral State or an international organization or a humanitarian organization should undertake the functions performed under the present Convention by the Protecting Powers, on behalf of the protected persons, unless the Government whose nationals they are has given its consent ".

[3] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-B, especially p. 351.

Protecting Power ceased to function, the Power of Origin would appoint another in its place. That was a provision, however, which it was not for the Conference to make. It was not for the Conference to create or to regulate the system of Protecting Powers, which is governed by international usage. All that it was called upon to do was to determine the particular duties of co-operation and supervision to be assigned to the Protecting Power and, in the event of the absence of any Protecting Power, to decide to whom, and in what manner, its duties should be transferred.

PARAGRAPH 1. — SPECIAL INTERNATIONAL ORGANIZATION

By the mere fact of choosing a Protecting Power, in accordance with international usage, a belligerent State appoints that Power to carry out the duties laid down in Article 8 and the activities arising thereunder.

The first paragraph of Article 10 gives the High Contracting Parties the option of entrusting this high mission to a special organization. The provision relates only to the duties envisaged by the Convention. It does not in any way affect the right of the Power of Origin to appoint a Protecting Power in the normal way, nor does it affect the normal duties of a Protecting Power, such as safeguarding the diplomatic, commercial and financial interests of the Power of Origin in enemy territory, or the protection of individuals and their property, over and above the protection provided by the Conventions. All that remains a private matter between the Parties concerned.

Accordingly a belligerent Power may very well appoint simultaneously :

(a) a neutral State as ordinary Protecting Power, to do the usual work of a Protecting Power, other than those duties for which the Convention provides ;

(b) by agreement with the enemy, an organization as described in paragraph 1, to perform the duties for which the Convention provides.

The belligerent cannot appoint any organization he pleases. Two conditions must be fulfilled : there must be agreement between both Parties as to the appointment ; and the organization appointed must offer every guarantee of *impartiality* and *efficacy*.

What is meant by " impartiality " has been already shown [1], but it is difficult to define here the conditions for " efficacy ", since they

[1] See above, pp. 107-108.

will depend on the nature, extent and degree of localization of the conflict. The guarantees of efficacy are to be sought mainly in the financial and material resources which the organization has at its command, and, even more perhaps, in its resources in qualified staff. Its independence in relation to the Parties to the conflict, the authority it has in the international world, enabling its representatives to deal with the Powers on a footing of equality, and finally its accumulated experience—all these are factors calculated to weigh heavily in deciding the Parties to agree to its appointment. For in the case considered in paragraph 1, the special organization can only be appointed by agreement ; failing such agreement the duties for which the Convention provides fall automatically to the Protecting Powers.

Paragraph 1 is applicable *at any time.* There are three main possibilities :

(a) In peace-time the High Contracting Parties may conclude an *ad hoc* agreement by which the rôle assigned by the Convention to the Protecting Powers is to be entrusted, in the event of armed conflict, to a special organization designated by name. In such a case, as soon as a conflict breaks out between two or more of the High Contracting Parties, the organization in question will be invested with the functions arising out of Article 8. The Protecting Powers appointed by the Parties to the conflict will be *ipso facto* freed of responsibility for performing these functions.

Such was the original idea voiced at the Conference of Government Experts in 1947. The agreement regarding the appointment of a special organization need not, however, be necessarily concluded between *all* the Powers party to the Convention. It may be the act of some of them only, in which case the special organization will not be invested with the functions arising out of Article 8 except in regard to relations between adversaries who are parties to the agreement. In all other cases the Protecting Powers will continue to be responsible for these functions.

(b) When hostilities first break out the Parties to the conflict, in appointing their respective Protecting Powers, may agree to have recourse to a special organization for the application of the Convention. An agreement of this kind, making over to the special organization the functions provided for in Article 8, *eo ipso* dispenses the Protecting Powers from the exercise of those functions, and limits them to the discharge of the other duties which international usage makes theirs.

(c) In the course of the conflict the opposing Parties may agree for some reason—in order, for example, to ease the burden on the Protecting Powers—to entrust to a special organization that part of the Protecting Powers' functions arising from the provisions of the Convention.

It may be noted that in any of these three contingencies the Parties to the conflict are free to entrust to the special organization (if it agrees) the other duties, independent of the Conventions, performed by the Protecting Power. It was not for the Convention to lay down rules on the subject. It is a matter falling within the exclusive competence of the Parties concerned.

The Diplomatic Conference refrained from giving a more precise indication, even by analogy, of the organization to which the paragraph relates. The organization may be one which is specially created for the sole purposes of Article 10, or it may be already in existence. If it does already exist, it may be specialized or general, official or private, international or national. The essential point is that it should be impartial and effective.

PARAGRAPH 2. — ABSENCE OF PROTECTING POWER

We here come to the actual appointment of a substitute for the Protecting Power. In what circumstances and at what moment does the paragraph become applicable ?

The text, as we have seen, was strongly opposed, and even led to reservations [1]. It was feared that a Detaining Power might appoint a substitute of its own choice, contrary to the wishes of the Power of Origin which is primarily concerned, by the simple process of inducing the Protecting Power appointed by the Power of Origin to relinquish its functions.

These apprehensions were unfounded. In the first place the text does not speak of " the activities of *the* Protecting Power " appointed at the outset of the conflict " but of " the activities of *a* Protecting Power ". We can only repeat the essential point that the Convention does not affect the process of appointment of the Protecting Power, which is governed by international usage. The disappearance, renunciation or disclaimer of the Protecting Power first chosen by the Power of Origin does not in any way deprive the latter of its freedom to appoint another neutral State to take the place of the first, or a

[1] See above, pp. 112-115.

third to take the place of the second, and so on. These successive States are not " substitutes " for the first Protecting Power. They are Protecting Powers on precisely the same footing as the first Protecting Power. So long as there is a Protecting Power of some sort, and the contending Parties have not taken advantage of the possibility offered by paragraph 1, only Article 8 is applicable. The same thing is true where the Parties to the conflict have made use of the option given in paragraph 1 and the special organization thus appointed ceases for some reason to function. Its disappearance does not in any way deprive them of the right to appoint, each in his own capacity, a Protecting Power in the normal way. Better still, the Protecting Powers they have appointed to represent them in the ordinary way will in such a case automatically become responsible under Article 8 for the duties provided for in the Conventions.

These considerations, the actual wording of paragraph 2, and the fact that it is the Detaining Power (that is to say, the Power which would appear to be least suitable for the purpose) which is made responsible for ensuring the protection of enemy personnel fallen into its hands, all point to the conclusion that paragraph 2 cannot, and must not, be applied before exhausting all other possibilities of arranging for their protection by means of either a Protecting Power or a special organization—both of which solutions imply the express consent of the Power of Origin.

In practice this contingency is hardly likely to arise unless the Power of Origin ceases to exist. The Detaining Power could not in such a case be blamed for choosing a substitute without the consent of the Power of Origin. The same argument would hold good if the Power of Origin persistently failed or refused to appoint a Protecting Power.

The Detaining Power is not completely free in the choice of the substitute. It has to " request a neutral State, or such an organization, to undertake . . . " the duties in question. It cannot therefore appoint an allied Power. The State, if it is to be a State, must be *neutral.* It is, of course, possible for a State to be neutral (that is to say not to be involved in the conflict on either side) and at the same time to be bound by a treaty of friendship with the Detaining Power, but its very neutrality would leave it a certain minimum of independence in relation to the Detaining Power. It was hardly possible in the Convention to go into further detail. However, a State which, while keeping out of the conflict, had previously broken off diplomatic relations with the enemies of the Detaining Power would obviously be ineligible.

The text leaves no freedom of choice with regard to the organization whose services may be requested. Only one can be meant, if such a one exists. The words " or such an organization " do not mean any organization which offers all guarantees of impartiality and efficacy. They can refer only to the organization mentioned in the previous line as being " provided for in the first paragraph above ", that is to say, an organization appointed by previous agreement between the Contracting Parties, and consequently accepted in advance by the Power of Origin.

The neutral State or organization thus appointed by the Detaining Power is not really a Protecting Power. Its appointment is exceptional, and is only made in order to apply the Convention. It is entitled to perform all the duties devolving upon a Protecting Power under the Convention, but no others [1].

PARAGRAPH 3. — ABSENCE OF A SUBSTITUTE

This is the final stage, in which no organization has been appointed under paragraph 1 and the Power of Origin is unable to appoint a Protecting Power while the Detaining Power, although wishing to apply paragraph 2, has failed to find a neutral State. There are no longer any possible substitutes. It is then that, as a last resort, the Convention calls upon a humanitarian organization.

The Convention in this case no longer uses the words " undertake the functions performed by a Protecting Power ", but speaks only of " humanitarian functions ". The distinction is logical. There is no longer any question of a real substitute, and a humanitarian organization cannot be expected to fulfil *all* the functions incumbent on a Protecting Power by virtue of the Convention. What it is asked to do, in the chaotic conditions that would exist if there were no longer any neutral State, is to undertake at least those activities which bring directly and immediately to the persons protected by the Conventions the care which their condition demands. This distinction has, moreover, the advantage of showing that the humanitarian organization referred to in paragraph 3, unlike a Protecting Power or its substitute, does not act, as it were, as an agent, but rather as a voluntary helper. This is of great importance—to the International

[1] In the Korean War, the Parties to the conflict, although not bound by the Geneva Conventions of 1949, made known their intention of applying their principles. No Protecting Power was appointed, however. The system of supervision established in 1949 was not tried out, therefore, during that war.

Committee of the Red Cross at any rate—in that it safeguards the independence of that organization which is an essential condition for its humanitarian work.

The Detaining Power *must* request the intervention of a humanitarian organization. Moreover, should such an organization anticipate the Detaining Power's request by spontaneously offering its services, the Detaining Power *must* accept them.

The obligation to ask for such services is unconditional. Consequently, a Detaining Power which was justified in declining the offer of services of a particular humanitarian organization would not thereby be relieved of its obligation, but would have to ask for the co-operation of another organization. The same would be true if the first organization which it approached, or which offered its services, ceased to function for any reason.

On the other hand, the obligation to accept the offer of services is qualified by the condition " subject to the provisions of this Article "; and these provisions can only be those of paragraphs 3 and 4. The Detaining Power cannot therefore decline these offers of service unless it has already applied for, and obtained, the co-operation of another qualified humanitarian organization, or unless the organization making the offer fails to furnish " sufficient assurances " as required by paragraph 4.

The Detaining Power is naturally always free to request, and accept, the simultaneous services of several humanitarian organizations.

No indication is given either in paragraph 2 or in paragraph 3 of the time-limit for appointing the different substitutes for the Protecting Power. Two possible situations can be envisaged ; the first would occur if the contending parties did not appoint a Protecting Power or could not reach agreement on the appointment. This is the case referred to by the words " When protected persons *do not* benefit... ". Such a situation could not be allowed to continue for very long and it seems to us that a substitute should be appointed within a period of one month at the most.

The second possibility is that of a Protecting Power ceasing its activities for some reason without another Protecting Power being appointed. That is the contingency referred to in the words " or *cease* to benefit ". The difficulty of finding a substitute may be greater in such cases, but it is felt that the time-limit should not exceed from six weeks to two months.

PARAGRAPH 4. — REQUISITE QUALIFICATIONS

The Protecting Power is primarily the agent of the Power of Origin, whose interests it safeguards *vis-à-vis* the adverse Power. The Convention imposes on it in this capacity humanitarian duties, which it asks the Protecting Power to perform as impartially as possible, but this requirement does not divest the Protecting Power of its primary character as representative of the Power of Origin. In the absence of a Protecting Power, on the other hand, the substitute which takes its place is appointed by the enemy of the Power of Origin. This led to fears being expressed in the course of the discussions at the Diplomatic Conference that the Detaining Power might tend to appoint a neutral State or an organization devoted to its (the Detaining Power's) cause. Hence the desire to bring home to the substitute that, although it has been chosen by the Detaining Power, the procedure is exceptional and adopted only for want of a better alternative ; the substitute does not thereby become the agent of the Detaining Power, and is charged by all the Contracting Parties with loyal co-operation in the application of the Convention in relation to the adversaries of the Detaining Power. Was this reminder essential ? It would have no effect on a substitute of deliberate bad faith ; but there may be a risk of an honest substitute regarding it as an offensive suspicion. Our own feeling is rather that the paragraph is a weapon to enable the substitute to insist on the Detaining Power granting the means and independence necessary for the performance of its duties with the impartiality required by the Convention.

It must be admitted, however, that to a large extent this clause meets the fears expressed by the authors of the reservation referred to above. A neutral Power or humanitarian organization which is invited by a belligerent Power to discharge the functions of a Protecting Power should make sure, whenever possible, that the Power of Origin has no objection to its appointment. It is of course true, as we have seen above [1], that in most cases a substitute will only be appointed when the Power of Origin is not in a position, or no longer in a position, to express any opinion or to appoint a Protecting Power. The appointment of a Protecting Power might, however, meet with other obstacles. This would occur, for example, if the Detaining Power did not recognize the legitimacy of the Government of the adverse Party. In such cases, the neutral Powers or organizations invited should consult the

[1] See pp. 117-119.

authorities representing the interests of the persons to be protected, even if their consultations were only unofficial.

As for the " sufficient assurances " stipulated, reference should be made to what has been said above concerning paragraph 1. The matter is one on which the Detaining Power will in practice be the sole judge, and, as such, it alone will bear the responsibility for unsatisfactory application of the Convention due to incapacity or lack of impartiality on the part of the substitute which it has called upon or accepted.

Paragraph 5. — Prohibition of derogations

This paragraph, which was added to the draft proposals of the International Committee of the Red Cross by the Stockholm Conference, but only in the case of the Third Convention, was inserted in all four Conventions by the Diplomatic Conference. Its purpose is to ensure neutral and impartial scrutiny in all circumstances, including cases where one Party to the conflict has become subject to the domination of the other. An Occupying Power, temporarily or finally victorious, will not in future be able to evade the provisions of Article 10 by reaching an agreement with a Government of the enemy State which has fallen under its influence, or has actually been set up by it, to establish a system in which a special substitute, at its beck and call, would in actual fact place the protected persons at its mercy, rendering any sort of supervision illusory. So long as a Detaining Power has protected persons in its charge, no plea of an arrangement with the enemy can be valid. It is bound either to continue to accept the intervention of the Protecting Power or, if there is no longer a Protecting Power, to provide a substitute.

Paragraph 6 calls for no comment.

Conclusion

It would be idle to deny that Article 10 is not all it might be. In spite of an obvious effort to carry matters to their logical conclusion, the Article remains incomplete and confused. It could hardly be otherwise in view of the difficulty of the subject-matter and the confused nature of the situations with which it deals. Its provisions may,

perhaps, admit of different interpretations, but rather than go into them here, it would be preferable to consider the positive side of the Article.

Like the two Articles which precede it, Article 10 supplements and reinforces Article 1. The Convention is to be respected *in all circumstances*. That requirement is so imperative that the absolute undertaking of the Parties to the conflict is not enough. Independent, impartial and effective supervision from outside is also necessary: and where that is impossible, one last opening is provided.

The one thing that matters, the one thing that counts is the principles set forth in Part II on which all the other provisions of the Convention depend. Such is their significance that even war, which is the *raison d'être* of the Convention, cannot prevail against them. There may be many interpretations of Article 10; but only one true one—namely, the one which is best fitted to give practical effect to the provisions of Part II.

ARTICLE 11. — CONCILIATION PROCEDURE [1]

In cases where they deem it advisable in the interest of protected persons, particularly in cases of disagreement between the Parties to the conflict as to the application or interpretation of the provisions of the present Convention, the Protecting Powers shall lend their good offices with a view to settling the disagreement.

For this purpose, each of the Protecting Powers may, either at the invitation of one Party or on its own initiative, propose to the Parties to the conflict a meeting of their representatives, and in particular of the authorities responsible for prisoners of war, possibly on neutral territory suitably chosen. The Parties to the conflict shall be bound to give effect to the proposals made to them for this purpose. The Protecting Powers may, if necessary, propose for approval by the Parties to the conflict a person belonging to a neutral Power, or delegated by the International Committee of the Red Cross, who shall be invited to take part in such a meeting.

This provision already existed in a slightly different form in Article 83, paragraph 3, and Article 87 of the 1929 Convention. The International Committee proposed that the passages should be combined to form a single Article to be placed among the general provisions

[1] Article common to all four Conventions. See First and Second Conventions, Article 11; Fourth Convention, Article 12.

at the beginning of the Convention. This proposal, together with a suggestion that it should be inserted in all four Conventions, was adopted.

Such alterations as were made were in general intended to facilitate the activities and extend the competence of the Protecting Powers.

PARAGRAPH 1. — GOOD OFFICES OF THE PROTECTING POWERS

It is no longer only in cases of disagreement between the Parties to the conflict with regard to the application of the Convention (as in the 1929 Convention) that the Protecting Powers are to lend their good offices ; they are to do so in all cases where they deem it advisable in the interest of prisoners of war. Furthermore, it is explicitly laid down—and this is new—that the Protecting Powers are to act in this way when there is disagreement with regard to the interpretation of the provisions of the Convention.

The only indication which the Convention contains of the form which such good offices will take is the provision in paragraph 2 of this Article for a possible meeting between representatives of the Parties to the conflict. There are, however, other methods to which the Protecting Powers may have recourse. They will undoubtedly in most cases try to achieve a fair compromise reconciling the different points of view, and will do all they can to prevent the disagreement from becoming acute.

It may happen that one and the same State is responsible for safeguarding the interests of two belligerents *vis-à-vis* one another, or there may be two different Protecting Powers. In the latter case they can take action either severally or jointly. It is in general preferable for the two Protecting Powers to come to an understanding beforehand.

During the Second World War there were several cases of disagreement between belligerents concerning the way in which the provisions of the 1929 Conventions should be applied. The Protecting Powers, however, were inclined more often than not to regard themselves as agents acting only on the instructions of the Power whose interests they safeguarded. The new wording invites them to take a more positive attitude. The general tendency of the 1949 Conventions is indeed to entrust Protecting Powers with rights and duties considerably more extensive than those which would devolve upon them as mere agents, and with a certain power of initiative. They thus become, as it were, the agents of all the Contracting Parties and

act in such cases as their own consciences dictate [1]. The burden on countries which agree to act as Protecting Powers will naturally be much heavier now than it was under the 1929 Conventions.

PARAGRAPH 2. — MEETING OF REPRESENTATIVES OF THE PARTIES TO THE CONFLICT

This paragraph is a recast of provisions taken from Article 83, paragraph 3, and Article 87, paragraph 2, of the 1929 Convention. It must be borne in mind, however, that henceforward Protecting Powers have the right to act on their own initiative, and are no longer dependent, as the 1929 text implied, on the initiative being taken by the Party to the conflict whose interests they represent. This idea of arranging a meeting of the representatives of the Parties to the conflict on neutral territory suitably chosen is very largely the result of experience gained during the First World War, when such meetings, which were fairly frequent, led to the conclusion of special agreements on the treatment of prisoners of war and on other problems of a humanitarian nature [2].

On the other hand, no meeting of this kind took place during the Second World War, so far as is known to the International Committee of the Red Cross. It is true that the particularly bitter nature of the struggle made the holding of such meetings very difficult, if not impossible.

The other 1929 provisions have been little changed. The Parties to the conflict are bound to give effect to the proposals for a meeting made to them by the Protecting Powers. The Protecting Powers may suggest that a neutral person, possibly one appointed by the International Committee of the Red Cross, should be present at the meeting. These provisions should certainly do a great deal to facilitate the application of the Geneva Conventions, and to ensure satisfactory treatment for the persons protected by those Conventions.

During the Diplomatic Conference one delegation was against any reference in the Article to disagreements concerning the interpretation of the Convention, on the ground that its interpretation was not a

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[1] This extension of their powers is a logical consequence of the general mission entrusted to them under Article 8 : " The present Convention shall be applied with the co-operation and under the scrutiny of the Protecting Powers ".

[2] See Mme FRICK-CRAMER : *Le Comité international de la Croix-Rouge et les Conventions internationales pour les prisonniers de guerre, Revue internationale de la Croix-Rouge*, May and July, 1943 ; Georges CAHEN-SALVADOR : *Les prisonniers de guerre, 1914-1919*, Payot, Paris, 1929, pp. 100 ff.

matter for the Protecting Powers but solely for the Contracting Parties. Several delegations pointed out in this connection that there was no question of entrusting the interpretation of the Convention to the Protecting Powers, but only of allowing them to adjust differences arising in regard to its interpretation.

Legal settlement of disputes. — A word should be said here concerning a provision whose insertion in the Conventions was proposed by several delegations when discussions at the Diplomatic Conference began. They maintained that, owing to the evolution of international law, it was no longer possible to draw up a Convention without providing for the legal settlement of problems arising out of its application or interpretation. The point was studied by a Working Party of the Joint Committee's Special Committee which adopted the text of an Article to be inserted immediately after the Article relating to enquiry procedure (Article 132 in the present Convention). The new Article read as follows :

> The States, parties to the present Convention, who have not recognized as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the International Court of Justice in the circumstances mentioned in Article 36 of the Statute of the Court, undertake to recognize the competency of the Court in all matters concerning the interpretation or application of the present Convention [1].

This Article, though immediately subjected to violent criticism, was adopted first by the Special Committee and then by the Joint Committee itself. Further discussion took place in the Plenary Assembly of the Conference, where several delegates stressed the fact that such a provision was inconsistent with Article 35 of the Statute of the International Court, which makes the United Nations Security Council responsible for laying down the conditions in which the Court is open to States not party to its Statute. They considered that it was inadvisable for Conventions completely independent of the juridical system of the United Nations to include a provision dealing with the competence of one of its bodies. After a lengthy discussion the Conference decided to change the proposed Article into a Resolution (Resolution No. 1), which was adopted without opposition. It reads as follows :

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[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-B, pp. 103 and 132.

The Conference recommends that, in the case of a dispute relating to the interpretation or application of the present Conventions which cannot be settled by other means, the High Contracting Parties concerned endeavour to agree between themselves to refer such dispute to the International Court of Justice.

The Diplomatic Conference no doubt acted wisely in eschewing a blend of two distinct juridical systems. It may indeed be desirable for a Convention to constitute a whole in itself, and to contain clauses laying down the procedure for the legal settlement of disputes ; but it is none the less true that the Geneva Conventions, in virtue of their purely humanitarian nature, are exceptions to that rule. It is open to any and every State, whether or not a member of the United Nations, to ratify or accede to them. They strive after universality, irrespective of all political and juridical problems.

Nevertheless, the strong recommendation contained in the Resolution undoubtedly carries weight and constitutes a powerful incentive to belligerents, in the circumstances indicated, to appeal to the Hague Court.

PART II

GENERAL PROTECTION OF PRISONERS OF WAR

ARTICLE 12. — RESPONSIBILITY FOR THE TREATMENT OF PRISONERS

Prisoners of war are in the hands of the enemy Power, but not of the individuals or military units who have captured them. Irrespective of the individual responsibilities that may exist, the Detaining Power is responsible for the treatment given them.

Prisoners of war may only be transferred by the Detaining Power to a Power which is a party to the Convention and after the Detaining Power has satisfied itself of the willingness and ability of such transferee Power to apply the Convention. When prisoners of war are transferred under such circumstances, responsibility for the application of the Convention rests on the Power accepting them while they are in its custody.

Nevertheless if that Power fails to carry out the provisions of the Convention in any important respect the Power by whom the prisoners of war were transferred shall, upon being notified by the Protecting Power, take effective measures to correct the situation or shall request the return of the prisoners of war. Such requests must be complied with.

PARAGRAPH 1. — RESPONSIBILITY OF THE POWER AS SUCH

1. *First sentence. — Principle*

War is a relationship between one State and another, or, one may also say, between one belligerent Power and another ; it is not a relationship between individual persons. The logical consequence is that prisoners of war are not in the power of the individuals or military units who have captured them. They are in the hands of

the State itself of which these individuals or military units are only the agents. The present provision, which formally establishes this principle, reproduces the text of Article 2, paragraph 1, of the 1929 Convention, which in turn was derived from Article 4, paragraph 1, of the Hague Regulations of 1907.

2. *Second sentence. — Responsibility of the State and of the individual*

Although there is no room for doubt regarding the " power " of the State over prisoners, the Convention nevertheless makes a distinction between the responsibilities involved in the exercise of this power, according to whether they rest on individuals acting in the capacity of agents carrying out their normal duties, or on individuals who override their authority or act in their private capacity.

Any breach of the law is bound to be committed by one or more individuals and it is normally they who must answer for their acts. Nevertheless, if the author of the act contrary to international law is an agent of the State, which is indubitably the capacity of members of the armed forces who take others prisoner or are responsible for guarding them, it is not his responsibility alone which is involved, but also that of the State, which must make good the damage and punish the offender. To the extent, however, that individual men and women acquire " international " rights and obligations as they do in connection with the laws and customs of war, so are they invested with the capacity of committing international offences, for which they personally may be held responsible, as well as the State to which they belong.

The existence of this dual responsibility is well reflected in the Article, which declares that the State is responsible, while making a reservation in regard to individual responsibilities. The Convention thus shows clearly that two distinct responsibilities may co-exist and emphasizes that they are not alternatives but cumulative in relation to one another. The fact that the State has made good the damage caused in no way diminishes the responsibility of the author of the offence and, *vice versa*, punishment of the offender does not relieve the State of its responsibility. The two forms of sanction for violations of the Convention thus run parallel to each other, a fact the Diplomatic Conference wished to stress.

Only the responsibility of the State will be dealt with here, as the question of individual responsibility is considered in Part VI in connection with Articles 129 and 130 (on penal sanctions).

The principle of the responsibility of the State implies an obligation on the State to instruct its agents in their duties and their rights. In that respect Article 12 is similar to Article 1 which, as we have seen, binds the Contracting Parties to respect and " ensure respect for" the Convention in all circumstances, and to Article 127, which stipulates that the text of the Convention is to be disseminated as widely as possible both in time of peace and in time of war.

The principle of responsibility further demands that a State whose agent has been guilty of an act in violation of the Convention should be required to make reparation. This already followed from Article 3 of the Fourth Hague Convention of 1907 respecting the Laws and Customs of War on Land, which states that " a belligerent Party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces ".

Compensation for damage resulting from the unlawful act, although not stipulated explicitly, is undoubtedly implied by the authors of Article 12. Consequently, a State which bears responsibility for a violation of the Convention is in duty bound to make good the damage caused, either by restoring everything to the former condition (*restitutio in integrum*) or by paying damages, the choice resting, as a general rule, with the injured party. In many cases, however, reparation will have to be limited to the payment of damages, when the nature of the prejudice caused makes restoration impossible. An example of this would be the physical and mental injury suffered by prisoners who, despite the individual safeguards provided in the Convention, have been brutally treated while in captivity.

It was not for the Convention to lay down rules concerning the procedure for applying this Article. The position is not the same as in the case of the individual liability to punishment of persons guilty of infringing clauses of the Convention. That is a comparatively new principle of the law of war, while here we are dealing with a traditional provision of international law. It is possible to refer, on the matter, to recognized rules embodied in the clauses of peace treaties, to provisions of statute law and to awards in international arbitration.

The safeguard contained in the present Article is reinforced by Article 131 relating to the responsibilities of the Contracting Parties, which may not absolve themselves of any liability incurred in respect of one of the grave breaches defined in Article 130.

One other point should be made clear. The Convention does not give a prisoner the right to make a personal claim for compensation. The State is answerable to another contracting State and not to the

former prisoner. On that point the recognized system was not in any way modified in 1949 [1].

PARAGRAPH 2. — RESPONSIBILITY OF THE RECEIVING POWER

The provision in the first paragraph was accepted without difficulty by the authors of the Convention, but nevertheless it does not cover the special case of the transfer of prisoners from one belligerent Power to another. This practice, which became increasingly common during the Second World War, raises a problem quite distinct from the question of the accommodation and hospitalization of prisoners in a neutral country [2].

The Conference of Government Experts gave immediate support to the proposal to prohibit any transfer of prisoners of war from a Power which was a party to the Convention to one which was not [3]. With regard to transfers as between Powers which are parties to the Convention, the Conference discussed the matter at some length without coming to an agreement, particularly as to which of the Powers should be held responsible for implementing the Convention. Some delegations proposed stipulating joint responsibility for both Powers concerned, in order to avoid possible worsening of conditions for prisoners so transferred. Other delegations considered that joint responsibility would be a difficult matter in practice and that, further, it might furnish the enemy with opportunities of creating friction between the Powers concerned. In their view, it is one of the fundamental principles of the Convention that its application is the responsibility of the Power actually holding prisoners and not of the Power which captures them [4]. The same question was discussed at the 1949 Diplomatic Conference [3]. Finally, the majority of delegations supported the present compromise, which fell between the principle of joint responsibility and that of sole responsibility. The matter was

[1] The Peace Treaty with Japan (concluded at San Francisco in 1951) provides an example of the assumption by a State of responsibility for the treatment of prisoners. In Article 16 of that Treaty, Japan affirmed her desire to make compensation to Allied prisoners of war who suffered undue hardship during their captivity, and authorized the use of Japanese assets in neutral countries for this purpose. The ICRC was made responsible for distributing these funds among the various countries concerned.

[2] This question is dealt with in Part IV below, ad Articles 109, 110 and, more particularly, 111.

[3] See *Report on the Work of the Conference of Government Experts*, p. 117.

[4] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 245-247, 327-328.

all the more important in that the scope of the obligations under the Convention depends, to some extent, on the identity of the Detaining Power since, in many cases, the Convention refers to the legislation of that Power in order to determine the applicable standards of treatment [1].

Since the end of the Second World War, the significance of this question has deepened with the establishment of military organizations for collective defence such as the North Atlantic Treaty Organization and the Warsaw Pact, which place the armed forces of several Powers under a unified command in case of conflict. Most of the member States of these organizations are in fact bound by the Geneva Conventions ; but, if that were not the case, any transfer of prisoners to such Powers would automatically be prohibited under this paragraph [2]. It is nevertheless of great importance, because of differences in national legislation on matters to which the Convention makes express reference, as we have said above, to determine exactly which Power is the responsible Detaining Power of prisoners. A case in point is the application of the death penalty : an offence punishable by the death penalty in one country might perhaps be liable to a less severe sentence under the legislation of another country. Moreover, for soldiers who are about to surrender, it is not a matter of indifference to know which Power is facing them. Lastly, the general problem of responsibility for the treatment of prisoners of war can be solved only on the very basis on which the system provided by the Convention is itself founded : the States parties to the Convention must remain responsible for the prisoners captured by their armed forces. A unified command which has authority over the armed forces of several countries cannot in this case take over the responsibility incumbent upon States ; otherwise the proper application of the Conventions which are, at least at the present stage, indissolubly linked to a structure composed of States, would be endangered.

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[1] In the first place, with regard to penal and disciplinary sanctions (Art. 82, 84, 87, 88, 95, 99, 100, 103, 104, 105, 106, 108) and working conditions (Art. 51, 53 and 57) ; a similar reference is also made in connection with evacuation and transfer (Art. 20 and 46), quarters and security (Art. 23 and 25).

[2] All the member States of the Warsaw Pact (Albania, Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland, Rumania and the USSR) are parties to the Convention. The member States of the North Atlantic Treaty Organization (Belgium, Canada, Denmark, France, the Federal Republic of Germany, Greece, Iceland, Italy, Luxemburg, the Netherlands, Norway, Portugal, Turkey, United Kingdom, United States of America) are all parties to the Convention with the exception of Canada and Iceland which, at the time of preparation of the present volume, had not yet deposited instruments of ratification.

The intervention of armed forces under the command of an international political organization such as the United Nations is distinct from that of a coalition of States.

A. *Coalition organizations.* — Some authors consider that the coalition organizations which have developed since the end of the Second World War have wrought a complete transformation in traditional conceptions and call for a fundamental revision of the system of bilateral agreements. Consequently, the following solutions have been proposed with regard to the application of the Geneva Conventions :

(a) by a special agreement concluded in advance, certain Powers should be designated to be responsible for the treatment accorded to prisoners of war ;

(b) the present Conventions should be modified by substituting fixed standards for those applicable under the national legislation of the Detaining Power ; furthermore, unified commands might be associated in the Conventions by becoming parties to the Conventions on the same footing as States [1].

These proposals call for the following comments : solution *(a)* is contrary to the letter of the present provision : prisoners are " in the hands of the enemy Power " which must be construed as meaning the Power to which " the individuals or military units who have captured them " are responsible. The proposed solution is contrary to the spirit and the letter of the Convention in that it would result in a restriction of the rights conferred upon prisoners of war by Article 6, to an extent which could only be determined by detailed study of the national legislations. Furthermore, it is obvious that such a responsibility could never be assigned to a Power which is not a party to the Convention, since any such transfer is expressly prohibited by Article 12.

Solution *(b)*, which involves a modification of standards, is notas revolutionary as it may seem at first sight, but it is in fact a matter which has been a strumbling-block for many important international assemblies : the international codification of penal law. The difficulties would therefore be considerable [2]. The provisions of the Conventions

[1] See Major R.R. BAXTER, " *Constitutional forms and some legal problems of international military command* ", *British Year Book of International Law*, 1952, p. 354.

[2] An interesting attempt has, however, been made in this regard in Articles 81 and 82 of the draft Treaty constituting the European Defence Community.

of the International Labour Organisation would make it easier to solve problems relating to labour of prisoners of war.

It is none the less certain that the establishment of coalition organizations such as those which have been formed since the end of the Second World War causes practical problems as far as the application of the Geneva Conventions is concerned.

Let us assume that the coalition is made up of States A, B, C and D. The prisoners have been captured by State A, which is a party to the Convention and is therefore responsible for the strict application of the Convention to them. It might be, however, that the prisoners captured by State A are interned on the territory of State B, and guarded by troops of State C under the general command of an officer of State D. The difficulties which would ensue for the delegates of the ICRC and the representatives of the Protecting Power are obvious. Furthermore, unless every precaution is taken in time, that is to say at the time of capture or surrender, confusion would inevitably occur and it might be virtually impossible to determine which State is the responsible Power ; as we have seen, this question is far from being unimportant, since on many points it is the legislation of the Detaining Power which is to be applied to prisoners.

A solution might be found to these problems along the following lines :

(a) as a general rule, subject to considerations relating to their security, prisoners should be interned on the territory of the Power which captured them, and guarded by troops of that Power ;

(b) if prisoners are interned on the territory of a Power other than that which captured them, they should nevertheless wherever possible be guarded by troops of the latter Power and should receive the treatment to which they would have been entitled if they had been interned on the territory of that Power ;

(c) if prisoners are interned on territory other than that of the Power which captured them, and if they are guarded by troops other than those of the latter Power, the necessary arrangements should be made for them to be transferred to another Detaining Power in accordance with paragraph 2 of Article 12.

(d) full regard should always be had to the provisions of paragraphs 2 and 3 of Article 12 concerning transfer.

B. *International armed forces.* — This applies particularly to military action by the United Nations. There are two possible cases:

(a) The United Nations takes action through a member State which is instructed to engage in armed operations on its behalf [1];

(b) The United Nations acts in its own name, and the armed forces provided by member States are under the political responsibility of the United Nations only.

In each of these cases, one cannot conceive that the United Nations, most of whose members are bound by the Geneva Conventions, would not apply the latter in full and to the letter, even if the military action was directed against one or more States which were not parties to these Conventions. Moreover, the member States would probably not agree to provide military forces without the assurance that the Conventions would be respected. This view was in fact confirmed when an international force was set up at the time of the Suez conflict in 1956; in reply to the International Committee of the Red Cross, the Secretary-General of the United Nations stated that, if the occasion arose, the troops engaged would apply the laws of war and in particular the Geneva Conventions.

In the first case, the State entrusted with carrying out the operation would be responsible for the prisoners captured, whether or not it was a party to the Convention; in the second case, the States which had provided military contingents would be responsible jointly. One may add that in both cases, there is nothing to prevent the United Nations from being held responsible in the second instance for the treatment and fate of prisoners of war.

General. — Whether the case involves a coalition of States, an international armed force or any other organization within which military personnel of several States fight side by side, one general principle prevails: wherever it is impossible or difficult, for any reason, to determine which is the State which has captured prisoners of war and consequently is responsible for them, this responsibility is borne jointly by all the States concerned. In such a case, the

[1] During the Korean conflict it was never possible to determine who was responsible for the treatment of prisoners of war, but these difficulties were essentially due to the fact that the principal executive agent of the United Nations in Korea—the United States of America—was not at that time a party to the 1949 Geneva Conventions.

broadest obligations in the humanitarian field of one or several of the States concerned must of course be applied by all of them ; it is therefore of little significance if one of these States is not a party to the Conventions.

Any other solution would be inconsistent with Article 1, which requires the High Contracting Parties to respect and to ensure respect for the Convention in all circumstances. There must be no possibility for a group of States which are fighting together to agree to hand over to one of their members not a party to the Convention all or some of the prisoners whom they have captured jointly, thus evading the application of the Convention. Such a solution would be a flagrant violation of the spirit and the letter of the Convention.

1. *First sentence. — Conditions for transfer*

This provision sets forth two mandatory conditions for any transfer of prisoners :

(a) prisoners of war may only be transferred from one Power which is a party to the Convention to another Power which is a party to the Convention ;

(b) such transfer may only take place after the transferring Power has satisfied itself of the willingness and ability of the receiving Power to apply the Convention.

The first condition is clearly stated and its interpretation arouses no difficulties. With regard to the second condition, it may be asked how the transferring Power is to satisfy itself that the receiving Power is able to apply the Convention. The Power wishing to transfer prisoners can only satisfy itself of the ability of the receiving Power to accept the prisoners through prior investigation ; in our view the future Protecting Power of the prisoners who are to be transferred would seem to be the best qualified authority to effect such an investigation, subject to any special agreement on the subject which may be concluded between the two parties.

2. *Second sentence. — Responsibility after the transfer*

This provision establishes the principle of the full and complete responsibility of the receiving Power from the moment at which

prisoners are transferred and for the whole period during which those prisoners are on the territory of the Power concerned. This obligation for the receiving Power is independent of the transferring Power, whose relationship with the former is defined in the third paragraph of the present Article. The rights and duties of the receiving Power in regard to prisoners follow directly from the Convention, and this Power is therefore in the same situation as any other Protecting Power.

PARAGRAPH 3. — OBLIGATIONS OF THE TRANSFERRING POWER

Despite the fact that a certain responsibility is thus laid on the receiving Power, it was never the intention of the authors of the Convention thereby to relieve the transferring Power of all responsibility with regard to the prisoners who are transferred.

As we have seen, the authors of the Convention first considered a system of joint responsibility [1] which maintained the responsibility of the transferring Power to a subsidiary degree and in certain cases. This system was not adopted in 1949, but it was the subject of lengthy discussion. Although joint responsibility may seem the most appropriate way of ensuring the maximum safeguards to prisoners, there would undoubtedly be difficulties of application, since it would give the transferring Power the right to interfere in the affairs of the receiving Power to an unlimited extent [2]. The Geneva Conference therefore adopted a system of subsidiary responsibility, subject to certain specific conditions.

A. *Conditions of the obligation.* — The text states that the responsibility of the transferring Power is involved if the receiving Power " fails to carry out the provisions of the Convention in any important respect ". It is therefore in this case, and in this case alone, that the transferring Power continues to have responsibility, But what constitutes failure to carry out the provisions in any important respect, and how would the transferring Power be informed thereof ? The text supplies the answer to the second question by providing for notification by the Protecting Power, but there is no answer to the

[1] See *XVIIth International Red Cross Conference, Draft Revised or New Conventions*, p. 59.

[2] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-B, p. 273.

first question. However, Article 130 of the Convention, which is one of the provisions relating to the execution of the Convention, gives a list of " grave breaches " which is not incompatible with the notion of " any important respect " as mentioned in the present provision. According to Article 130, the following acts are considered to be grave breaches : " wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, compelling a prisoner of war to serve in the forces of the hostile Power, or wilfully depriving a prisoner of war of the rights of fair and regular trial prescribed in this Convention ". The commentary on this text will be found under the Article concerned [1], but there is no doubt that this list specifies matters on which the transferring Power should intervene in accordance with the present provision. On the other hand, we do not consider that these types of grave breaches need necessarily be committed " wilfully " in order to justify any such intervention. The transferring Power may and indeed must intervene if these acts have been committed and if the receiving Power is unable or unwilling to rectify the situation immediately.

The obligations of the receiving Power are, however, more extensive. The general conditions of internment stipulated in the Convention must be respected : quarters, food, hygiene, labour and working pay. If the receiving Power fails to carry out these provisions in any " important " respect, the responsibility of the transferring Power is again involved. The breach would have this effect, not only if it caused serious prejudice to the prisoners, but also if it amounted to systematic violation of the Convention. Differences of interpretation as between the Powers concerned will, of course, always exist ; but if it is the interpretation of the transferring Power which is more favourable to the prisoners, then it must prevail.

Lastly, reference may be had to Article 13, which states the general principle of humane treatment, in order to determine whether or not the alleged breach constitutes failure to carry out the provisions of the Convention " in any important respect ".

B. *Extent of the obligation.*—The phrase " effective measures to correct the situation " refers especially to measures of direct assistance : food supplies, the sending of teams of doctors and nurses, equipment, etc., and in our view, as an indispensable corollary of the responsibility

[1] See below, Article 130.

laid upon the transferring Power, the receiving Power is obliged to accept this offer of assistance. If these measures nevertheless prove inadequate, if the poor treatment given to prisoners is not caused merely by temporary difficulties but by ill-will on the part of the receiving Power, or if for any other reason the situation cannot be remedied, the Power which originally transferred the prisoners must request that they be returned to it. In no case may the receiving Power refuse to comply with this request, to which it must respond as rapidly as possible.

The Power which originally transferred the prisoners of war may moreover arrange for them to be transferred to a third Power which is better qualified to receive them, provided the latter is also a party to the Convention [1].

ARTICLE 13. — HUMANE TREATMENT OF PRISONERS

Prisoners of war must at all times be humanely treated. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited and will be regarded as a serious breach of the present Convention. In particular, no prisoner of war may be subjected to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical, dental or hospital treatment of the prisoner concerned and carried out in his interest.

Likewise, prisoners of war must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity.

Measures of reprisal against prisoners of war are prohibited.

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[1] Although the 1929 Convention contained no express provision to this effect, the International Committee of the Red Cross has always held the view that in case of transfer the Power which captured the prisoners retains a certain responsibility. Thus, in August 1945 it drew the attention of the United States Government to the difficult situation of German prisoners of war who had been handed over by the United States military authorities to the French authorities, because of the general shortage of foodstuffs in France. Following this intervention, the United States placed very large quantities of foodstuffs and clothing at the disposal of the International Committee of the Red Cross, and these supplies were forthwith distributed to prisoner-of-war camps in France. The text of this Article is largely based on this experience. (See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. III, pp. 110-111.)

PARAGRAPH 1. — PROHIBITION OF PHYSICAL MALTREATMENT

1. *First sentence. — Humane treatment* [1]

The requirement that protected persons must at all times be humanely treated is the basic theme of the Geneva Conventions [2]. The expression " humanely treated " is taken from the Hague Regulations and the two 1929 Geneva Conventions.

The word " treated " must be understood here in its most general sense as applying to all aspects of life. With regard to the concept of humanity, the purpose of the Convention is none other than to define the correct way to behave towards a human being ; each individual is desirous of the treatment corresponding to his status and can therefore judge how he should, in turn, treat his fellow human beings. The principal elements of humane treatment are subsequently listed in the Article.

The requirement of humane treatment and the prohibition of certain acts inconsistent with it are general and absolute in character. They are valid at all times, and apply, for example, to cases where repressive measures are legitimately imposed on a protected person, since the dictates of humanity must be respected even if measures of security or repression are being applied. The obligation remains fully valid in relation to persons in prison or interned, whether in the territory of a Party to the conflict or in occupied territory. It is in such situations, when human values appear to be in greatest peril, that the provision assumes its full importance.

2. *Second sentence. — Threats to the life or health of prisoners*

The first obligation is to protect the life and health of prisoners ; this is a fundamental obligation which stems from the right of prisoners to be treated humanely. This is already included in the general concept of humane treatment which is stated at the beginning of the Article, but the authors of the Convention decided to denounce it specifically as a serious breach ; the other " grave breaches " are listed in Article 130.

3. *Third sentence. — Mutilation and medical experiments*

The authors of the Convention wished expressly to prohibit mutilation and medical experiments which are a particularly repre-

[1] See Jean S. PICTET, *Red Cross Principles*, pp. 14-31.

[2] See First and Second Conventions, Article 12 ; Fourth Convention, Article 27.

hensible form of attack on the human person. This prohibition is also included in Article 130. The intention was to abolish for ever the criminal practices inflicted on thousands of persons during the Second World War.

The Convention, of course, refers only to experiments not justified by the medical treatment of the prisoner concerned. It does not prevent doctors from using treatment for medical reasons with the sole object of improving the patient's condition. It must be permissible to use new medicaments and methods invented by science, provided that they are used only for therapeutic purposes. The prisoners must not in any circumstances be used as " guinea-pigs " for medical or scientific experiments.

Paragraph 2. — Other prohibitions

The concept of humane treatment implies in the first place the absence of any kind of corporal punishment. But it does not only have this negative aspect. The present provision adds the notion of protection. To protect someone means to stand up for him, to give him assistance and support and also to defend or guard him from injury or danger. It is therefore a positive obligation for the Detaining Power at all times which follows from the obligation to treat prisoners humanely. The protection extends to moral values, such as the moral independence of the prisoner (protection against acts of intimidation) and his honour (protection against insults and public curiosity).

Paragraph 3. — Prohibition of reprisals

Article 2, paragraph 3, of the Geneva Convention of 1929 already forbade measures of reprisal against prisoners of war ; after the First World War, the International Committee of the Red Cross had considerable difficulty in obtaining sufficient support for the idea that reprisals on the person of prisoners of war should be prohibited. Many people considered that in the event of one of the Parties committing illicit acts in regard to prisoners in its hands, reprisals or the threat of reprisals on prisoners in the hands of the other Party constituted the most effective, if not the only means of ensuring a return

to normal conditions [1]. But this argument did not prevail over the view that it was inhuman that a defenceless man should be held responsible for acts which he had not himself committed. It must, moreover, be pointed out that quite apart from the fact that the safeguards afforded to prisoners would be endangered by the launching of systematic reprisals, the feelings which lie behind such practices are absolutely contrary to the spirit of the Geneva Conventions. It was not always easy to obtain respect for the corresponding provision of the 1929 Convention, and the efforts made by the International Committee of the Red Cross in this field during the Second World War demonstrate the great importance of this rule [2]. It forms part of the general obligation to treat prisoners humanely both by virtue of its practical importance and because of its very great moral significance.

Moreover, it need hardly be pointed out that reprisals rarely solve the initial problem. They do not lead to a re-establishment of lawful practices but involve those who apply them in a vicious circle of reprisals and counter-reprisals which brings a gradual deterioration of the law and standard of values which one wishes to protect. And even if they bring a solution for a short time, the danger is that they may engender fresh hatred which would be a factor conducive to fresh conflicts.

ARTICLE 14. — RESPECT FOR THE PERSON OF PRISONERS

Prisoners of war are entitled in all circumstances to respect for their persons and their honour.

Women shall be treated with all the regard due to their sex and shall in all cases benefit by treatment as favourable as that granted to men.

Prisoners of war shall retain the full civil capacity which they enjoyed at the time of their capture. The Detaining Power may not restrict the exercise, either within or without its own territory, of the rights such capacity confers except in so far as the captivity requires.

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[1] The Hague Agreement concluded between the British and German Governments on July 2, 1917, contained a provision in Chapter IX stating that measures of reprisal should be taken only after at least four weeks' notice of this intention had been given. The Agreement also provided for an endeavour to remove the motives for reprisals by means of direct discussion (See *Bulletin international des Sociétés de la Croix-Rouge*, 1917, p. 445).

[2] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pp. 365-372.

PARAGRAPH 1. — PERSON AND HONOUR

This provision appeared in Article 3, paragraph 1 of the 1929 Convention [1] in almost identical terms. In the French text of the 1949 Convention, however, the word " personne " was substituted for " personnalité ". This change seems to emphasize that the rule is a general one and that the term " personne " embraces both the physical and the moral aspects of the individual.

1. *Respect for the physical person of the prisoner*

Respect for physical integrity generally means that it is prohibited to kill, wound or even endanger prisoners of war. As we have seen above, Article 13 defines this obligation in a positive manner by specifying certain acts which constitute grave breaches. It should be emphasized that this protection must be enforced not only in regard to the agents of the Detaining Power, but also, should the occasion arise, in regard to fellow prisoners. Any infraction should be liable to punishment. We shall also see that Article 96, paragraph 3, expressly forbids the Detaining Power to delegate its disciplinary powers to a prisoner of war or to allow them to be exercised by a prisoner of war. The protection applies in particular to the following :

(a) any direct injury : blows, torture, cruelty, mutilation, medical or scientific experiments which are not in the interest of the prisoner (Article 13) ; the Convention refers specifically to such acts in regard to questioning (Article 17, paragraph 4), the execution of disciplinary punishments (Article 87, paragraph 3, Article 89, paragraph 3), and the execution of judicial punishments (Article 87, paragraph 3, and Article 108, paragraph 3).

What of the right of sentries to use their weapons if prisoners attempt to escape [2] ? We shall examine this question in connection with Article 42, which limits the use of weapons against prisoners of war, in particular against those who escape or attempt to escape, and with Article 121, which calls for an official enquiry in any such case.

(b) the person of the prisoner must be protected in the general living conditions to which he is subjected, which must not be harmful

[1] See below, p. 689.

[2] See Franz SCHEIDL, *Die Kriegsgefangenschaft, von den ältesten Zeiten bis zur Gegenwart*, Berlin, 1943, p. 446.

to his health. A number of articles of the Convention are devoted to the implementation of this principle in specific cases [1].

(c) Lastly, prisoners must be protected from the effects of military operations, on land and especially against air bombardment (Article 23).

2. *Respect for the moral person of the prisoner*

Respect for the person goes far beyond physical protection and must be understood as covering all the essential attributes of the human person. These include on the one hand a whole gamut of convictions, whether religious, political, intellectual, social, etc., and, on the other hand, the desire to strive to carry out these convictions. These qualities and aspirations, which are the rightful attributes of each individual, are referred to in diverse ways in the various legislative systems. Captivity restricts the blossoming of personality more than any other mode of life, but its harmful effects must not exceed the hardship imposed by captivity itself. Although the exercise of social or patrimonial rights may seem to be incompatible in practice with the status of prisoner of war, there are certain essential rights which may not be affected by that status, such as the civil capacity which is safeguarded by the present Article and the exercise of religious duties, which is ensured by Article 34. The Convention contains no express reference to freedom of opinion ; and yet this right, which is one of the fundamental elements of personality, may be threatened today because of the ideological nature of conflicts, either by those who guard the prisoners, if the Detaining Power endeavours to weaken the morale of detainees or to win them over to its cause, or by their own fellow prisoners. This problem of propaganda was the subject of a lively discussion at the Conference of Government Experts [2]. The discussion did not lead to any positive result, as it seemed too difficult to define the type of propaganda which should be prohibited. Propaganda is the dissemination of certain opinions with the object of persuading the listener to support them. It may be aimed at a variety of objectives : religious, social, economic, cultural, political etc., and may, in fact, harm the interests of the Power of

[1] Places of internment (Article 22), quarters (Article 25), food (Article 26), clothing (Article 27), climate (Article 27), hygiene (Article 29), transfer (Article 46), labour (Article 49 et seq.), disciplinary and penal provisions (Articles 97, 98 and 108).

[2] See *Report on the Work of the Conference of Government Experts*, pp. 118-119.

Origin of the prisoners concerned. Its effects are all the greater if prisoners have been weakened physically and morally by long captivity.

None of the provisions of the Convention takes account, in this regard, of the interests of the Power of Origin. One may assume, however, that the personal interest of prisoners is protected by the present provision which, by declaring the principle of respect for the person of prisoners, prohibits any propaganda likely adversely to affect it in the long run.

In this connection one may refer to Article 38, which provides that " while respecting the individual preferences of any prisoner... ", the Detaining Power must encourage the practice of intellectual, educational and recreational pursuits etc. ; the Detaining Power is, therefore not merely authorized but is urged to make intellectual and educational facilities available to prisoners, on condition that the individual preferences of each of them are respected. *A fortiori*, therefore, prisoners must not be subjected to any propaganda contrary to the spirit of the Convention. On the other hand, any propaganda which would reaffirm the rights of the individual in accordance with the Geneva Conventions is permissible.

3. *The prisoner's honour*

The sentiment of honour is one of the factors of personality. The prisoner of war must be viewed by his guard as an unhappy enemy and must be treated accordingly : administrative officials and guards alike must be considerate for the sensibilities of soldiers who have tasted defeat, and any persecution based on their misfortune is prohibited. They must be protected against libel, slander, insult and any violation of secrets of a personal nature, and they must be so protected not only *vis-à-vis* their guards, but also (although this is sometimes more difficult to achieve) *vis-à-vis* their fellow prisoners.

The problem of clothing prisoners of war is sometimes very delicate; it is understandable that they would feel repugnance at having to wear the uniform of the enemy army and they must be asked to do so only in case of absolute necessity and after the appropriate modifications have been made to such uniforms.

The honour of prisoners also requires that they should be permitted to wear their badges of rank and nationality (Article 40), that officers should be treated with the regard due to their rank and age (Article 44), that all labour of a humiliating kind should be avoided (Article 52), that any punishment should not be of a dishonourable kind and, lastly,

that in case of death there must be honourable burial (Article 120, para. 4).

It must be stressed that prisoners are entitled to such respect " in all circumstances " and this phrase is linked to those which declare the inalienability of the rights of prisoners of war.

PARAGRAPH 2. — THE SPECIAL POSITION OF WOMEN

Article 3, paragraph 1, of the 1929 Convention already stated that " women shall be treated with all consideration due to their sex ". Considering that much prejudice still remained which sometimes placed women on an inferior footing, the Conference of Government Experts was of the opinion that provision should be made for women to receive treatment at least equal to that accorded to male prisoners of war [1].

1. *Treatment as favourable as that granted to men*

In order clearly to interpret Article 14, paragraph 2, one should reverse the chronological and grammatical order of the text; the treatment to be accorded to women prisoners is not based on the rather vague idea of " regard " but on treatment equivalent to that accorded to male prisoners.

There is no doubt as to the principle: whatever the customary practices of the Detaining Power and the status accorded to its nationals, women prisoners must receive treatment at least as favourable as that granted to men.

This principle is, however, weakened to some extent by the existence of exceptions of two kinds: the first category of exceptions stems from the Convention itself which, in certain articles, makes provision for special treatment for women. The second category arises from the present paragraph and from the idea of " regard " which it contains.

The Convention makes a specific reservation concerning the situation of women in a number of cases [2], and these express reservations call for some comment.

Some of them make provision for special treatment for persons of the weaker sex (separate dormitories, separate places of detention);

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[1] See *Report on the Work of the Conference of Government Experts*, p. 119.

[2] Articles 16; 25, para. 4; 29, para. 2; 49, para. 1; 88, para. 2; 97, para. 4; 108, para. 2.

others merely refer to the fact that women should in general receive more favourable treatment, without specifying what it should consist of. Does this privilege cover all the provisions of the Convention or, on the contrary, does it only refer to those provisions which make express reference to it ? In our view, this reference tends to strengthen the scope of the principle rather than to limit it. The Convention also contains a series of provisions—relating, for instance, to insults and public curiosity (Article 13, para. 2), questioning (Article 17), food (Article 26), clothing (Article 27), intellectual, educational and recreational pursuits, sports and games (Article 38), conditions for transfer (Article 46 ff.), prisoners' representatives (Article 79)—to which the principle is applicable, although it has not been explicitly mentioned. This is merely due to the fact that there might seem to be a less pressing need to comply with the requirement.

2. *The regard due to women*

It is difficult to give any general definition of the " regard " due to women. Certain points should, however, be borne in mind, whatever the status accorded to women either in the country of detention or in the country of origin ; these points are the following :

(a) weakness ;

(b) honour and modesty ;

(c) pregnancy and child-birth.

These three considerations must be taken into account in the application of provisions of the Convention.

A. *Weakness.* — This will have a bearing on working conditions (Art. 49 ff.) and possibly on food.

B. *Honour and modesty.*—The main intention is to defend women prisoners against rape, forced prstitution and any form of indecent assault. Provision is therefore made for men and women to be separated in Articles 25 (dormitories), 29 (sanitary installations), 97 and 108 (execution of punishment). The honour and modesty of women prisoner are also protected by Articles 13, paragraph 2 (protection against insults and public curiosity), 17 (questioning), and if need be, where the clothing available is seriously inadequate, by Article 27.

C. *Pregnancy and child-birth.*—If there are mothers with infants among the prisoners, they should be granted early repatriation.

Particular " regard " is required in the case of women prisoners who are pregnant when captured or become pregnant in captivity despite the precautions taken, not only for the birth, but also for the care of the child [1]. The best solution would be that which was suggested at the Conference of Government Experts : women who have given birth should be repatriated with their child, while pregnant women should either enjoy special treatment or, if their state of health permits, should also be repatriated.

PARAGRAPH 3. — CIVIL CAPACITY OF PRISONERS

1. *Definition and general principles*

The civil capacity of a person involves both the existence and the exercise of civil rights. The exercise of these rights is generally subject to the person concerned having attained majority and not being under an interdict, on the one hand, and being capable of discernment, on the other.

The principle of the retention of civil capacity by prisoners of war, which was already recognized in Article 3 of the 1929 Convention, emphasizes that war captivity bears no resemblance to detention under common law and that, unlike the latter, it cannot result in any *capitis deminutio*. War captivity impairs neither the honour nor the dignity of its victims.

This recognition is of great importance. In ancient times and in the Middle Ages, prisoners of war were generally put into slavery and it was not until the eighteenth century that there was any change in the status of prisoners of war and, even so, their juridical personality was not yet recognized.

The 1863 Code of rules for armies in the field of the United States of America expressly referred to the property rights of prisoners, in Article 72 [2].

Article 4 of the Regulations concerning the Laws and Customs of War on Land, annexed to the Fourth Convention of The Hague of 1907, contains a similar provision ; the Oxford Manual is even more explicit, since it states that captivity is " a temporary detention

[1] This problem is distinct from that of the education of adolescent prisoners, which was a particularly delicate question during the Second World War, when certain Powers had enlisted a large number of minors in their armies. Both problems may, however, be considered under Article 38.

[2] See *Revue internationale de la Croix-Rouge*, August 1953, p. 636.

only, entirely without penal character " (Article 61). But none of these texts affirmed the full and complete capacity of the prisoner.

2. *Determination of a prisoner's civil capacity*

The 1949 Diplomatic Conference considered it necessary to clarify the 1929 text establishing the civil capacity of prisoners of war. It was recalled that this capacity is always determined by law, whether the legislation of the country of origin of the internee or that of his country of domicile. But the prisoner will never be considered as " resident " in the country of detention solely by virtue of the fact that he is in captivity. The legislation of his country of origin will, therefore, be applicable in most cases as that is also the country of domicile of the majority of prisoners. There are other possibilities, however, and for that reason the Stockholm draft, which only referred to the law of the country of origin, was amended by the Geneva Conference [1], so as to refer instead to the " civil capacity which they enjoyed at the time of their capture ". This wording is rather ambiguous and might be interpreted as meaning that the time of capture determines the scope of the provision. Thus, a prisoner who was a minor at the time of capture could never attain full civil capacity, even if during captivity he reached majority. This opinion would be contrary to the spirit of the principle stated in the Article, and it must be rejected [2]. It is reasonable to assume that the purpose of the expression is merely to determine the legislation applicable. The civil capacity of the prisoner of war will therefore be determined by the legislation which governed his capacity at the time of capture.

3. *The* de facto *capacity of the prisoner of war*

Since the prisoner retains his full civil capacity, he must be able to exercise his rights both in his country of origin or domicile and in the country of detention.

A. *The exercise of the prisoner's capacity in his country of origin or domicile.*—The prisoner's interests in his country of origin or domicile may be safeguarded through appropriate institutions, acting in place of the absent person, or by the prisoner himself, acting through a

[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 248-249.

[2] In this connection see *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 400.

proxy or by correspondence. The first solution is not applicable to matters of direct personal concern : marriage, divorce, judicial separation, recognition of children and exercise of paternal authority. All these judicial actions may be carried out by proxy on condition that both the Power of Origin and the Detaining Power adopt appropriate procedures and grant the necessary facilities.

The consequent obligation for the Detaining Power (subject to the requirements of captivity) is confirmed by Article 77, which requires that the Detaining Power shall authorize and facilitate the transmission of necessary correspondence, the preparation and transmission of powers of attorney, transmission of instruments, papers or documents, and shall take necessary measures for the authentication of prisoners' signatures and allow them to consult a lawyer. During the Second World War, legal services were established in some prisoner-of-war camps, under the direction of the prisoners' representatives [1].

One further comment with regard to wills. Article 120 of the Convention provides that wills shall be drawn up so as to satisfy the conditions of validity required by the legislation of the country of origin of prisoners of war. The legislation of most countries makes provision for a simplified procedure in the case of military personnel. If, however, the legislation of the country of origin required an authenticated document, the Detaining Power would have to take the necessary measures to enable such an instrument to be prepared. In that case, the Protecting Powers could act as consular authorities.

Article 14 also implies, in our opinion, that the Power of Origin should establish a procedure which would enable prisoners to execute legal instruments during their absence with all the necessary guarantees [2]. But in the case of prisoners, this must merely safeguard their status and would not enable them to maintain or undertake any commercial activity, for instance.

In this connection, we should refer to the institution of marriage without both parties being present. During the last war this procedure was permitted, notably by Germany, Belgium, France and Italy, which passed special legislation to permit prisoners of war to marry by proxy in their country of origin. On the other hand, most

[1] In this connection, see a very interesting work by Ferdinand CHARON, *De la condition du prisonnier de guerre français en Allemagne au regard du droit privé*, thesis presented to the Faculty of Law of Paris, 1946.

[2] In the majority of cases, this procedure could be added to the existing legislation (see CHARON, *op. cit.*). See, in Swiss law, the regulations for mandate and management or any other contract, as well as the general regulations concerning representation (Art. 32 ff. of the Swiss *Code des Obligations*).

countries placed limitations on the right of prisoners of war to enter into marriage with nationals of the Detaining Power or with foreigners resident in the territory of that Power; this question, however, is related to the exercise of civil capacity on the territory of the Detaining Power.

B. *The exercise of civil capacity by a prisoner of war on the territory of the Detaining Power.*—Although, in principle, a prisoner of war does not come into contact with nationals of the Detaining Power, experience has shown that in practice such contacts do occur, particularly if a prisoner of war is working and leaves the camp to mingle with the civilian population.

It would seem very difficult, however, to recognize any extensive right of a prisoner of war to exercise civil capacity in the country of detention.

As far as relations with his fellow prisoners or with women prisoners of war are concerned, the prisoner naturally enjoys his full capacity in the field of family law, with the reservation, however, that in principle family life is incompatible with the system of captivity. The civil capacity of prisoners of war is not restricted as far as legal obligations are concerned, but the requirements for validity of legal instruments must be able to be met.

A similar distinction will be made regarding relations between a prisoner of war and the civilian population and there is no doubt that, as far as family law is concerned, his personal responsibility is involved [1]. As regards legal obligations, the question is more difficult. Whatever the degree of independence granted to the prisoner, opportunities for him to participate in the commercial and economic life of the country of detention will probably be very limited because he is an enemy and a prisoner. It seems doubtful, moreover, that any legal action resulting from a prisoner's participation in the life of the civilian population could be considered under private law; such action should more appropriately be considered as coming within the scope of public law [2].

Reference must also be made to responsibility for illicit acts. We do not refer here to penal matters, which the Convention explicitly makes subject to the laws of the Detaining Power (Article 82), but to offences of which a prisoner of war may be the victim. In the event

[1] Cf. CHARON, *op. cit.*, pp. 244-245.

[2] This is why the responsibility of the Power on which a prisoner of war depends is involved when there are no means of redress, either in regard to private persons or to the Detaining Power, e.g., in the case of occupational accidents during captivity. See Article 54, para. 2, below.

that prisoners of war suffer any loss or damage to their personal property, however slight, they must be able to claim any rights due to them, through the offices of the military authority in whose hands they are, unless this authority expressly authorizes them to defend their own interests themselves.

Responsibility for injuries or offences may also be involved in the case of occupational accidents. Article 27, paragraph 4, of the 1929 Convention required belligerents " to admit prisoners of war who are victims of accidents at work to the benefit of provisions applicable to workmen of the same category under the legislation of the Detaining Power ". The International Committee of the Red Cross pointed out that the effectiveness of this provision was restricted if the consequences of the accident continued after the repatriation of the prisoner of war ; it was therefore deleted and was replaced by Article 54, paragraph 2, and Article 68 of the 1949 Convention, which provide for compensation by the Power of Origin and require the Detaining Power to provide the prisoner of war concerned with a medical certificate enabling him, if need be, to submit a claim.

ARTICLE 15. — MAINTENANCE OF PRISONERS

The Power detaining prisoners of war shall be bround to provide free of charge for their maintenance and for the medical attention required by their state of health.

The requirement of principle contained in this Article already existed in the 1929 Convention (Article 4) [1]. The phrase " free of charge ", which strengthens the present text, was implicit in the 1929 text.

Maintenance must be understood to mean the supply of what is necessary for the life and continuing physical health of prisoners of war. These various requirements are confirmed by special articles regarding quarters (Article 25), food (Article 26), clothing (Article 28), medical attention (Article 30), and possibly, although the link is less direct, working pay (Articles 54 and 62) and advances of pay (Articles 60 and 61). The funds made available to prisoners of war in the form of working pay or advances of pay enable them to purchase certain items which also contribute to their maintenance. We have in mind

[1] Also in other legal texts of Conventions or of doctrine ; *Lieber Laws*, Art. 76 ; *Brussels Declaration*, Art. 27 ; *Oxford Manual*, Art. 69 ; *The Hague Regulations*, Art. 7.

particularly material for correspondence. Such items are probably included among the " articles in daily use " which must be available in camp canteens, in accordance with Article 28, paragraph 1. During the Second World War, most Detaining Powers provided writing-paper free of charge, particularly in the case of special forms, and it is to be hoped that this practice will continue.

One should also mention intellectual, educational and recreational pursuits, sports and games for prisoners of war. In accordance with Article 38, the Detaining Power must encourage these activities, and must therefore also provide prisoners with the necessary premises and equipment.

Although the principle has never been questioned, in practice these obligations were not always respected during the Second World War, particularly as regards clothing and medical attention [1].

This responsibility is an absolute one ; it is in no way diminished by any relief supplies which prisoners may receive from their country of origin or from humanitarian organizations. In fact, maintenance is well compensated, since prisoners of war may be required to work, and their working pay represents only a part of the value of the work done by them.

Can a Power legitimately plead that it is impossible for it to provide prisoners with the minimum maintenance required by the Convention?

In our view, the reply to this question must be in the negative. If the Detaining Power is unable or unwilling to fulfil its obligations in respect of maintenance, it should no longer detain any prisoners of war. The treatment accorded to the armed forces of the Detaining Power is not a determining factor, since in general the principle of assimilation comes second to standards which are expressly laid down.

Does this mean that in such a case the Detaining Power would be obliged to hand over the prisoners of war concerned to the Power on which they depend ? This would certainly be the ideal solution, if the end of hostilities was in sight ; otherwise, internment in a neutral country would have to be considered, pursuant to Article 111.

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[1] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pp. 258-267. See also Maurice BRETONNIÈRE, *L'application de la Convention de Genève aux prisonniers français en Allemagne durant la seconde guerre mondiale* (thesis in typewritten form), Paris 1949, pp. 60-61. At the Conference of Government Experts, some delegations suggested that a detailed statement of obligations in respect of " maintenance " should be included in this Article, but this proposal was rejected in order to preserve the general nature of the principle stated in the Article.

See *Report on the Work of the Conference of Government Experts*, p. 120.

ARTICLE 16. — EQUALITY OF TREATMENT

Taking into consideration the provisions of the present Convention relating to rank and sex, and subject to any privileged treatment which may be accorded to them by reason of their state of health, age or professional qualifications, all prisoners of war shall be treated alike by the Detaining Power, without any adverse distinction based on race, nationality, religious belief or political opinions, or any other distinction founded on similar criteria.

This Article contains a statement of the principle that all prisoners of war are to receive the same standard of treatment, with a further clause of non-discrimination, but subject to the special provisions expressly laid down in the Convention. The prohibition of discrimination is not in fact incompatible with certain differentiation in treatment for which specific provision is made in various Articles of the Convention. Such differentiation may be based on rank (Articles 39, paras. 2 and 3 ; 40, 43, 44, 45, 49, paras. 2 and 3 ; 60, 89, para. 2 ; 97, para. 3 ; 98, para. 2), sex (Articles 14, para. 2 ; 25, para. 4 ; 29, para. 2 ; 49, para. 1 ; 88, paras. 2 and 3 ; 97, para. 4 ; 108, para. 2), aptitude for work (Articles 49, 53, 55, 62), age (Articles 49, para. 1 ; 45) or state of health (Articles 30, 49, para. 1 ; 55, para. 2 ; 92, para. 3 ; 98, para. 4 ; 108, para. 3 ; 109, 110, 114). The wording excludes differentiation only when it is of an adverse nature. Absolute equality might easily become injustice if applied without regard to considerations such as state of health, age, sex, rank or professional aptitude. The principle of equality in the Convention must therefore be understood in this way which admits such differentiation [1].

It is clear from the wording of the provision that the list of various criteria which it contains is only by way of example ; one might add many more criteria—birth, financial circumstances, language, colour, social status, etc.

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[1] See Jean S. PICTET : *Red Cross Principles*, pp. 32-40.

PART III

CAPTIVITY

SECTION I

BEGINNING OF CAPTIVITY

ARTICLE 17. — QUESTIONING OF PRISONERS

Every prisoner of war, when questioned on the subject, is bound to give only his surname, first names and rank, date of birth, and army, regimental, personal or serial number, or failing this, equivalent information.

If he wilfully infringes this rule he may render himself liable to a restriction of the privileges accorded to his rank or status.

Each Party to a conflict is required to furnish the persons under its jurisdiction who are liable to become prisoners of war, with an identity card showing the owner's surname, first names, rank, army, regimental, personal or serial number or equivalent information, and date of birth. The identity card may, furthermore, bear the signature or the fingerprints, or both, of the owner, and may bear, as well, any other information the Party to the conflict may wish to add concerning persons belonging to its armed forces. As far as possible the card shall measure 6.5 × 10 cm. and shall be issued in duplicate. The identity card shall be shown by the prisoner of war upon demand, but may in no case be taken away from him.

No physical or mental torture, nor any other form of coercion may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to any unpleasant or disadvantageous treatment of any kind.

Prisoners of war who, owing to their physical or mental condition, are unable to state their identity shall be handed over to the medical service.

The identity of such prisoners shall be established by all possible means, subject to the provisions of the preceding paragraph.

The questioning of prisoners of war shall be carried out in a language which they understand.

General Remarks

The first concern and, indeed, the first duty of a belligerent Power which has prisoners of war in its hands is to establish their identity. It must immediately determine the rank and status of those whom it has captured, in order to accord them the treatment to which they are entitled.

It is therefore in the interest of the person concerned to establish his identity and he must give the Power which has captured him sufficient information to establish beyond any doubt his status as a member of the enemy armed forces. But this minimum amount of information does not meet every requirement. The Detaining Power may very naturally be tempted to obtain additional information from the prisoner, both in regard to himself and concerning the circumstances which preceded his capture, for this is obviously of interest from the military point of view. The prisoner may, and indeed must, refrain from giving military information to the Detaining Power ; he must therefore be protected against any inquisitorial practices on the part of that Power. Furthermore, he will wish to send to his family and friends as much information as possible concerning his situation, so that he may receive news and parcels ; this information can obviously be sent only through the good offices of the Detaining Power. There are, however, cases where, if a prisoner gives information about members of his family, the latter may suffer embarrassment or difficulty.

The Power in whose armed forces the prisoner was serving prior to his capture must ascertain the fate of those who were enlisted under its colours and must also see to it that the prisoner's next of kin are notified.

It was therefore necessary to make provision in the Convention for all these requirements which may conflict in some respects. The system finally adopted may be summarized as follows :

A. *Information given by the prisoner to the Detaining Power* (Article 17, paragraphs 1 and 3).

Time : Immediately following capture ; this is not expressly stated, but the spirit of the Convention requires that prisoners should be identified within a very short time ;

Form : Questioning or identity card.

The prisoner is bound to give his surname, first names, rank, date of birth and army, regimental, personal or serial number, or failing this, equivalent information. He must upon demand show his identity card which must contain, as a minimum requirement, this information.

B. *Information given by the prisoner to his family and the Central Prisoners of War Agency* (Article 70, Annex IV).

Time : Within one week after capture ;

Form : Capture card (Annex IV).

This provision is binding on the Detaining Power but the prisoner may refrain from giving certain information. The capture card provides space for indicating the surname, first names, father's first name, address of family, date and place of birth, rank, army, regimental, personal or serial number, state of health, and name and address of camp.

C. *Information given by the Detaining Power to the national Information Bureau for forwarding to the Powers concerned and to the Central Prisoners of War Agency* (Article 122).

Time : As soon as possible after capture ;

Form : At the discretion of the national Bureau (individual record), but all written communications by the Bureau must be authenticated by a signature or seal.

This provision is binding on the Detaining Power, subject to any information of a personal nature which prisoners may refuse to give.

The information comprises : surname, first names, father's first name, mother's maiden name, name and address of the person to be notified, rank, army, regimental, personal or serial number, name of camp and postal address—information regarding transfers, releases, repatriations, escapes, admissions to hospitals, deaths—information regarding the state of health of prisoners.

PARAGRAPH 1. — DECLARATION BY THE PRISONER

As we have seen, a prisoner of war, when questioned on the subject, is bound to give only his name, first names and rank, date of birth and

army, regimental, personal or serial number, or failing this, equivalent information. The present text is therefore an improvement as compared with the corresponding text in the 1929 Convention, which allowed a prisoner to give only his regimental number (Article 5, paragraph 1). The Central Agency's extensive experience showed that that information alone was quite inadequate for the identification of prisoners of war and for the work of the Information Bureaux. In view of the risk of error involved in transmitting names and figures, it is essential to have several indications simultaneously, in order to make a cross-check. In practice, moreover, prisoners of war, when questioned, very rarely availed themselves of the possibility of giving only their regimental number [1]. The Conference of Government Experts considered that it would be advisable to revert to the text of the Hague Regulations (Article 9), with the addition of the requirement that the date of birth should be given. At the 1949 Diplomatic Conference, however, this solution was not adopted without difficulty; some delegates pointed out that information concerning the rank and age of prisoners might be of interest from the military point of view [2]. It should, however, be noted that if the age and rank of prisoners are not known, the Detaining Power will be unable to take them into account as required by certain Articles of the Convention (Articles 16, 44 and 45). Other information which is of great value for purposes of identification, such as nationality or country of origin, may be withheld because of possible consequences, e.g. when the country concerned is occupied by the armed forces of the Detaining Power. This is also true in the case of information concerning the military unit or regiment, which may be of military interest [3].

PARAGRAPH 2. — SANCTION

Although a prisoner of war may not be forced to give any information over and above that specified in paragraph 1, he is bound to give those indications and his statement must be a true one.

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[1] See BRETONNIÈRE : *op. cit.*, pp. 67-78.

[2] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 250.

[3] The United States authorities gave strict instructions to members of their armed forces that, in case of capture by the enemy, they were to give only the information specified in Article 17. *(The U.S. Fighting Man's Code*, rule IV, Department of Defense, Office of the Armed Forces, Information and Education, November 1955). These very strict instructions were given following the unfortunate experiences of American prisoners of war during the Korean conflict.

For this reason, the Convention does not hesitate to provide a santion in case of wilful infringement of this rule. When prisoners are questioned, the Detaining Power should therefore draw their attention to the provisions contained in this Article, so that they may be fully aware of their rights and obligations. It is perhaps regrettable that no express provision to that effect was included in the Convention, since this situation is not covered by the general requirement in Article 41 that the text of the Convention must be posted in every camp. Prisoners of war are in fact usually questioned very shortly after capture, sometimes even on the battlefield and amid some confusion. The fifth paragraph of the Article makes special provision to cover incorrect statements made by prisoners owing to their physical or mental condition. Under the Convention, a prisoner who wilfully makes an inaccurate statement or who refuses to give the particulars specified in the first paragraph may be liable to " a restriction of the privileges accorded to his rank or status ". This wording is not entirely new; the Brussels Declaration (Article 29), the Oxford Manual (Article 65), the Hague Regulations (Article 9) and the 1929 Convention (Article 5, paragraph 2) already contained a similar rule, with the slight difference that the word " category " was used instead of " rank or status ". The Conference of Government Experts considered, however, that the term " category " did not make sufficiently clear the distinction between officers, non-commissioned officers and men. The word " status " is intended to cover the situation of certain members of the armed forces, such as war correspondents, who without holding any rank, yet have the status of an officer [1]. It must be emphasized, however, that for the prisoners concerned this provision may entail only a " restriction " of privileges and in no case should it involve loss of all or part of the other benefits accruing under the Convention [2]. The only advantages which may be withdrawn are therefore those contained in the provisions concerning special privileges to be accorded to officers, non-commissioned officers or persons with similar status. Those provisions are the following :

Article 16 : General clause referring to privileged treatment according to rank and age ;

[1] See *Report on the Work of the Conference of Government Experts*, p. 123.

[2] The draft text approved by the Conference of Government Experts is quite explicit in this regard :

" Should the prisoner of war deliberately infringe this rule, he may be liable to restriction of the privileges granted to prisoners of war of his rank or status, *over and beyond the rights conferred by the Convention on prisoners of war in general* ". (*Report on the Work of the Conference of Government Experts*, p. 123.) The last phrase was deleted in order to simplify the text.

Article 39, paragraph 3 :	Special provisions for saluting in the case of officers ;
Article 40 :	Wearing of badges of rank ;
Article 44 :	Special clause regarding treatment of officers ;
Article 45 :	Special clause regarding treatment of other prisoners of war according to rank and age ;
Article 49, paragraph 1 :	General conditions concerning labour : age reservation ;
Article 49, paragraph 2 :	Exemption from work for non-commissioned officers ;
Article 49, paragraph 3 :	Exemption from work for officers ;
Article 60 :	Advances of pay ;
Article 79, paragraph 2 :	Appointment of prisoners' representative in camps for officers and in mixed camps ;
Article 79, paragraph 3 :	Appointment of officers to administrative posts in labour camps ;
Article 87, paragraph 4 :	Requirement that the Detaining Power may not deprive a prisoner of war of his rank or prevent him from wearing his badges ;
Article 97, paragraph 3 :	Provision of quarters separate from those of non-commissioned officers and men for officers undergoing punishment ;
Article 104, paragraph 2 :	Notification of proceedings against a prisoner of war ;
Article 122, paragraph 4 :	Information transmitted by the Information Bureau.

The sanction automatically applies to prisoners who conceal their rank, since in such a case the Detaining Power will necessarily and in good faith consider them as having a status inferior to that to which they would actually be entitled. If the captor subsequently discovers the true identity of prisoners of war who have fallen into his hands, he is in no way bound to accord them the corresponding treatment [1]. The Convention, however, gives the captor full latitude in this matter.

[1] For an example during the Second World War, see BRETONNIÈRE : *op. cit.*, pp. 67-68.

If, on the contrary, during questioning a prisoner claims a rank superior to his actual status and the Detaining Power subsequently finds this out, the prisoner may be deprived throughout his captivity, not only of the privileges which had until then been accorded to him, but also of all the privileges to which his true rank would entitle him.

PARAGRAPH 3. — IDENTITY CARDS

At the Conference of Government Experts, one delegation recommended that the identification of prisoners of war should be based on an identity card of a standard pattern for all members of the armed forces of a given country, which every combatant should carry and hand to the Detaining Power on capture in order to speed up identification formalities. It was objected tnat such cards might be lost or exchanged and that they could in no way replace verbal information furnished by prisoners of war. The proposal was therefore rejected [1].

1. *First sentence. — Issue of an identity card. — Obligation for belligerent Powers*

This requirement is mandatory and refers to all the categories of persons mentioned in Article 4, regardless of their nationality. The provision is applicable to all persons under the jurisdiction of a Party to the conflict who are liable to become prisoners of war. It should, however, be noted that this requirement could not be complied with in the event of a mass levy.

The fact that such identity cards must be issued at the outbreak of hostilities implies that the States parties to the Convention must take the necessary measures in good time [2]. The information to be shown on the card is exactly the same as that specified in the first paragraph of the Article.

2. *Second sentence. — Other information*

As an optional measure, the Convention also provides that the card may bear the signature and finger-prints of the owner, as well as " any other information the Party to the conflict may wish to add... "

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[1] See *Report on the Work of the Conference of Government Experts*, p. 122.

[2] Certain Governments are already preparing these identity cards. See *Revue internationale de la Croix-Rouge*, September 1953, pp. 691-694 ; see also *Information Note No. 4*, May 1954, pp. 14-15.

It would also be desirable to indicate the religious denomination of the owner, in order to enable the appropriate rites to be performed in case of death. Another important addition would be the owner's blood group. In order to preclude any exchange of cards, the photograph of the holder might also be on the card.

4. *Third sentence. — Size and number of copies*

As far as possible the card should be of standard size (6.5 × 10 cm.)[1]; this is desirable for practical reasons, particularly for filing in card indexes. The duplicate copy will be filed by the Power which issued the card and will assist the work of the Information Bureaux and the Central Prisoners of War Agency.

4. *Fourth sentence. — Showing of the card*

In accordance with this provision, the prisoner of war must upon demand show the identity card of which he is the regular holder to the military authorities of the Detaining Power. This requirement is unconditional, and is therefore unrelated to the questioning referred to in the first paragraph. A prisoner of war may not cite the questioning as grounds for refusing to show his identity card.

Furthermore, the card constitutes proof, as uniform does not always do—especially in case of attempted escape—that its owner is a member of regular armed forces and is entitled to the treatment laid down by the present Convention.

The identity card affords a constant guarantee to the prisoner only if he carries it all the time [2]. It frequently happened during the Second World War that the belligerents took away all the identity documents of prisoners of war, and numerous difficulties ensued. As we shall see in considering Article 18, one cannot prohibit the Detaining Power from taking away the military documents carried by prisoners, as such documents may contain military information. The identity card, on the other hand, contains no military information ;

[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 250-251.

[2] A prisoner may lose his card, in which case he would have a valid excuse. Moreover, Article 5 provides that persons " shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal ". Partisans will not normally carry identity cards, but this fact cannot deprive them of the right to be treated as prisoners of war, provided they fulfil the conditions specified in Article 4. This applies also to those who have taken up arms as a result of a mass levy.

it serves only to establish the prisoner's identity and must be handed back to him immediately, in accordance with the present provision.

The card to which the present Article refers is distinct from that mentioned in Article 4, paragraph 4; the latter is for issue to persons who accompany the armed forces without actually being members thereof, and a model card is shown in Annex IV.

PARAGRAPH 4. — PROHIBITION OF COERCION

During the Second World War, certain categories of prisoners were placed in special camps, known as " interrogation camps " before being sent to a normal prisoner-of-war camp. In order to try to secure information, great hardship was inflicted on them. Such camps were outside the control of the Protecting Powers and the delegates of the International Committee of the Red Cross, which in most cases had no knowledge of their existence. These practices were therefore in flagrant violation of Article 5, paragraph 3, of the 1929 Convention.

The authors of the new Convention were not content to confirm the 1929 text : they made it more categorical by prohibiting not only " coercion " but also " physical or mental torture ". The Convention also broadened the scope of the prohibition. During the Second World War, certain Detaining Powers succeeded, by coercion, in obtaining information from prisoners of war about their personal circumstances, or that of their relatives [1]. The 1929 text, which stated that " No pressure shall be exerted on prisoners to obtain information regarding the situation in their armed forces or their country " was replaced by an absolutely general prohibition in regard to " information of any kind whatever ".

The Detaining Power may not therefore exert any pressure on prisoners, and this prohibition even refers to the information specified in the first paragraph of the Article. The holding of prisoners *incommunicado*, which was practised by certain Detaining Powers in " interrogation camps " during the last war, is also implicitly forbidden by this paragraph, but even more so by Article 126.

Be this as it may, a State which has captured prisoners of war will always try to obtain military information from them [1]. Such attempts

[1] See *Report on the Work of the Conference of Government Experts*, pp. 123-124.

[2] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 251.

are not forbidden ; the present paragraph covers only the methods to which it expressly refers [1].

PARAGRAPH 5. — PRISONERS WHO ARE UNABLE TO STATE THEIR IDENTITY

The 1929 Convention also provided, in Article 5, paragraph 4, that a prisoner who, by reason of his physical or mental condition, is incapable of stating his identity must be handed over to the Medical Service ; no difficulties seem to have arisen from the application of this provision during the Second World War [2]. The Conference of Government Experts nevertheless recommended the addition of a clause requiring the Detaining Power to endeavour to establish identity in such cases " by all possible means, subject to the provisions of the preceding paragraph ". The delegations at the Conference had in mind particularly the finger-print system, but this is only useful provided finger-prints have been registered previously by the prisoner's Power of Origin. Recourse may also be had to other methods, such as the transmission of photographs.

PARAGRAPH 6. — LANGUAGE USED FOR QUESTIONING

The questioning of prisoners of war should obviously be carried out in " a language which they understand ", and the authors of the 1929 Convention did not deem it necessary to include this clarification. It will be noted, however, that, provided the prisoner can understand the questions put to him, the questioning need not necessarily be carried out in his mother tongue.

ARTICLE 18. — PROPERTY OF PRISONERS

All effects and articles of personal use, except arms, horses, military equipment and military documents, shall remain in the possession of prisoners of war, likewise their metal helmets and gas masks and like articles issued for personal protection. Effects and articles used for their

[1] See also below, p. 627.

[2] See BRETONNIÈRE, *op. cit.*, p. 70.

clothing or feeding shall likewise remain in their possession, even if such effects and articles belong to their regulation military equipment.

At no time should prisoners of war be without identity documents. The Detaining Power shall supply such documents to prisoners of war who possess none.

Badges of rank and nationality, decorations and articles having above all a personal or sentimental value may not be taken from prisoners of war.

Sums of money carried by prisoners of war may not be taken away from them except by order of an officer, and after the amount and particulars of the owner have been recorded in a special register and an itemized receipt has been given, legibly inscribed with the name, rank and unit of the person issuing the said receipt. Sums in the currency of the Detaining Power, or which are changed into such currency at the prisoner's request, shall be placed to the credit of the prisoner's account as provided in Article 64.

The Detaining Power may withdraw articles of value from prisoners of war only for reasons of security; when such articles are withdrawn, the procedure laid down for sums of money impounded shall apply.

Such objects, likewise the sums taken away in any currency other than that of the Detaining Power, and the conversion of which has not been asked for by the owners, shall be kept in the custody of the Detaining Power and shall be returned in their initial shape to prisoners of war at the end of their captivity.

This Article reaffirms and strengthens a principle of the law of nations : the right to booty is limited to property of the enemy State (to the exclusion of all personal belongings of a prisoner of war).

This principle was recognized only with some difficulty [1]. For humanitarian reasons, the 1929 Convention extended the concept of a prisoner's personal belongings to cover, with certain specified exceptions, articles which are in fact the property of the State but are in personal use by the prisoner. The first paragraph of the present Article confirms this extension [2].

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[1] It was finally recognized by the *Lieber Laws* (Article 72), the *Brussels Declaration* (Article 23, para. 5), the *Oxford Manual* (Article 64) and the *Hague Regulations* (Article 4, para. 3).

[2] See SCHEIDL, *op. cit.*, pp. 301-303. In this author's opinion, the attitude of the Detaining Power should be determined merely by the question of interest : the captor State should exercise the right to booty only if it would be more to its advantage to confiscate articles than it would be to the advantage of the prisoner to leave those same articles in his possession.

The right of the captor State to take booty must not be confused with its right to impound certain belongings of prisoners of war for reasons of security. If the latter right is exercised, a receipt must be given and the articles concerned must be returned to their owners at the end of hostilities.

During the Second World War, there seem to have been frequent violations of the provisions of the 1929 Convention in regard to the right to take booty, or at least those provisions seem to have been interpreted in a more or less liberal manner according to circumstances [1]. That is why they have been drafted more explicitly in the new Article.

PARAGRAPH 1. — ARTICLES OF PERSONAL USE OF PRISONERS OF WAR

This paragraph states a rule, with certain exceptions to that rule.

Articles of personal use, articles used for the clothing or feeding of prisoners of war, and certain articles issued for personal protection, including metal helmets and gas masks, must remain in their possession. These articles may not be confiscated, regardless whether they are the personal property of prisoners or whether they form part of their regulation military equipment.

On the other hand, arms, horses, military equipment other than that issued for personal protection, and military documents are subject to confiscation, regardless whether or not they are the personal property of the prisoner [2].

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[1] See BRETONNIERE, *op. cit.*, pp. 71-74.

[2] As an indication, these provisions may be summarized as follows :

A. *Articles not subject to the right to take booty*

1. *All articles of clothing :* underwear, all garments and parts thereof, including boots, leggings, belts, gloves, coats and raincoats of all kinds. Pullovers have sometimes been confiscated, the reason given being that they would make escape easier, but this is a flagrant violation of the present provision. Bags and canteens used for storing such clothing and articles are also exempt from confiscation (see *Report on the Work of the Conference of Government Experts*, pp. 124-125).

2. *Other personal effects* : toilet requisites (except open-blade razors, which were confiscated by some Detaining Powers during the Second World War, on the grounds that they could be used as weapons), watches, wallets and notecases (subject to the provisions of paragraph 4), keys, prayer-books, writing-paper, pencils, pens, pocket torches, spectacles, etc. For reasons of security, however, cameras may be confiscated.

The numerous abuses of the right to take booty which occurred during the Second World War were mainly due to the fact that confiscation did not always take place with all desirable safeguards, i.e. in the presence of responsible officers with all the necessary instructions. Reference should be made here to the first paragraph of Article 12, which states that prisoners of war " are in the hands of the enemy Power, but not of the individuals or military units who have captured them ". The right to booty is a right of the State, not of the individual. The Detaining Power is therefore under an obligation to regulate the exercise of that right in accordance with the Conventions in force.

PARAGRAPH 2. — IDENTITY DOCUMENTS

This provision, which is new, was introduced in the light of certain regrettable occurrences during the Second World War, when paybooks or army-books were sometimes taken away from prisoners on the grounds that they constituted " military papers " and were therefore

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3. *Articles used for personal protection*: the Convention makes specific mention of metal helmets and gas masks. To these should be added special clothing, tent canvas, field-dressing kits, and life-belts if they may still be of use ; if that is not the case, these articles may be confiscated.

4. *Articles used for feeding :* pocket knives, eating utensils, mess-tins, water-bottles, oil and solid alcohol stoves and, obviously, foodstuffs and their containers.

B. *Articles subject to the right to take booty*

1. *Arms :* arms of any kind, and of course ammunition and accessory equipment for such arms.

2. *Horses :* horses are still specifically mentioned, although the rôle of cavalry has greatly diminished in present-day armed forces. Other individual means of transport should also be considered as liable to confiscation : skis, bicycles, motor bicycles, etc.

3. *Military equipment :* this gives rise to most difficulty, since many of the articles mentioned under A above are in fact part of military equipment. In any case, this category includes all articles solely for military use, such as optical or precision instruments, portable radio sets, component parts of weapons, pioneer tools, etc.

4. *Military documents :* the term " papers " which was used in the 1929 Convention has been replaced here by " documents ", in order to emphasize that this refers not to identity papers, for which special provision is made in paragraph 2, but to other documents such as maps, regulations, written orders, plans, individual military records, etc.

liable to confiscation under Article 6, paragraph 1, of the 1929 Convention. In fact, they were only identity tokens in the sense of paragraph 3 of the same Article, and as such could not be impounded. This measure often placed prisoners of war in an awkward situation when they were deprived of their sole identity document and could no longer produce evidence of their rank [1]. Moreover, in case of attempted escape, they ran the risk of being treated as spies. It is obvious, however, that no Detaining Power would undertake not to seize the individual service records of combatants immediately following capture, since valuable information might be contained therein. The Convention does not, therefore, restrict the right of the Detaining Power to seize military documents; in this respect it departs from the 1929 text but also stipulates that at no time should prisoners of war be without identity documents. As we have already seen in connection with Article 17, the Detaining Power must therefore supply an identity document in place of any individual service record which it impounds.

Paragraph 3. — Badges, decorations and articles having above all a personal or sentimental value

Whatever the rank and nationality of a prisoner of war, the wearing of badges and decorations is a matter of dignity which is within the general question of respect for the persons and honour of prisoners. Article 40 provides expressly that prisoners of war shall be permitted to wear badges and decorations, and they may not be deprived of this right in any circumstances, not even as a penal or disciplinary sanction (Article 87, paragraph 4). It was therefore logical to forbid the Detaining Power to take away such badges and decorations. Article 6, paragraph 3, of the 1929 Convention contained a similar provision, but it was not always respected during the Second World War [2]. The reference is, of course, only to regular badges and decorations; it does not extend to any which are not authorized by the military authorities to whom the prisoners concerned are responsible.

Considerable discussion took place at the Conference of Government Experts regarding the impounding of valuables. Several delegations pointed out that during the Second World War many prisoners of war had succeeded in escaping, thanks to articles of value which

[1] See *Report on the Work of the Conference of Government Experts*, pp. 126-127.

[2] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, p. 370 *in fine*.

they had been allowed to keep [1]. The present text is therefore more restrictive than the 1929 provision and refers only to articles having above all a personal or sentimental value, such as rings, wedding rings or other family tokens whose commercial value is often negligible.

PARAGRAPH 4. — IMPOUNDING OF SUMS OF MONEY

Sums of money which are the personal property of prisoners of war may not be considered as booty. For reasons of security, however, and also in order to preclude any attempt at bribery, the Detaining Power must be able to withdraw such monies (except those amounts needed for the minor purchases permitted during captivity).

Such impounding must be accompanied by certain safeguards, and the present provision reaffirms and strengthens Article 6, paragraph 2, of the 1929 Convention. Sums of money carried by prisoners of war may be taken away only by order of an officer, and, in principle, immediately following capture. It is not expressly stated, however, that the officer must be present. He may instruct a qualified clerk to carry out the operation, but he remains responsible. This provision is intended to safeguard the proper conduct of the operation which must not only not amount to pillage, but must be carried out in an orderly manner. The money may not be impounded until the relevant details have been recorded in a special register. This register is not the one referred to in the second sentence of the same paragraph ; the latter records the total credit due to each prisoner, including advances of pay and working pay, pursuant to Article 64. The register referred to here contains only a record of sums of money and valuables impounded at the time of capture.

In addition to recording particulars in the register, the Convention requires the Detaining Power to issue an itemized receipt. The form and content of the receipt will be determined by the Detaining Power concerned, but it should contain at least the following information : place and date of issue of the receipt, exact amount impounded (in figures and in letters), expressed in terms of the currency actually handed over, exact designation of the person to whom the receipt is issued, i.e. at least the surname, first names, rank, nationality (or an equivalent indication, such as the armed forces of which he is a member), year of birth, and army, regimental, personal or serial number. One very important requirement is that the receipt must be legibly inscribed with the name, rank and unit of the person issuing the

[1] See *Report on the Work of the Conference of Government Experts*, p. 126.

receipt. Since the operation may be carried out only by order of an officer, he is responsible, in accordance with the regulations of the Detaining Power, for designating the person who will sign such receipts. As a rule, this signature must be at least that of a quartermaster sergeant or other non-commissioned officer qualified in accountancy.

Special reference is made to sums in the currency of the Detaining Power, or which are changed into that currency at the prisoner's request. Such sums must be placed to the credit of the prisoner's account as provided in Articles 64 and 65, so that they may be made available to him in accordance with the provisions of Part III, Section IV.

Paragraph 5. — Impounding of valuables

As we have already seen in considering paragraph 3, it is forbidden to take away from prisoners of war articles of personal or sentimental value. Although the present provision authorizes the Detaining Power to withdraw other articles of value, the text is restrictive and permits such withdrawal only where the security of the Detaining Power so requires.

Articles of value which prisoners might have would consist mainly of jewels, with which they might try to bribe their guards.

The procedure for withdrawal is the same as in the case of sums of money. But although it is simple to specify in a receipt the exact amount of a sum of money, valuation of articles is a different matter. In recording jewellery, therefore, precise indications must be given as to weight, composition, content, etc., so that in case of loss an equitable assessment can be made for compensation purposes.

Paragraph 6. — Return of valuables

The receipt given upon the impounding of valuables and the record contained in the special register, pursuant to paragraph 4, constitute the necessary documentary evidence for the return of such articles.

The Detaining Power is responsible for articles of value as well as for sums of money which have not been changed into local currency. But if such articles and monies are not returned at the end of captivity, the prisoner of war cannot make a claim against the former Detaining

Power. It was therefore suggested at the Conference of Government Experts that such compensation should be incumbent rather upon the Power of Origin of the prisoner concerned [1], and that it would then be for the Power of Origin to arrange for a general solution of the question with the Detaining Power, within the context of the peace treaty. This solution would certainly be more advantageous for the prisoner of war, since financial compensation for an article of value calls for an expert appraisal which must be made objectively.

ARTICLE 19. — EVACUATION OF PRISONERS

Prisoners of war shall be evacuated as soon as possible after their capture, to camps situated in an area far enough from the combat zone for them to be out of danger.

Only those prisoners of war who, owing to wounds or sickness, would run greater risks by being evacuated than by remaining where they are, may be temporarily kept back in a danger zone.

Prisoners of war shall not be unnecessarily exposed to danger while awaiting evacuation from a fighting zone.

This provision corresponds almost exactly to the first three paragraphs of Article 7 of the 1929 Convention, with additional detailed provisions in Article 20 of the present Convention [2].

PARAGRAPH 1. — THE PRINCIPLE

The principle is that prisoners of war should be evacuated immediately from the zone in which they were captured. Once he has laid down arms a prisoner is no longer a combatant and he has the right to live, according to the general rule stated in the first paragraph of Article 13.

It is implicitly recognized that there may be a delay before evacuation takes place, but any such delay must be short. The fighting units which have taken prisoners do not usually have the means to evacuate prisoners to the rear and some time will inevitably elapse between the time of capture and final evacuation. As we shall see in examining the third paragraph, however, the captors are not relieved of the obliga-

[1] See *Report on the Work of the Conference of Government Experts*, p. 126.

[2] See *Revue internationale de la Croix-Rouge*, 1941, p. 255 ff.

tion to take all measures within their power for the protection of prisoners. Prisoners of war must be evacuated to camps situated in an area far enough from the combat zone for them to be " out of danger ". As in the wording of the provision concerning delay, here too the authors of the Convention provided some flexibility. The distance between the combat zone and an area out of danger necessarily depends on circumstances, on the stability of the front line or, on the contrary, on military developments. The most that one can say is that such camps must, in all circumstances, be out of range of the land or naval weapons of the two belligerents.

Paragraph 2. — Evacuation of the wounded and sick

While prisoners in good health must be evacuated as soon as possible after their capture, wounded or sick prisoners may be kept on the spot if any move would endanger their lives. This provision reflects the Convention's constant pre-occupation with finding solutions in the best interest of prisoners of war. The Detaining Power is, of course, not relieved of any obligation towards this category of prisoners and, in this connection, one should refer to Article 15 of the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field [1].

Paragraph 3. — Measures of protection

Whether the prisoners of war concerned are wounded or sick or are in good bealth, the Detaining Power must avoid exposing them unnecessarily to danger until such time as they are evacuated. The practical steps to be taken during this waiting period will depend on the combatant units which captured the prisoners ; but prisoners of war would be " unnecessarily exposed " if they came under enemy fire when it was possible to provide them with shelter.

The English text—" unnecessarily "—is stronger than the French —" inutilement ".

The " advisability " (or the " necessity ") of keeping back prisoners of war in a danger zone must be assessed in the light of the prisoners' interests and not according to the interests of the Detaining Power. In this connection one must have in mind Article 23, paragraph 1, of

[1] See Jean S. Pictet, *Commentary on the First Geneva Convention of 1949*, Geneva 1952, pp. 150-158, and more especially p. 152, para. C.

the present Convention and Article 28 of the Fourth Geneva Convention, which forbid combatant units to use prisoners of war or civilians as a shield in order to protect themselves from enemy fire.

ARTICLE 20. — CONDITIONS OF EVACUATION

The evacuation of prisoners of war shall always be effected humanely and in conditions similar to those for the forces of the Detaining Power in their changes of station.

The Detaining Power shall supply prisoners of war who are being evacuated with sufficient food and potable water, and with the necessary clothing and medical attention. The Detaining Power shall take all suitable precautions to ensure their safety during evacuation, and shall establish as soon as possible a list of the prisoners of war who are evacuated.

If prisoners of war must, during evacuation, pass through transit camps, their stay in such camps shall be as brief as possible.

This provision resulted from the distressing experience of the Second World War, when the most flagrant instances of ill-treatment of prisoners occurred during evacuation, both immediately after capture and wnen prisoners of war were transferred from one camp to another.

The authors of the Convention therefore resolved to devote one Article to the conditions in which prisoners should be evacuated ; the 1929 Convention failed to make adequate provision in this matter, and merely stated that the evacuation of prisoners should be effected by stages of not more than twenty kilometres per day. This latter stipulation is not included in the new text, since it is covered by the general wording of the present Article.

PARAGRAPH 1. — PRINCIPLE OF HUMANE TREATMENT AND CONDITIONS SIMILAR TO THOSE FOR FORCES OF THE DETAINING POWER

This paragraph was the subject of lengthy discussion during the meetings which preceded the 1949 Diplomatic Conference. The Conference of Government Experts finally agreed on the principle of humane conditions similar to those for the forces of the Detaining Power. At first sight, this stipulation seems to provide all the necessary safeguards. The circumstances of the combat may nevertheless, in certain cases, require the Detaining Power to transport its own troops in dangerous conditions which would be absolutely unjustifiable in the case of prisoners of war. Moreover, the standard of training and the

state of health of combatants and prisoners may be very different, and the same treatment cannot be given to prisoners of war, who are frequently exhausted by combat or by prolonged isolation, as is given to fresh troops going to the front for the first time or after a long rest behind the lines. Lastly, general living conditions may differ greatly : treatment which might be bearable for the captors might cause indescribable suffering for their prisoners. Account must be taken of varying habits in regard to climate, food, comfort, clothing, etc., and the Second World War on more than one occasion showed the consequences of this disparity in standards of living.

The determining factor is therefore the concept of humane treatment, which is briefly defined in Article 13 above : evacuation must not endanger the life or health of prisoners of war. Moreover, although evacuation inevitably involves fatigue, it must be carried out in such a way as to avoid great hardship and suffering. There is therefore an absolute prohibition on the " death marches " of evil memory during the Second World War, when thousands of prisoners fell by the wayside. Nor may prisoners ever again be herded more than eighty together in a coach built to hold forty, so that many of them died during the journey.

PARAGRAPH 2. — SPECIAL PROVISIONS

In order to emphasize their concern for the most essential steps to be taken by the Detaining Power before evacuation, the authors of the Convention gave some detailed provisions in the present paragraph. It is obviously in the interest of the capturing Power to evacuate prisoners of war to the rear as soon as possible, since they cannot but hinder military operations ; furthermore at any moment during fluctuations in the fighting the adversary might be able to liberate them. It was therefore impossible to lay down very detailed requirements concerning evacuation and the present Article merely specifies essential matters : prisoners of war must be supplied with sufficient food and potable water and with the " necessary " clothing and medical attention.

The word " necessary " implies the clothing and attention which are necessary for prisoners of war, taking into account their state of health, their training and their customs, as well as what is normally given to the troops of the Detaining Power [1].

[1] Reference may also be made to Articles 26 and 27 below, which deal respectively with food and clothing for prisoners of war.

The present paragraph also mentions the safety of prisoners of war and requires the Detaining Power to take " all suitable precautions ". In the first place the Detaining Power must avoid evacuating prisoners across the fighting lines where they might come under fire (see Article 19 above). It must also take all suitable measures to protect prisoners from the dangers of air bombardment, in accordance with the provisions of Article 23 below. Lastly—and this point may be of great importance in certain circumstances—the Detaining Power must protect prisoners of war against any attack by the civilian population. If at any time the conditions specified in the first paragraph of this Article and in the present paragraph cannot be fulfilled, evacuation must be suspended and may only be resumed if the prisoners concerned would run greater risks by remaining where they are. But the Detaining Power must obviously take all possible steps to avoid such a situation.

During the preparatory work, the International Committee of the Red Cross suggested that the present paragraph should include the requirement that a list of evacuated prisoners of war must be drawn up. The reason for this proposal was that during the Second World War many prisoners of war had disappeared during transfer, particularly when they were transported by sea. In accordance with this suggestion the Convention states that such a list must be established " as soon as possible ". In actual fact, it is of the utmost importance that this list should be drawn up before departure since it is during travel that there is the greatest danger of disappearance. If they are to be of any real use, the lists must be accurate. Without going so far as to require all the information specified in the case of the capture card for which provision is made in Article 70 below, it seems reasonable that these lists should include at least the details referred to in Article 17, paragraph 1, i.e. surname, first names, rank, army, regimental, personal or serial number or equivalent information, and date of birth. They should be drawn up in several copies, in order to facilitate checking on arrival at the camp.

PARAGRAPH 3. — TRANSIT CAMPS

Evacuation may take place over a great or small distance, may be of short or long duration according to the distance and the means of transport and, lastly, may take place in several stages or even over several periods. It is not always possible to evacuate prisoners of war from the combat zone immediately ; in most cases a temporary stay in

" transit camps " is inevitable. These camps must, however, not be confused with the transit camps of a permanent kind, to which Article 24 refers. The camps mentioned in the present paragraph are those which the military authorities may have to establish in a combat zone in order to house prisoners captured during military operations in that particular zone. In view of the fact that they are near the fighting zone, it is not always possible to require that such camps should fulfil all the material conditions specified in the Convention. During the Second World War, however, it sometimes happened that prisoners of war were kept in transit camps for a very long time, without adequate conditions of internment and, moreover, they were often refused the right to be visited by the bodies responsible for scrutiny and to send a notification of their whereabouts to the Central Prisoners of War Agency. In order to remedy this situation, the International Committee proposed that the Convention should state expressly that the stay of prisoners of war in transit camps should be " as brief as possible ". Only in case of absolute necessity and for a very brief period may the full application of the conditions of internment provided by the Convention be suspended.

SECTION II

INTERNMENT OF PRISONERS OF WAR

Chapter I

General Observations

ARTICLE 21. — RESTRICTION OF LIBERTY OF MOVEMENT

The Detaining Power may subject prisoners of war to internment. It may impose on them the obligation of not leaving, beyond certain limits, the camp where they are interned, or if the said camp is fenced in, of not going outside its perimeter. Subject to the provisions of the present Convention relative to penal and disciplinary sanctions, prisoners of war may not be held in close confinement except where necessary to safeguard their health and then only during the continuation of the circumstances which make such confinement necessary.

Prisoners of war may be partially or wholly released on parole or promise, in so far as is allowed by the laws of the Power on which they depend. Such measures shall be taken particularly in cases where this may contribute to the improvement of their state of health. No prisoner of war shall be compelled to accept liberty on parole or promise.

Upon the outbreak of hostilities, each Party to the conflict shall notify the adverse Party of the laws and regulations allowing or forbidding its own nationals to accept liberty on parole or promise. Prisoners of war who are paroled or who have given their promise in conformity with the laws and regulations so notified, are bound on their personal honour scrupulously to fulfil, both towards the Power on which they depend and the Power which has captured them, the engagements of their paroles or promises. In such cases, the Power on which they depend is bound neither to require nor to accept from them any service incompatible with the parole or promise given.

PARAGRAPH 1. — INTERNMENT

Prisoners of war are in the power of the State which has captured them. This power is based on force, and the first concern of the captor is to maintain it by resisting any escape or attempted escape by prisoners. The usual method used for this purpose, expressly authorized by this paragraph of the Convention, is internment. To intern a person is to put him in a certain area or place—in the case of prisoners of war, usually a camp—and to forbid him to leave its limits. The concept of internment should not be confused with that of detention. Internment involves the obligation not to leave the town, village, or piece of land, whether or not fenced in, on which the camp installations are situated, but it does not necessarily mean that a prisoner of war may be confined to a cell or a room. Such confinement may only be imposed in execution of penal or disciplinary sanctions, for which express provision is made in Section VI, Chapter III, below. Health considerations may also justify additional restrictions on the liberty of prisoners of war as envisaged by the term " internment ". Such measures, when taken in the interest of the prisoner of war himself and not in the interest of the Detaining Power, are expressly authorized by the present paragraph, concurrently with those resulting from the application of sanctions.

Pursuant to Article 41 of the Convention, prisoners of war must be clearly informed of the regulations and the like which the Detaining Power has laid down regarding their internment ; in particular, they must be informed of the precise limits imposed on their freedom of movement. In case of any infringement of such limits, Article 42 permits the Detaining Power to take action, if need be by the use of weapons.

PARAGRAPH 2. — RELEASE ON PAROLE

This paragraph and that which follows it reproduce the text of Articles 10 and 11 of the Hague Regulations. Article 12 of those Regulations, which provides that prisoners of war liberated on parole and recaptured bearing arms against the Government to which they had pledged their honour forfeit their right to be treated as prisoners of war, was, however, omitted by the authors of the 1949 Convention.

The 1929 Convention made no mention of release on parole, but the authors of the 1949 Convention decided to include a reference to it,

with appropriate modifications. During the Second World War, some belligerent countries did permit such release to some extent, after concluding agreements with the opposing Party under which certain prisoners of war might be granted temporary release on parole for reasons of health or hygiene.

1. *First sentence. — General principle*

The Convention makes provision for liberty on parole or promise, but with a reservation : the laws and regulations of the Power on which prisoners depend must be respected. This reservation is imperative for the Detaining Power itself.

In principle, a prisoner of war who is offered the possibility of liberty on parole is supposed to know the corresponding laws and regulations of the Power on which he depends. Such laws and regulations may either forbid prisoners of war to accept release on parole in any circumstances, or may allow them to do so subject to certain conditions. It may be, however, that a prisoner of war is not acquainted with these laws and regulations, if only because they have been promulgated since the beginning of his captivity. The Detaining Power has no such excuse, since the third paragraph of this Article (see below) expressly states that each Party to the conflict must notify the adverse Party of its laws and regulations in this regard. The text of the present provision seems explicit : prisoners may be released on parole " in so far as is allowed by the laws of the Power on which they depend ". The Detaining Power may not therefore offer release on parole to prisoners of war if the laws and regulations of the Power on which they depend forbid them to accept ; on the other hand, it may do so if the relevant laws and regulations permit the possibility, but only to the extent and subject to the conditions specified therein.

The Detaining Power is in a way responsible for the application of these laws and regulations, and is not allowed to make any proposals to prisoners of war in its hands which would be inconsistent with such laws and regulations.

2. *Second sentence. — Release on parole for health reasons*

This new provision was inserted as a result of a practice which, if not widespread, was followed during the Second World War.

It may be carried out in a variety of ways ranging from temporary release on parole, even for a very short period such as permission to

take a walk outside the camp limits, to an authorization to live outside a camp for reasons of health. Here the provision is phrased in very positive terms and must be interpreted as encouraging the Detaining Power to resort to this practice wherever possible, in so far as is allowed by the laws and regulations of the Power on which the prisoners of war depend.

3. *Third sentence. — Prohibition of coercion*

The last sentence, which categorically forbids the Detaining Power to compel a prisoner of war to accept liberty on parole or promise, is of the utmost importance. A prisoner who is faced with the choice—either internment or release on parole, with all the consequences entailed thereby—is also faced with a problem of conscience which he must be absolutely free to solve. A person who gives his parole gives a personal undertaking on his honour for which he is in the first place responsible to himself.

Once the Detaining Power offers a prisoner of war some liberty of movement in exchange for a promise that he will not take flight, and this is accepted, the Detaining Power has no other guarantee but the word of honour of the prisoner concerned. For, as we shall see when considering the third paragraph of the present provision, if a prisoner who has been paroled breaks that promise, escapes and rejoins the armed forces of his country, there is nothing in the Convention which would oblige the Power on which he depends to return him to the Power which captured him. Consequently the " sanction " for a breach of parole is not necessarily of a disciplinary or penal nature ; it is first of all a moral sanction by virtue of the consequent dishonour for the person concerned.

This would not be the case, however, if there had been any coercion. Would the allegation that coercion had been used entitle a prisoner of war to ignore the promise which he had been compelled to give ? The answer is probably in the affirmative, but it would be necessary to prove that there had been coercion. The Convention does not define this term and in such a case the only safeguard provided for a prisoner of war who again fell into the hands of the Power which captured him is contained in the procedural guarantees to which he would be entitled pursuant to Article 85 below.

PARAGRAPH 3. — PROCEDURE FOR APPLICATION

1. *First sentence. — Notification of relevant laws and regulations*

This provision stating that upon the outbreak of hostilities the belligerents must notify each other of their respective laws and regulations regarding liberty on parole, is a corollary to the requirement in the second paragraph that the Detaining Power must take into account such laws and regulations.

2. *Second sentence. — Respect of parole*

By definition, liberty which is granted solely on the basis of a promise implies that this promise must be scrupulously respected. It is given in the context of the relevant laws and regulations and involves the personal honour of the individual concerned. For this reason, Article 12 of the Hague Regulations attached a sort of *capitis deminutio* to any breach of parole : anyone who broke his parole forfeited the right to be treated as a prisoner of war and therefore, if recaptured, became an outlaw. As we have already seen, the authors of the 1949 Convention did not wish to go so far ; in such a case the prisoner of war concerned would still benefit from the provisions of Article 85 below which, in particular, guarantee an impartial and equitable trial [1]. But nevertheless, unlike the case of a prisoner of war who succeeds in escaping [2], a prisoner of war who is released on parole and is recaptured bearing arms may be tried and sentenced by the Detaining Power.

3. *Third sentence. — Obligation for the Power on which prisoners of war depend*

In the first place, the promise given by a prisoner of war is, of course, binding upon him ; but, provided this promise was made consistently with the relevant laws and regulations, it is also binding on the Power on which he depends. The undertaking is clearly stated in the present provision, which forbids the said Power to require or

[1] For the relevant discussions, see *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 252-253, 347, 472-474.

[2] See below the commentary on Article 91, para. 2.

even to accept from a member of its armed forces any service incompatible with the parole or promise given. It would consequently not be permissible for a Power to take advantage of circumstances in order to obtain information regarding the enemy's position, either by requesting such information, or by merely accepting it. The text does not add that, if a prisoner of war returns to his own side in such conditions, the Power on which he depends must return him to the State in whose hands he was a prisoner. But it does not forbid such a course, nor does it specify the attitude to be taken by that Power, from the penal or disciplinary point of view, in regard to breach of parole by a member of its armed forces.

ARTICLE 22. — PLACES AND CONDITIONS OF INTERNMENT

Prisoners of war may be interned only in premises located on land and affording every guarantee of hygiene and healthfulness. Except in particular cases which are justified by the interest of the prisoners themselves, they shall not be interned in penitentiaries.

Prisoners of war interned in unhealthy areas, or where the climate is injurious for them, shall be removed as soon as possible to a more favourable climate.

The Detaining Power shall assemble prisoners of war in camps or camp compounds according to their nationality, language and customs, provided that such prisoners shall not be separated from prisoners of war belonging to the armed forces with which they were serving at the time of their capture, except with their consent.

PARAGRAPH 1. — PLACES OF INTERNMENT

The term " premises " refers to the accommodation for housing prisoners of war.

The place of internment of prisoners of war may be either in an urban area or in the country, but it must be located on land. The use of boats, rafts or " pontoons " is therefore absolutely forbidden.

As for the nature of the dwellings the very general word " premises " permits the use of tents [1], provided they fulfil the conditions relating to quarters (Article 25). Internment of prisoners of war in

[1] See *Report on the Work of the Conference of Government Experts*, p. 129.

penitentiaries is in principle prohibited because of the painful psychological impressions which such places might create for prisoners of war.

PARAGRAPH 2. — CLIMATE

During the Second World War, the transfer of prisoners of war for detention in the colonies or in districts with a climate other than that to which they were accustomed did not arouse the same difficulties between belligerents as had been the case during the First World War. The principle stated in Article 9, paragraph 2, of the 1929 Convention, which is reproduced in almost identical terms in the present provision, was generally recognized by the Detaining Powers and, on the whole, these Powers responded to the representations made by the International Committee of the Red Cross on several occasions in order to obtain the transfer of prisoners to places with a more favourable climate.

The present provision refers to the case of prisoners who are in a place where the climate is unfavourable to them, whether because of altitude, cold, heat, dryness or humidity. The phrase " where the climate is injurious for them " also applies to prisoners with a weak constitution or a predisposition to a certain disease, e.g. tuberculosis ; the Detaining Power must remove such prisoners of war to a place which is more favourable for them, even if the camp in question is perfectly acceptable for prisoners in good health.

As a minimum requirement, the conditions of hygiene and healthfulness to be afforded by places of internment of prisoners of war should be at least equal to those required by the public authorities for the civilian population.

PARAGRAPH 3. — ASSEMBLING OF PRISONERS OF WAR

1. *The principle*

The First World War was the first occasion on which soldiers of every race and nationality fought on the same battlefields, and the very varied composition of armed forces sometimes raised difficult problems for the Detaining Powers. It was difficult to expect men to live side by side solely because they had belonged to the same armed forces when not only their culture and civilization were very different, but also they had customs and habits which differed very much, for instance in matters of hygiene. The Detaining Powers therefore

avoided bringing together in the same camp prisoners of different races or nationalities and the 1929 Convention, in Article 9, paragraph 3, recognized this principle which was thus introduced into humanitarian law.

The criterion of nationality was included on a proposal by the International Committee of the Red Cross and the Conference of Government Experts recommended the addition of a reference to language and customs. On the other hand, the question of race, which was mentioned in the 1929 text, was omitted, mainly because of the derogatory implication which this term has acquired as a result of certain persecutions.

A. *Nationality.* — This factor is the most important and must be given first consideration. It must be respected even if the State to which the prisoner claims allegiance has ceased to exist in the course of the conflict. In the case of dual nationality, the nationality of the country to whose armed forces the prisoner belongs must be determining. Stateless prisoners of war should be interned with prisoners of war belonging to the same armed forces, in accordance with the second part of this paragraph. This same procedure should also be followed in any case of doubt as to nationality. It must be pointed out, however, that when questioned, a prisoner of war is not required to declare his nationality (Article 17, paragraph 1). If he makes no statement, the prisoner's nationality will therefore be taken as being that of the armed forces to which he belongs.

B. *Language.* — As we shall see in connection with Article 41, a distinction must be made between the mother tongue of a prisoner, his official language (i.e. the language in which official records and legislation are drawn up in his country of origin) and any other language which he is able to speak or understand.

The purpose of the present provision is obviously to enable prisoners of war to converse among themselves and also, by the use of a single language, to facilitate the administration of the camps or sections of camps in which prisoners are assembled. The determination will therefore be made on the basis of the language which prisoners of war are able to speak or understand without difficulty, whether or not it is their official language. This provision will also apply even within a group of prisoners of the same nationality, since the population of many countries is made up of different language groups (i.e., Canada, Belgium, Switzerland etc.).

C. *Customs.* — It is essential for the good administration of prisoner-of-war camps that there should be some consistency of customs among the internees, particularly with regard to food, quarters, clothing and hygiene, and the insertion of this reference was fully justified. During the Second World War it sometimes happened that is response to a request by the International Committee of the Red Cross, prisoners of war were transferred to districts where the climate was warmer than in their first place of internment [1].

2. *Reservation*

During the discussions at the Conference of Government Experts in 1947, and later at the 1949 Diplomatic Conference, it was pointed out that the clause relating to the assembling of prisoners of war by categories had sometimes been used for political purposes during the Second World War, for example in order to dissociate the various members of a coalition [2]. This result was clearly contrary to the spirit of the Convention and an amendment presented by the United Kingdom Delegation was therefore approved which would permit prisoners in different categories but belonging to the same armed forces to be interned together, if they so preferred. This is an exception to the general rule. It is justified because it can prevent the application of the general rule for purposes which are other than humanitarian.

On the other hand, ideological disputes may arise between prisoners of a given nationality, without being the result of any propaganda action by the Detaining Power.

If it would clearly be in the interest of the prisoners of war to separate the hostile groups, there is no doubt that the camp commander would be able to take the necessary decisions in order to maintain order and avoid any discussions or disputes between prisoners of war which might go so far as to endanger their lives.

It is obvious, however, that this reservation may be very difficult for the camp commander to interpret. In fact, the matter is such a delicate one that the clause was approved only by a small majority at the Diplomatic Conference.

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[1] The Convention makes several references to the customs of prisoners, in particular in regard to quarters (Article 25, para. 1), food (Article 26, para. 1), the compulsory weekly day of rest (Article 53, para. 2) and the election of prisoners' representatives (Article 79, para. 5).

[2] See *Report on the Work of the Conference of Government Experts*, pp. 131-132. See also *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 347.

One can, however, be sure of acting in accordance with the spirit of the Convention if one is guided in all circumstances solely by consideration of the moral and material well-being of the prisoners themselves.

ARTICLE 23. — SECURITY OF PRISONERS

No prisoner of war may at any time be sent to, or detained in, areas where he may be exposed to the fire of the combat zone, nor may his presence be used to render certain points or areas immune from military operations.

Prisoners of war shall have shelters against air bombardment and other hazards of war, to the same extent as the local civilian population. With the exception of those engaged in the protection of their quarters against the aforesaid hazards, they may enter such shelters as soon as possible after the giving of the alarm. Any other protective measure taken in favour of the population shall also apply to them.

Detaining Powers shall give the Powers concerned, through the intermediary of the Protecting Powers, all useful information regarding the geographical location of prisoner-of-war camps.

Whenever military considerations permit, prisoner-of-war camps shall be indicated in the daytime by the letters PW or PG, placed so as to be clearly visible from the air. The Powers concerned may, however, agree upon any other system of marking. Only prisoner-of-war camps shall be marked as such.

General

The problem of protecting prisoners of war from the hazards of military operations first arose during the First World War, as a result of the development of long-range artillery. At that time, the belligerents agreed not to establish depôts for prisoners less than thirty kilometres from the front, and the authors of the 1929 Convention included this rule in Article 7, paragraph 1. It also happened during the First World War that the presence of prisoners in the fighting zone was used in order to ward off attacks by the enemy artillery. Such practices were subsequently prohibited by Article 9, paragraph 4, of the 1929 Convention.

With the technical development of weapons during the Second World War the 1929 text became inadequate. The situation resulting

from the operation of aircraft over the entire enemy territory could be met only by a very broad interpretation of Article 7 and Article 9, paragraph 4, of the Convention [1]. The International Committee of the Red Cross therefore proposed to the Conference of Government Experts that the text should be improved, not only by broadening the scope of Article 9, paragraph 4, but also—still more important—by introducing new provisions concerning air-raid shelters and protection from air bombardment, and the notification and marking of prisoner-of-war camps.

PARAGRAPH 1. — GEOGRAPHICAL SITUATION OF PLACES OF INTERNMENT

This paragraph contains two distinct ideas ; the first concerns the presence of prisoners of war in areas exposed to fire, and the second relates to the use of prisoners for purposes of protection.

The first part of this paragraph, which relates to the detention of prisoners of war in areas exposed to fire, should be considered in conjunction with Article 19, paragraph 1, which stipulates that prisoners of war must be evacuated as soon as possible after their capture to camps situated in an area far enough from the combat zone for them to be out of danger. Account must also be taken, however, of Article 47, paragraph 2, which states : " If the combat zone draws closer to a camp, the prisoners of war in the said camp shall not be transferred unless their transfer can be carried out in adequate conditions of safety, or if they are exposed to greater risks by remaining on the spot than by being transferred."

The words " at any time " make this provision absolute ; regardless whether or not a truce or armistice has been concluded, prisoners of war must not be kept in areas in which the arms or armed forces of the two Parties are in operation. The word " areas " must be interpreted very broadly and must not be limited to the range of weapons placed in any particular sector. Prisoners of war must be evacuated not only following capture (in accordance with Article 19), but also whenever any shift in the front may result in prisoners being in the combat zone.

The stipulation that prisoners of war must not be used for purposes of protection implies that they must be interned away from any military objective ; a distinction must nevertheless be made between

[1] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pp. 305-319.

military objectives as such (troop concentrations, airfields, anti-aircraft batteries, munition dumps, radar and tracing stations, munition factories, heavy industries, marshalling yards etc.) and the other nerve centres of a country which, without being primarily of a military nature, nevertheless inevitably contribute, whether directly or indirectly, to the war potential of that country by virtue of their economic importance. Prisoners of war not employed in rural areas, i.e. those who are assigned to industrial work, are naturally quartered in the vicinity of the towns or cities in which those industries are located [1]. On the other hand, however, prisoners of war may in no case be interned in the vicinity of military objectives in the strict sense of the term, since they would thus be exposed to heavy bombardment. This interpretation is moreover confirmed by the text of Article 50, paragraph 1 (*b*), which provides that prisoners of war must not be required to work in the metallurgical, machinery and chemical industries.

PARAGRAPH 2. — AIR-RAID SHELTERS

This paragraph was inserted by the Stockholm Conference. The requirement that prisoners of war must have shelters against air bombardment " to the same extent as the local civilian population " implies that either shelters must be supplied for prisoners of war in the same conditions as for the civilian population, or that the existing shelters must be available to prisoners of war and to the civilian population alike. This will generally be the case for prisoners of war employed in urban areas. Shelters will not be provided for labour detachments interned in rural areas if none are available for the rural population there. During the Second World War prisoners were sometimes obliged to remain in their quarters during air-raids, to continue working or to help with rescue operations [2]. Such practices are henceforth prohibited by this provision, subject to the measures which may be required for the protection of the prisoners' own quarters. On this last point, the Convention is not very explicit as it does not specify to what extent prisoners may be required to engage in the

[1] See *Report on the Work of the Conference of Government Experts*, p. 133. The Conference did not support a proposal by the International Committee of the Red Cross that the establishment of prisoner-of-war camps near large urban centres should be prohibited.

[2] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pp. 312-313.

protection of their quarters. Since such measures are undertaken mainly in the interest of prisoners of war, one may logically consider that the Detaining Power can require them to take the same action as is required of its own armed forces in similar circumstances, it being understood that only measures of passive defence are involved. On this point there is however a slight difference between the French text, which is in the conditional tense, and the English, which is in the indicative and confirms our interpretation.

The last sentence of the paragraph states that any other protective measure taken in favour of the population must also apply to prisoners of war. This, of course, refers to the local population, since identical measures are not taken in rural and urban areas. If civilian workers employed in a particular industry are issued with special equipment for use during air-raids (gas masks, protective clothing, etc.), such equipment must also be made available to prisoners of war.

PARAGRAPH 3. — NOTIFICATION OF GEOGRAPHICAL LOCATION OF CAMPS

In the course of the Second World War, the International Committee of the Red Cross made several appeals to the belligerents to notify the geographical location of prisoner-of-war camps, in order to avoid air-raids on them; this action was based on Article 8, paragraph 1, of the 1929 Convention. The belligerents refused to comply with this request, however, on the ground that such notification might give the enemy valuable information regarding the location of certain important industries and that, moreover, the enemy might induce prisoners of war to revolt by parachuting weapons to them at an appropriate moment. In actual fact, the location of the main prisoner-of-war camps was known to the belligerents and the present provision was approved without difficulty at the 1949 Diplomatic Conference. It is understood that this requirement applies only to camps of some importance or base camps, and does not cover labour detachments unless they are fairly large and of some degree of permanence. In accordance with the spirit of the first paragraph of the present Article, the Detaining Power must not take advantage of the temporary presence of a few prisoners at a given place in order to afford protection to military objectives in the vicinity. It may also be that a prisoner-of-war camp originally situated far from any military objectives may, with changing circumstances, find itself in their vicinity. In the interests of security, it is essential to move the camp in good time.

The risk of error, and the consequent danger for prisoners, will be greatly reduced if the belligerents notify each other of the geographical

location of camps in sufficient detail. What are the implications of the phrase " all useful information " in the Article ? Does it mean a general indication of the district or, on the other hand, should sufficient details be given to enable the camp to be pin-pointed on a map ? Only the latter information would be of any real use in order to keep the camp free from attacks. It is therefore recommended that belligerents should give all possible details, despite the objections to which we have referred above.

Paragraph 4. — Marking of camps

At the beginning of the Second World War, the International Committee suggested to the belligerents that places of internment of prisoners of war should be marked in a special manner so that they could be clearly distinguished by enemy aircraft. This request was not generally complied with, as the belligerents feared that camps so marked would provide landmarks for aircraft, particularly at night [1]. However, with or without the permission of camp commanders, prisoners in some camps took the initiative of displaying markings in the daytime, by means of the letters PW or PG (prisoners of war or *prisonniers de guerre*) ; this procedure was recognized by the 1949 Diplomatic Conference, subject to agreement on any other system.

The stipulation that prisoner-of-war camps should be marked is subject to a reservation which, in our view, is so drafted as to permit an excessively restrictive interpretation. " Whenever military considerations permit... " should not be construed as meaning that camps may only be marked subject to special conditions to be determined solely by the Detaining Power. Whenever circumstances permit, camps must be marked. The argument that the marking of camps might provide landmarks for low-flying aircraft no longer carries the same weight as in the past, since technical developments have made it possible for aircraft to find their way without ground visibility. It is therefore desirable, and in no way contrary to the interests of the belligerents, that prisoner-of-war camps should be marked at all times, day and night, although unfortunately the Convention does not specify this. Marking in this way would preclude the recurrence of events which occurred during the Second World War, when prisoner-of-war camps were bombed on several occasions [2].

[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 254.

[2] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pp. 313-319.

ARTICLE 24. — PERMANENT TRANSIT CAMPS

Transit or screening camps of a permanent kind shall be fitted out under conditions similar to those described in the present Section, and the prisoners therein shall have the same treatment as in other camps.

The camps to which the present Article refers are distinct from the " transit camps " mentioned in Article 20, paragraph 3.

It would have been dangerous to allow the existence in these camps of conditions less favourable than those which the Convention stipulates for permanent camps. The present Article therefore states the principle that conditions in such camps must not differ in any essential respect from the normal conditions of internment as set forth in this Section of the Convention. Similarly, in screening camps for prisoners of war, the conditions must correspond to those provided in ordinary camps.

Chapter II

Quarters, Food and Clothing of Prisoners of War

ARTICLE 25. — QUARTERS

Prisoners of war shall be quartered under conditions as favourable as those for the forces of the Detaining Power who are billeted in the same area. The said conditions shall make allowance for the habits and customs of the prisoners and shall in no case be prejudicial to their health.

The foregoing provisions shall apply in particular to the dormitories of prisoners of war as regards both total surface and minimum cubic space, and the general installations, bedding and blankets.

The premises provided for the use of prisoners of war individually or collectively, shall be entirely protected from dampness and adequately heated and lighted, in particular between dusk and lights out. All precautions must be taken against the danger of fire.

In any camps in which women prisoners of war, as well as men, are accommodated, separate dormitories shall be provided for them.

General

The text of Article 10 of the 1929 Convention, concerning the housing of prisoners of war, proved generally satisfactory during the Second World War. This text was completely redrafted by the Conference of Government Experts, however, because of varying criteria in regard to climate, customs or habits of prisoners of war as compared with those of the forces of the Detaining Power.

This Conference gave special attention to the question of fixing a time-limit within which the conditions laid down by the Convention should be fulfilled. Very often on arrival at camps prisoners of war did not find conditions corresponding to the minimum requirements and it was only by degrees, following the intervention of the supervisory bodies, that the essential improvements were made to these establishments [1]. The International Committee of the Red Cross therefore proposed that a time-limit should be fixed and that after its expiry the prisoners' representative and the supervisory bodies would be justified in demanding that the prisoners should be transferred to camps with better installations.

Although this notion was not stated in the text of the Convention because of the difficulties inherent in war-time, it is clear from the discussions at the Diplomatic Conference that the Detaining Power must do its utmost to provide satisfactory quarters for prisoners of of war as soon as possible. It is moreover in its own interest to do so. Any Government which maintains armed forces in peace-time has to concern itself with questions relating to the housing and maintenance of troops. At the same time, it should also make provision for the maintenance of any prisoners who might be taken. Once prisoners of war are quartered in permanent camps and not in temporary depôts, it will be far easier to supervise them and furnish the necessary supplies.

Paragraph 1. — General conditions

The basic criterion in regard to quarters is the standard afforded to forces of the Detaining Power billeted in the same area. This requirement constitutes a minimum standard [2].

[1] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, p. 248.

[2] This principle of assimilation is to be found in a number of Articles of the Convention, for instance in the case of transfer (Article 46, para. 2), working conditions (Article 51, paras. 1, 2 and 3), duration of labour (Article 53, para. 1), penal and disciplinary sanctions (Article 82).

The Conference nevertheless recognized that the principle of assimilation was not fully adequate because of the diverse living conditions to which armed forces are accustomed. The second sentence of the paragraph therefore states that allowance must be made for the habits and customs of the prisoners, it being understood that this would result in their receiving treatment more favourable than that resulting from the principle of assimilation. It would be inadmissible to cite the fact that prisoners of war are accustomed to a lower standard of living in their own country as justification for deviating from the principle of assimilation stated in the first sentence. Ultimately, the state of health of prisoners of war will show whether or not their living conditions are satisfactory. This is a subjective factor which varies according to circumstances and the individual concerned, and it can be assessed only by qualified persons—i.e. by doctors. One may therefore conclude that even if the quarters assigned to prisoners of war correspond in all respects to the conditions accorded to the armed forces of the Detaining Power and in addition correspond to the habits and customs of the prisoners, they must nevertheless be visited periodically by the doctors responsible for checking the health of prisoners ; those doctors must state clearly whether the quarters might be prejudicial to the health of those who are housed in them [1]. In this connection, reference may be made to the medical inspections required by Article 31 ; it cannot be too strongly emphasized that the commissions responsible for inspecting prisoner-of-war camps should always include qualified doctors.

Quarters are frequently constructed by the prisoners of war themselves, on sites designated by the Detaining Power and with materials provided by it. There is no difference between this and other work which prisoners may be compelled to do, pursuant to Article 50. The prisoners concerned will naturally have a special interest, but the work is nevertheless done on behalf of the Detaining Power, and must therefore be paid for by that Power in the same way as other work specified in Article 50. This need not necessarily apply in the case of improvements carried out by prisoners of war to their quarters if the latter already meet the minimum standards set by the Convention.

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[1] See also, in connection with medical checks, the commentary on Article 26 (food).

As regards tents, some Detaining Powers made general use of them during the Second World War and they were found to be satisfactory, considering the climate and with certain essential improvements (concrete flooring, brick walls, and paving of surrounding area and paths). See *Report on the Work of the Conference of Government Experts*, pp. 134-135.

PARAGRAPH 2. — DORMITORIES

In arranging dormitories for prisoners of war, their habits and customs must be taken into account as well as the standards applicable to the armed forces of the Detaining Power. It will be recalled that during the Second World War the question of the number of blankets provided gave rise to great difficulties. The International Committee of the Red Cross therefore proposed that a provision should be inserted stipulating a certain number of blankets—six in cold climates, four in moderate climates, and two in hot climates. This proposal, however, was rejected by the Conference of Government Experts. The requirements of war might not permit a belligerent Power to consider the needs of its own armed forces to the full extent desired and there could be no question of its according more privileged treatment to prisoners of war. As in the case of quarters, the wording adopted should enable the matter to be settled equitably.

PARAGRAPH 3. — SPECIAL CONDITIONS

Adequate heating and lighting and freedom from dampness are essential conditions for the quarters of prisoners and because of their importance specific mention has been made of them. The principle of assimilation to the standards afforded to the armed forces of the Detaining Power remains applicable to the extent that these standards are respected. Thus, it is forbidden to intern prisoners of war in an underground fortress which does not meet the required conditions, even though the forces of the Detaining Power may be billeted there for long periods. Consideration for the health of prisoners of war, to which reference is made in the first paragraph, must be the overriding factor. These conditions were apparently not always respected during the Second World War [1].

As regards lighting, the Conference of Government Experts recommended the addition of the phrase " especially between nightfall and lights out " to the 1929 text, in order that prisoners might make the most of the only leisure time available to them. This therefore refers primarily to the quarters in which prisoners are housed, or the premises which may be made available to them for their leisure activities (libraries, reading-rooms, recreation rooms, etc.). During sleeping hours prisoners must have the conditions of darkness which would be

[1] See BRETONNIÈRE, *op. cit.*, pp. 96-99.

most beneficial for their rest ; lighting must be available in the sanitary conveniences.

The problem of lighting also arises, however, in connection with preventing attempts to escape. This mainly involves lighting of walls and fences, for instance, by means of searchlights installed in watch-towers. The Detaining Power is naturally at liberty to take all relevant precautions and to illuminate not only walls and fences, but also the outside of buildings, the parade ground, etc. Such lighting should not, however, enter the sleeping-quarters of prisoners in order not to disturb their rest.

The usual precautions must be taken against fire : there must be fire-extinguishers or water-tanks within reach and a fire-alarm system if there is a fire station in the vicinity. Here again, the rules were not spelled out in detail in order to avoid giving them an arbitrary character.

PARAGRAPH 4. — QUARTERS FOR WOMEN PRISONERS OF WAR

This is a new provision introduced after the Second World War, when a certain number of women served in the armed forces of the belligerents. It should be read in conjunction with Article 14, paragraph 2, which states that women must be treated with all the regard due to their sex. The dormitories must therefore be separated, and male prisoners must not have access to the dormitories of women prisoners, either with or without their consent. The Detaining Power is responsible for executing this provision.

Strictly speaking, this paragraph refers only to dormitories and the quarters as a whole need not necessarily be separated ; the Detaining Power is, however, at liberty to provide separate quarters if it deems fit and in order more easily to fulfil the other requirements of the Convention with regard to women prisoners.

* * *

Lastly, pursuant to Article 97, paragraph 2, the premises in which prisoners undergo disciplinary punishments must conform to the sanitary requirements set forth in the present Article.

ARTICLE 26. — FOOD

The basic daily food rations shall be sufficient in quantity, quality and variety to keep prisoners of war in good health and to prevent loss of weight or the development of nutritional deficiencies. Account shall also be taken of the habitual diet of the prisoners.

The Detaining Power shall supply prisoners of war who work with such additional rations as are necessary for the labour on which they are employed.

Sufficient drinking-water shall be supplied to prisoners of war. The use of tobacco shall be permitted.

Prisoners of war shall, as far as possible, be associated with the preparation of their meals ; they may be employed for that purpose in the kitchens. Furthermore, they shall be given the means of preparing, themselves, the additional food in their possession.

Adequate premises shall be provided for messing.

Collective disciplinary measures affecting food are prohibited.

To provide prisoners with food is one of the principal duties of the Detaining Power under Article 15, which concerns the maintenance of prisoners in general. It is also one of the most difficult obligations to define, since one must reconcile the varying requirements of armed forces, on the one hand, and, on the other hand, the difficulties which the Detaining Power may have in regard to its own food supplies.

PARAGRAPH 1. — DETERMINATION OF THE BASIC DAILY RATION

Article 7, paragraph 2, of the Hague Regulations stated the principle that prisoners should be treated " on the same footing as the troops of the Government who captured them " ; and this had been made more explicit by Article 11 of the 1929 Convention, which read : " The food ration of prisoners of war shall be equivalent in quantity and quality to that of the depôt troops."

This text was not entirely satisfactory. In some armies depôt troops did not exist and the comparison could therefore not be made ; moreover, it seemed rather strange to give the same food to troops who might be accustomed to a very different diet. This difficulty arose in particular in the Far East, where European troops found it very difficult to accustom themselves to the diet of the local forces.

The Conference of Government Experts considered several proposals for defining food rations for prisoners of war :

(*a*) According to caloric content of foodstuffs : this solution was rejected. On the one hand it is difficult to fix values acceptable in all latitudes ; on the other, too many details would have to be included to ensure a sufficiently varied allocation of calories.

(*b*) By comparison with the rations of the civilian population : this standard was rejected, because it failed to take into account the frugality of some populations and the fact that civilians, unlike prisoners, can buy non-rationed commodities ;

(*c*) Periodic checking of weight of prisoners of war : since weight is one of the best indications of health, periodic checking would reveal any inadequacy of food rations. This standard was finally adopted [1].

The 1949 Diplomatic Conference decided to include this reference after the Netherlands representative had proposed that the question of food ration standards should be referred to the World Health Organization [2].

1. *First sentence. — The basic daily ration*

Since there is no longer any reference to depôt troops of the Detaining Power as an element of comparison, the food ration of prisoners of war must be determined by their actual needs. This implies that account must be taken of the special requirements of each category of human beings and the varying living conditions afforded to prisoners of war ; climate, altitude and the requirements of work must all be taken into consideration when food rations are established. On the other hand, this system has the disadvantage of making any check more difficult and recourse must often be had to specialists who can assess the state of health of prisoners—that is to say, to doctors. This is feasible pursuant to Article 31, which calls for medical inspections at least once a month. Control of this kind must be carried out by the Detaining Power, which is responsible for applying the Convention, and it is also a responsibility of the Protecting Power as part of the general duties conferred by Article 8.

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[1] See *Report on the Work of the Conference of Government Experts*, p. 139.

[2] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 257.

The " basic " daily food ration means the minimum required to keep prisoners of war in good health. Under Article 15, the Detaining Power is bound to provide for the maintenance of prisoners of war, regardless of any food supplies which they may receive from outside sources. The basic ration must therefore be provided in full and in all circumstances. Wherever prisoners receive additional supplies, it will obviously be difficult to determine what their state of health would have been if they had had only the basic ration, and this is a difficulty inherent in the system finally approved. It will nevertheless be easy to check the condition of prisoners who do not receive additional supplies.

The present paragraph obviously does not prevent the Detaining Power from according prisoners more favourable treatment either permanently or occasionally whenever circumstances so permit. In that case, it will no longer be merely fulfilling an obligation, but will be granting privileges over and above the requirements of the Convention as referred to in Article 89 (2).

2. *Second sentence. — The habitual diet of prisoners*

During the Second World War, prisoners of war were not always able to accustom themselves to the diet of the Detaining Power. The present provision, which is additional to the requirements in the first sentence, should ensure that prisoners are provided with food corresponding to their needs, their taste and their habits. Paragraph 4 of this same Article, which provides that prisoners of war may be associated with the preparation of their meals, will facilitate the application of this clause. The Detaining Power must therefore ascertain the habitual diet of prisoners of war and the Protecting Power must check the manner in which account is taken of it.

PARAGRAPH 2. — ADDITIONAL RATIONS FOR PRISONERS WHO WORK

Prisoners who are employed must receive food commensurate with the work done if they are to remain in good health, in accordance with paragraph 1. The sole determining factor is the degree of extra fatigue which results from such work.

For the allocation of additional rations, the type of work and not the output must be considered ; in no circumstances may the Detaining Power use additional rations as a means of pressure to ensure

output [1]. Article 51, paragraph 1, makes this clear by specifying that, especially as regards food, prisoners of war who work must be granted conditions not inferior to those enjoyed by nationals of the Detaining Power employed on similar work [2].

PARAGRAPH 3. — DRINKING WATER AND TOBACCO

This provision corresponds to Article 11, paragraph 3, of the 1929 Convention, which does not seem to have given cause for complaint during the Second World War [3]. Drinking water must be " supplied " by the Detaining Power, but there is no obligation to supply tobacco, which prisoners can generally procure in the canteen (Article 28).

PARAGRAPH 4. — PREPARATION OF FOOD

The requirement that prisoners of war must be associated with the preparation of their meals is a new one in the case of the ranks, although Article 22, paragraph 2, of the 1929 Convention contained a similar provision applicable to officers [4].

This refers to the choice of ingredients as well as to the preparation of food [5].

The corresponding provision for officers (Article 44, paragraph 3) is broader and permits them to supervise the mess, i.e. to organize the purchase of food and its preparation, subject of course to the regulations laid down by the Detaining Power.

The second sentence of this paragraph was already included in the 1929 Convention (Article 11, paragraph 2). It is very important for prisoners, and implies that they may light a fire inside or near each hut and may have sufficient utensils and water [6].

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[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 257.

[2] During the Second World War, prisoners often did not receive the extra rations granted to civilians engaged in similar work. See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pp. 335-337.

[3] See BRETONNIÈRE : *op. cit.*, p. 105.

[4] See William FLORY : *Prisoners of War, A Study in the Development of International Law*, Washington 1942, pp. 67-68.

[5] If prisoners of war work in camp kitchens, food will not be rejected as being unsuited to their taste, as sometimes happened during the Second World War. See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, p. 257.

[6] It appears that this provision was not always respected during the last war (see BRETONNIÈRE : *op. cit.*, p. 105), hence the need for the new text.

PARAGRAPH 5. — PREMISES

" Adequate premises " implies premises which protect prisoners of war from the sun and the elements and enable them to take their meals in conditions to which they are accustomed. Such premises must, moreover, meet the requirements of Article 25, paragraph 3.

PARAGRAPH 6. — DISCIPLINARY MEASURES

This provision was contained in Article 11, paragraph 4, of the 1929 Convention. It is very important and should be taken in conjunction with the provisions relating to disciplinary sanctions, of which it is only one aspect [1]. No sanction may be imposed which would deprive prisoners of war of the minimum required for their good health and this interpretation is confirmed by the last paragraph of Article 89, which prohibits any disciplinary punishments " dangerous to the health of prisoners of war ".

ARTICLE 27. — CLOTHING

Clothing, underwear and footwear shall be supplied to prisoners of war in sufficient quantities by the Detaining Power, which shall make allowance for the climate of the region where the prisoners are detained. Uniforms of enemy armed forces captured by the Detaining Power should, if suitable for the climate, be made available to clothe prisoners of war.

The regular replacement and repair of the above articles shall be assured by the Detaining Power. In addition, prisoners of war who work shall receive appropriate clothing, wherever the nature of the work demands.

PARAGRAPH 1. — SUPPLY OF ARTICLES OF CLOTHING

1. *First sentence. — Obligations of the Detaining Power*

As already stated in Article 12, paragraph 1, of the 1929 Convention, the Detaining Power must provide prisoners of war with clothing, underwear and footwear ; the 1949 text makes express provision for

[1] See BRETONNIÈRE : *op. cit.*, p. 105.

this requirement to be adapted to climate. It must be pointed out that the Detaining Power's obligation is in no way lessened by any additional clothing which prisoners may receive from other sources. During the Second World War the Powers of Origin of prisoners of war sent considerable quantities of uniforms to them through the good offices of the International Committee of the Red Cross, but in doing so the Powers concerned had no intention of releasing the Detaining Power from its obligations [1].

Prisoners may in no case be obliged to wear the uniform of the Detaining Power if they consider that their honour does not so permit (Article 14, paragraph 1). The Detaining Power must therefore, as a minimum, alter those uniforms, in particular by removing all badges of nationality. Detaining Powers have never been willing to allow prisoners of war to wear civilian clothing, in order not to make escape easier.

2. *Second sentence. — Use of enemy uniforms captured by the Detaining Power*

The authors of the Convention nevertheless considered that material difficulties in time of war are such that the Detaining Power could not be required to make clothing specially for prisoners. The use of enemy uniforms captured by the Detaining Power is therefore permitted, but since this source is rather problematic, the clause does not solve the problem. The best solution is in fact that the Power of Origin or the Protecting Power should send the necessary uniforms, and relief organizations can assist in forwarding such consignments.

Paragraph 2. — Replacement and working outfits

The obligation in the present paragraph for the Detaining Power to replace articles of clothing does not depend on any stocks of enemy uniforms which it may hold. But if such stocks exist, they should obviously be used solely for replacement of clothing in accordance with the first paragraph.

As regards the supply of appropriate working outfits, there is no reference to the clothing of civilian or military workers of the Detaining Power employed on similar work for purposes of comparison. This is

[1] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pp. 258-263.

mentioned, however, in Article 51, paragraph 1, which provides that prisoners of war must be granted suitable working conditions, and specifically as regard clothing, and that such conditions must not be inferior to those enjoyed by " nationals of the Detaining Power employed in similar work ". That Article also takes account of " climatic conditions ". The present paragraph requires the provision of appropriate clothing wherever the nature of the work demands. The fact that nationals of the Detaining Power may be called upon to work in bad conditions does not therefore mean that prisoners of war may be required to work in similar conditions. The safety and health of prisoners of war are the only determining factors. In this connection, one should refer to Article 52, paragraph 1, which states that prisoners of war should not be employed on labour which is of an unhealthy or dangerous nature. As we shall see later in considering Articles 51 and 52, the unhealthy or dangerous nature of any particular work often depends on the clothing and equipment of workers.

We may also refer here to Article 7 of the Regulations concerning collective relief (Annex III), which gives the prisoners' representative wide powers regarding the distribution and allocation of clothing received in relief shipments.

ARTICLE 28. — CANTEENS

Canteens shall be installed in all camps, where prisoners of war may procure foodstuffs, soap and tobacco and ordinary articles in daily use. The tariff shall never be in excess of local market prices.

The profits made by camp canteens shall be used for the benefit of the prisoners ; a special fund shall be created for this purpose. The prisoners' representative shall have the right to collaborate in the management of the canteen and of this fund.

When a camp is closed down, the credit balance of the special fund shall be handed to an international welfare organization, to be employed for the benefit of prisoners of war of the same nationality as those who have contributed to the fund. In case of a general repatriation, such profits shall be kept by the Detaining Power, subject to any agreement to the contrary between the Powers concerned.

PARAGRAPH 1. — ESTABLISHMENT OF CANTEENS

The wording of this provision is imperative, like that of Article 12, paragraph 2, of the 1929 Convention. It lays on the Detaining Power

an additional obligation, over and above the general obligation to provide free of charge for the maintenance of prisoners of war, which is set forth in Article 15 and is supplemented by other related special provisions.

In fact, the canteens were poorly supplied during the Second World War [1], because of the general shortage caused by the conflict. In 1949, it was proposed that specific reference should be made to the conclusion of special agreements for the stocking of canteens by the Power of Origin. This suggestion was rejected as it was feared that the Detaining Power might consider that such agreements freed it from its obligations [2]; the States party to the Convention are nevertheless at liberty to conclude such agreements if they think fit.

What commodities should be available in canteens ? The Convention speaks first of " foodstuffs ", which should supplement the normal diet of prisoners of war : sugar, bread, cheese, tinned meat. The camp authorities may prohibit the sale of alcoholic drinks, but must permit the sale of all other health-giving, refreshing or fortifying beverages, hot or cold, and, if possible, milk.

The term " ordinary articles in daily use " means, in addition to soap and tobacco, which are specifically mentioned :

(a) all necessary supplies for correspondence (paper, pencils, pens, ink, stamps, etc.) ;

(b) all necessary toilet articles (towels, brushes, razors, combs, nail scissors, etc.) ;

(c) all necessary supplies for repairing personal effects (buttons, thread, needles, shoe-laces, etc.) ;

(d) miscellaneous articles (pocket torches and batteries, string, penknives, handkerchiefs, etc.).

PARAGRAPH 2. — CANTEEN PROFITS

During the Second World War, canteens frequently made large profits unbeknown to the prisoners, and these profits were used in an arbitrary way by the Detaining Power, particularly for the repair of damage done or alleged to have been done in the camp by prisoners of

[1] See BRETONNIÈRE, *op. cit.*, p. 111.

[2] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 258.

war. Such practices were contrary to Article 12, paragraph 3, of the 1929 Convention, which expressly provided that canteen profits were to be utilized for the benefit of the prisoners. The present Article is therefore more explicit and provides for the creation of a special fund composed solely of canteen profits. Like the canteen, the special fund is under the direction of the Detaining Power, and the camp commander has authority over the utilization of profits. But the prisoners' representative has the right to collaborate in the management of the canteen and of the fund. As regards administration, he will therefore be consulted as to the times at which the canteen is to be open, the commodities and articles to be offered for sale, the arrangement and installation of the premises and the control of prices.

It must be emphasized that, in accordance with the present paragraph, the fund must be used for the benefit of the prisoners. The wishes expressed by the prisoners must therefore be taken into consideration, to the extent that they do not run contrary to the regulations ensuring good administration and discipline in the camp. The Detaining Power may not utilize canteen profits to make up any shortcomings for which it is responsible. On the other hand, it is also recommended that canteen profits should not be hoarded, but should be utilized whenever needed in order to improve the lot of the prisoners. As we shall see in connection with the following paragraph, these profits have in the past too often been lost to those who helped to build them up. In this respect the prisoners' representative can play a key rôle by instigating—in agreement with his fellow prisoners, on the one hand, and with the camp administration, on the other—all reasonable measures for the regular utilization of canteen profits.

Paragraph 3. — Disposal of the fund if the camp is closed down

Here the Convention refers only to the closing of a camp either following an administrative measure or in the event of general repatriation of prisoners after the end of hostilities. The authors of the provision decided against recommending the sharing out of profits among the prisoners, since this had sometimes been done during the Second World War and had given rise to complaints. It is in practice very difficult to determine what contribution each prisoner has made to the profits in hand [1]. If the prisoners interned in one camp are

[1] See *Report on the Work of the Conference of Government Experts*, p. 143.

transferred *en bloc* to another camp, the canteen profits must also be transferred, in the same way as prisoners' community property and the luggage they are unable to take with them, pursuant to Article 48, paragraph 3, and also Article 65, paragraph 3, which concerns the transfer of personal accounts. In this case the provisions of the present paragraph are therefore not applicable.

There is no very precise definition of the " international welfare organization " which is to receive the credit balance of the special fund if a camp is closed down in the course of the hostilities. One may assume, however, that this refers to one or more of the relief societies recognized by the Detaining Power in accordance with Article 125.

This organization will be designated by the Detaining Power which is responsible for the management and utilization of the fund. The representative of the prisoners who have contributed to the fund may be consulted regarding the organization to be chosen. But the organization is in any case obliged to consult the prisoners' representative before deciding how to make use of the fund, since its position is similar to that of the Detaining Power, and the latter's attitude is governed by paragraph 2.

The fund must be employed for the benefit of prisoners of war of the same nationality as those who have contributed to it ; if the camp comprised prisoners of different nationalities, several societies may be designated. In that case, the credit balance would be shared out among those societies proportionately to the number of prisoners of each nationality in the camp where the canteen profits accumulated.

If the welfare organization which takes over the fund looks after prisoners of war of all nationalities, without distinction, it will itself be able to make a fair distribution.

In case of a general repatriation, after the end of the hostilities, the matter must be settled between the Governments concerned ; they may, if they wish, conclude a special agreement (Article 6), usually depending on the amount of the funds in question. Otherwise, the profits will be kept by the Detaining Power.

Last but not least, one should refer to Article 62, paragraph 3, which states that the working pay of the prisoners' representative, of his advisers, if any, and of his assistants shall be paid out of the fund maintained by canteen profits, on a scale to be fixed by the prisoners' representative and approved by the camp commander.

Chapter III

Hygiene and Medical Attention

ARTICLE 29. — HYGIENE

The Detaining Power shall be bound to take all sanitary measures necessary to ensure the cleanliness and healthfulness of camps, and to prevent epidemics.

Prisoners of war shall have for their use, day and night, conveniences which conform to the rules of hygiene and are maintained in a constant state of cleanliness. In any camps in which women prisoners of war are accommodated, separate conveniences shall be provided for them.

Also, apart from the baths and showers with which the camps shall be furnished, prisoners of war shall be provided with sufficient water and soap for their personal toilet and for washing their personal laundry; the necessary installations, facilities and time shall be granted them for that purpose.

This Article is based on Article 13 of the 1929 Convention.

The Detaining Power has every interest in taking all necessary sanitary measures in prisoner-of-war camps in order to prevent epidemics, which are as dangerous for the civilian population as for the prisoners.

PARAGRAPH 1. — CLEANLINESS AND HEALTHFULNESS

The cleanliness and healthfulness of the camps depend, first and foremost, on their location and installation. In considering Articles 22 and 25, we have already examined the question of climate and special conditions relating to quarters, and we shall not revert to these except to stress that sanitary measures consist, in the first place, of the respect of these general conditions.

Among the special measures which the Detaining Power must take in regard to prisoners of war, we would mention first very strict examination upon entry into the camp, thorough disinfection and inoculation with all necessary vaccines. These vaccines will, of course,

vary according to the climate and latitude [1] and will be re-administered as frequently as necessary; even if they are not in current use in the armed forces to which the prisoners belong, that is no reason why they should not be administered. Prisoners of war must be vaccinated as their health requires, taking into account their constitution and the risks to which they are exposed, with no restrictive considerations other than those accruing from Article 13 (which prohibits medical or scientific experiments of any kind which are not justified by the medical treatment of the prisoner concerned and carried out in his interest). In this connection, one may also refer to Article 30, paragraph 3, which states that prisoners of war should have the attention, preferably, of medical personnel of the Power on which they depend and, if possible, of their nationality. Prisoners suffering from contagious diseases must be placed in quarantine.

Careful attention must also be paid to quarters, and all necessary measures taken to keep them free of vermin. Lastly, prisoners of war must be given the necessary time and materials to keep their quarters clean, and the authorities of the Detaining Power must make regular inspections.

Paragraph 2. — Installations

The question of sanitary conveniences is of the utmost importance for the maintenance of cleanliness and hygiene in camps. These conveniences should be so constructed as to preserve decency and cleanliness and must be sufficiently numerous. If additional conveniences become necessary, the Detaining Power must install them immediately. They must be inspected periodically by the health authorities.

During the Second World War, prisoners of war sometimes had no access to the conveniences during the night [2]. The new Convention makes an express stipulation in this respect.

Another new provision which did not appear in the 1929 text is that concerning women prisoners of war; the most elementary rules of decency require that separate conveniences should be provided for them.

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[1] In Germany, during the Second World War, prisoners of war were vaccinated regularly against typhus, typhoid, tetanus and diphtheria. (See Bretonnière, *op. cit.*, p. 113. See also *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pp. 263-264.

[2] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, p. 263.

Prisoners of war may, of course, be required to work on the construction of conveniences, as part of the work of installing the camp (Article 50) ; they must be paid for it, however, as it is in fact done on behalf of the Detaining Power and the latter is responsible in accordance with the general obligation under Article 15 to provide free of charge for the maintenance of prisoners of war.

PARAGRAPH 3. — PERSONAL TOILET

In the first place, this paragraph provides that the camps must be furnished with baths and showers [1]. Taking into account the difficulties which the Detaining Power may have in providing hot baths and showers for a large number of prisoners, one bath or shower per week for each prisoner may be considered reasonable. If time or climate permit, the Detaining Power may also enable prisoners to wash completely with cold water. Baths and showers may be made compulsory for prisoners of war, provided no risk to their health is involved.

This interpretation is not based on the present provision, but on paragraph 1 of this Article, which requires the Detaining Power to take all necessary sanitary measures. If baths and showers are considered necessary to ensure healthfulness in the camps and to prevent epidemics, they must be compulsory.

Apart from baths and showers, prisoners of war must also be provided with sufficient water and soap for their personal toilet and for washing their personal laundry. Special installations will be needed in the camp so that each prisoner of war can wash in the time allowed each day, first thing in the morning, and in the evening after work.

The time allowed must also be sufficient for the washing of personal laundry. In camps where other ranks are interned, this task is usually performed by the prisoners themselves ; in camps for officers, it is usually done outside the camp against payment.

ARTICLE 30. — MEDICAL ATTENTION

Every camp shall have an adequate infirmary where prisoners of war may have the attention they require, as well as appropriate diet. Isolation

[1] See *Report on the Work of the Conference of Government Experts*, pp. 144-145.

wards shall, if necessary, be set aside for cases of contagious or mental disease.

Prisoners of war suffering from serious disease, or whose condition necessitates special treatment, a surgical operation or hospital care, must be admitted to any military or civil medical unit where such treatment can be given, even if their repatriation is contemplated in the near future. Special facilities shall be afforded for the care to be given to the disabled, in particular to the blind, and for their rehabilitation, pending repatriation.

Prisoners of war shall have the attention, preferably of medical personnel of the Power on which they depend and, if possible, of their nationality.

Prisoners of war may not be prevented from presenting themselves to the medical authorities for examination. The detaining authorities shall upon request, issue to every prisoner who has undergone treatment, an official certificate indicating the nature of his illness or injury, and the duration and kind of treatment received. A duplicate of this certificate shall be forwarded to the Central Prisoners of War Agency.

The costs of treatment, including those of any apparatus necessary for the maintenance of prisoners of war in good health, particularly dentures and other artificial appliances, and spectacles, shall be borne by the Detaining Power.

During the Second World War the belligerents as a rule made genuine attempts to provide the medical attention required by wounded and sick prisoners of war and to respect Article 14 of the 1929 Convention, on which the present provision is based.

Not only were infirmaries provided in most camps, but hospitals for prisoners of war were very often set up in the neighbourhood of the principal camps. Equipment and qualified personnel were, however, sometimes in short supply. Moreover, the scarcity of manual labour induced some camp commanders to limit the number of prisoners of war excused from work on account of sickness [1].

The 1929 provisions therefore needed to be strengthened and made more explicit, and they have been rearranged in a more logical sequence.

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[1] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pp. 265 ff; see also *Revue internationale de la Croix-Rouge*, 1941, p. 571.

PARAGRAPH 1. — INFIRMARY

1. *First sentence. — General conditions*

An infirmary is necessary so that medical attention may be given. In order to be " adequate ", it must be proportionate to the size of the camp. As a minimum, the Detaining Power should apply the same standards as it applies to its own armed forces in respect of the general installation and administration of the infirmary. The Convention states that the treatment available there must include appropriate diet [1].

Apart from the question of diet, the present provision purposely makes a very general reference to the treatment which should be available to prisoners of war in the infirmary ; " the attention they require " corresponds to the wording in Article 15. In principle, the infirmary will be equipped only to deal with slight injuries or readily curable illnesses. If the patient's condition worsens, he must be transferred to a hospital or quarantine camp as the case may be, in accordance with paragraph 2 of this Article.

2. *Second sentence. — Isolation of cases of contagious or mental disease*

This provision, requiring the isolation of cases of contagious disease, is based on the risk of infection which is increased by the crowded conditions in which prisoners of war live. The 1949 Diplomatic Conference inserted the reference to cases of mental disease [2]. Like the preceding provision, however, this stipulation must be interpreted as applying to relatively slight cases only ; serious illness must be treated in hospitals or other appropriate establishments.

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[1] It should also be noted that in accordance with Article 98, paragraph 5, if the Detaining Power decides to withhold relief parcels addressed to prisoners of war undergoing confinement as a disciplinary punishment, such parcels must be entrusted to the prisoners' representative, who must hand over to the infirmary any perishable goods contained in them.

[2] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 259.

PARAGRAPH 2. — SERIOUS DISEASES

1. *First sentence. — Admission to a military or civil medical unit*

Captivity must not hinder the treatment of serious illness or injury. The present provision requires the Detaining Power to ensure that prisoners of war whose condition necessitates special treatment, a surgical operation or hospital care, are admitted " to any military or civil medical unit where such treatment can be given ", i.e. to military or civilian hospitals. This obligation remains valid for the Detaining Power even if the repatriation of the prisoners concerned is contemplated " in the near future " (under Article 109). During the Second World War, the International Committee of the Red Cross observed that prisoners due for repatriation were assembled in camps for weeks previous to their departure. Although their case sometimes required an immediate surgical operation, this was not performed, on the pretext that repatriation was expected daily [1].

2. *Second sentence. — The disabled and the blind*

During the Second World War, the Detaining Powers as a rule felt bound to supply disabled prisoners of war with temporary remedial apparatus, although this was not stipulated by Article 14 of the 1929 Convention. The present text is more explicit and provides that " special facilities " must be afforded to the disabled. After supplying the remedial apparatus required by disabled prisoners of war, the Detaining Power must also arrange for their rehabilitation. If necessary, a rehabilitation centre must be set up for the disabled, similar to those established for members of its own armed forces.

The situation of blind prisoners of war is particularly tragic, and one delegation at the 1949 Diplomatic Conference made a special appeal in their behalf. Experience has shown that it is possible to begin to re-educate the blind during captivity, with very little equipment [2]. Such action will, of course, only be taken pending the repatriation of such disabled or blind prisoners, for as seriously wounded, they *must* be repatriated as soon as they are fit to travel.

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[1] See *Report on the Work of the Conference of Government Experts*, p. 148.

[2] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 259 and 382.

PARAGRAPH 3. — NATIONALITY OF ATTENDING MEDICAL PERSONNEL

This provision was inserted by the Conference of Government Experts [1]; it must be taken in conjunction with Article 33, paragraph 2, which states that members of the medical personnel while retained by the Detaining Power shall continue to exercise their medical functions " for the benefit of prisoners of war, preferably those belonging to the armed forces upon which they depend ". This provision, which was included in the 1929 Convention, does not in any way relieve the Detaining Power of its obligation to provide all necessary care and treatment and does not invalidate the basic Red Cross principle that the wounded and sick must be cared for without any distinction on grounds of nationality [2]. But it is perfectly normal that wounded and sick prisoners of war should prefer to be treated by compatriots who speak their own language and use methods to which they are accustomed. Moreover, medical treatment given in these circumstances yields the best results [3].

PARAGRAPH 4. — MEDICAL EXAMINATION

1. *First sentence. — Right of prisoners of war to present themselves for medical examination*

During the Second World War, prisoners of war were too often prevented from presenting themselves for medical inspection ; moreover, instead of being held daily, these examinations were sometimes held at several days' interval. Labour detachments often had no infirmary, and sick prisoners of war frequently had long trips to make to the infirmary at the main camp. Many prisoners could therefore not be given treatment in time, with serious consequences [4].

The text of the present provision, which is in the negative form, is sufficiently clear ; it is contrary to the Convention to prevent attendance at these examinations, whether by order of the Detaining Power or because of practical difficulties.

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[1] See *Report on the Work of the Conference of Government Experts*, pp. 147-148.

[2] See *Commentary I*, p. 247.

[3] The question of the retention of personnel to exercise medical functions is covered by Articles 32 and 33 below.

[4] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, p. 265. See also the commentary on Article 54, paragraph 2.

In particular, prisoners of war undergoing confinement as a disciplinary or judicial punishment must be removed to the infirmary or to hospital if their state of health so requires (Article 98, paragraph 4, and Article 108, paragraph 3).

Daily medical inspections are not formally stated by the Convention as a general obligation, except in the case of prisoners confined as a disciplinary punishment (Article 98, paragraph 4). Prisoners serving sentence in penitentiary establishments will be subject to the normal rules of those establishments applicable to members of the armed forces of the Detaining Power, provided that such rules conform to the " requirements of health and humanity " (Article 108, paragraph 1) ; Article 108, paragraph 3, like Article 15, states that they are entitled to have " the medical care required by their state of health ".

2. *Second and third sentences. — Medical certificate*

This provision is confirmed, in the special case of occupational accidents, by Article 54, paragraph 2, and also by Article 68, paragraph 1. These certificates will enable prisoners of war who are the victims of accidents to justify their entitlement after repatriation.

On many occasions during the Second World War, certificates issued to prisoners were confiscated under various pretexts at the time of repatriation. In order to prevent this, the Conference of Government Experts decided that a duplicate of the certificate issued should be forwarded by the Detaining Power to the Central Prisoners of War Agency [1]. One should also note that, pursuant to Article 114, prisoners of war who meet with accidents have the benefit of the provisions of the Convention as regards repatriation or accommodation in a neutral country, in the same way as other wounded and sick.

PARAGRAPH 5. — TREATMENT FREE OF CHARGE

The costs of treatment of wounded and sick prisoners of war must be borne by the Detaining Power. This provisión merely reaffirms the principle already set forth in Article 15.

There is, however, an additional clarification : the cost of " any apparatus necessary for the maintenance of prisoners of war in good

[1] See *Report on the Work of the Conference of Government Experts*, p. 147.

health " must also be borne by the Detaining Power. Among such apparatus, dentures and spectacles are expressly mentioned, because of their importance, but the obligation also covers all other artificial appliances.

The present provision does not require the Detaining Power to supply prisoners of war with permanent prostheses ; it may supply only temporary appliances, provided they are adequate to maintain the prisoner of war in good health. Even if the repatriation of these prisoners is delayed, it is preferable that they should be fitted with permanent prostheses in their own country [1].

ARTICLE 31. — MEDICAL INSPECTIONS

Medical inspections of prisoners of war shall be made at least once a month. They shall include the checking and the recording of the weight of each prisoner of war. Their purpose shall be, in particular, to supervise the general state of health, nutrition and cleanliness of prisoners and to detect contagious diseases, especially tuberculosis, malaria and venereal disease. For this purpose the most efficient methods available shall be employed, e.g. periodic mass miniature radiography for the early detection of tuberculosis.

This provision is an expanded version of Article 15 of the 1929 Convention. Emphasis should be laid on regular checking of the weight of prisoners of war, for this is the quickest and easiest way of seeing whether or not the general state of health is satisfactory. The most appropriate method for detecting infectious diseases is the establishment of mobile units, similar to those set up for tuberculosis during the Second World War [2].

The wording of the last sentence of this Article indicates the most up-to-date methods and leaves the way open for even more efficient techniques which may develop.

These inspections also cover the general state of cleanliness and provide an opportunity to check the general standards of hygiene in the camp required by Article 29 above. They are distinct from the examinations made pursuant to Article 112 by Mixed Medical Commissions, which have to take decisions regarding the repatriation or

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[1] See *Report on the Work of the Conference of Government* Experts, p. 146.

[2] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 260 and 356-357.

accommodation of wounded and sick prisoners of war, but they will enable lists of prisoners of war to be drawn up for submission to the Commissions (Article 113).

ARTICLE 32. — PRISONERS ENGAGED ON MEDICAL DUTIES

Prisoners of war who, though not attached to the medical service of their armed forces, are physicians, surgeons, dentists, nurses or medical orderlies, may be required by the Detaining Power to exercise their medical functions in the interests of prisoners of war dependent on the same Power. In that case they shall continue to be prisoners of war, but shall receive the same treatment as corresponding medical personnel retained by the Detaining Power. They shall be exempted from any other work under Article 49.

The status of medical personnel, i.e. physicians, surgeons [1], nurses, etc., *who are attached to the medical service of their armed forces* is governed by Articles 24, 25 and 28 of the First Convention and by Article 33 of the present Convention. Such personnel who fall into the hands of the enemy *are not* prisoners of war. They may be retained to assist prisoners of war.

The present Article refers only to the relatively rare case of physicians, surgeons, etc. who are not attached to the medical service but are members of the armed forces and, as such, are prisoners of war.

In the interests of prisoners of war and because of their civilian profession, they may be required by the Detaining Power to exercise their medical functions as work under Article 49.

While exercising their medical functions, such physicians and surgeons and medical orderlies [2] will be in exactly the same position as retained medical personnel. But since they are nevertheless prisoners of war, they will not be eligible for relief under Article 33, paragraph 3.

Their medical activity constitutes work, and they must therefore be paid for it.

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[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 476 ; Vol. III, pp. 35-37, No. 32 and p. 67, No. 109.

[2] The French text uses the term " médecins ", which includes both physicians and surgeons.

Chapter IV

Medical Personnel and Chaplains retained to assist Prisoners of War

ARTICLE 33. — RIGHTS AND PRIVILEGES OF RETAINED PERSONNEL

Members of the medical personnel and chaplains while retained by the Detaining Power with a view to assisting prisoners of war, shall not be considered as prisoners of war. They shall, however, receive as a minimum the benefits and protection of the present Convention, and shall also be granted all facilities necessary to provide for the medical care of, and religious ministration to prisoners of war.

They shall continue to exercise their medical and spiritual functions for the benefit of prisoners of war, preferably those belonging to the armed forces upon which they depend, within the scope of the military laws and regulations of the Detaining Power and under the control of its competent services, in accordance with their professional etiquette. They shall also benefit by the following facilities in the exercise of their medical or spiritual functions :

(a) *They shall be authorized to visit periodically prisoners of war situated in working detachments or in hospitals outside the camp. For this purpose, the Detaining Power shall place at their disposal the necessary means of transport.*

(b) *The senior medical officer in each camp shall be responsible to the camp military authorities for everything connected with the activities of retained medical personnel. For this purpose, Parties to the conflict shall agree at the outbreak of hostilities on the subject of the corresponding ranks of the medical personnel, including that of societies mentioned in Article 26 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949. This senior medical officer, as well as chaplains, shall have the right to deal with the competent authorities of the camp on all questions relating to their duties. Such authorities shall afford them all necessary facilities for correspondence relating to these questions.*

(c) *Although they shall be subject to the internal discipline of the camp in which they are retained, such personnel may not be compelled to carry out any work other than that concerned with their medical or religious duties.*

During hostilities, the Parties to the conflict shall agree concerning the possible relief of retained personnel and shall settle the procedure to be followed.

None of the preceding provisions shall relieve the Detaining Power of its obligations with regard to prisoners of war from the medical or spiritual point of view.

Article 14, paragraph 4, of the 1929 Convention provided that doctors and medical orderlies might be retained in the camps for the purpose of caring for their prisoner compatriots.

The Conference of Government Experts decided that this provision should be removed from the Convention relative to the Treatment of Prisoners of War and embodied in the First Convention [1]. The First Committee of the Diplomatic Conference adopted a provision which contained detailed stipulations concerning retained medical personnel, and became Article 28 of the First Convention. It then appeared to the delegates to the Conference, meeting in plenary session, that such an important provision should not be left out of the present Convention, and the text of Article 28 was finally reproduced in the present Article [2], to ensure that commanders of prisoner-of-war camps would be aware of it.

The conditions for retention are stated in Article 28, paragraph 1, of the First Convention and are not reproduced in the present Article [3].

PARAGRAPH 1. — STATUS AND TREATMENT OF RETAINED MEDICAL PERSONNEL

The wording of this paragraph is not absolutely identical with the corresponding text in Article 28 of the First Convention. Although both of them state that retained personnel shall not be considered as

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[1] See *Report on the Work of the Conference of Government Experts*, p. 147.

[2] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 464 and 583 ; Vol. II-B, p. 174 ; Vol. III, p. 67, No. 110. For the history of this Article, see *Commentary I*, pp. 235-240.

[3] In this connection, see *Commentary I*, pp. 240-242 ; as regards chaplains, see also p. 229 ff. below.

prisoners of war, the First Convention adds (Article 28, paragraph 2) that they shall *at least* benefit by all the provisions of the Third Convention, while the present paragraph states that they "shall... receive *as a minimum the benefits and protection of the present Convention*". It would seem, as the author of the Commentary on the First Convention has pointed out [1], that the drafters' intention was to stipulate that the Detaining Power could apply to retained medical personnel only those provisions of the Third Convention that constituted an advantage for them.

Moreover, the phrase "as a minimum" clearly indicates that treatment as prisoners of war should be regarded as a minimum standard and that medical personnel should have a privileged position. This interpretation is in harmony with the practice and policy of the International Committee of the Red Cross during the Second World War. The Convention thus invites belligerents to give medical personnel additional advantages over and above those expressly provided for in the Conventions, whenever it is possible to do so.

In deciding not to place retained personnel on the same footing as prisoners of war, the intention of the Conference was to enable the former to carry out their medical and spiritual work in behalf of prisoners under the best possible conditions. The Conference thought it necessary to affirm the supra-national and quasi-neutral character of personnel whose duties placed them outside the conflict. By virtue of their neutral character alone, such personnel should be repatriated, and they are retained only as an exceptional measure with one purpose in view—namely, relief work carried out with the consent, and even, in a manner of speaking, on behalf of the Power of Origin. The difference is that whereas under the 1929 Convention the matter had to be settled by special agreement between the two adverse Parties to the conflict, under the new provisions this agreement is concluded beforehand, as it were, by the very fact of accession to the Convention.

While they remain with the adverse Party, medical personnel will actually find that their liberty is to some extent restricted, although from a strictly legal point of view they are not in captivity inasmuch as they are not prisoners of war. This state of affairs is inevitable in view of their status as "retained personnel" and their enemy nationality. Besides, Article 28 of the First Convention lays down that they are to be subject to camp discipline. The extent of the restrictions on their liberty will vary according to circumstances. In no event may they be more stringent than those imposed on prisoners of war. On

[1] See *Commentary I*, p. 243.

the contrary, belligerents should be particularly generous in this matter, having recourse, whenever possible, to supervision and assigned residence rather than actual internment.

In order to determine the treatment to be accorded to retained medical personnel, it is necessary to consider which provisions of the 1949 Prisoners of War Convention are applicable to them. We shall revert to this matter in commenting on the second paragraph of this Article.

PARAGRAPH 2. — FUNCTIONS

1. *First sentence. — General*

In the first place, retained medical personnel and chaplains are to continue to carry out their medical and spiritual duties in behalf of prisoners of war. The words " shall continue ", which already appeared in the 1864, 1906 and 1929 Conventions, have been kept, and with good reason. They bring out the fact that although the capture and subsequent retention of medical personnel places them in a new environment and under a different authority, their functions remain unchanged and should continue without hindrance, and practically without a break. It is in fact only because of these functions that they are retained.

From now on, these functions will be performed under the laws and military regulations of the Detaining Power, and the authority of its competent services. This provision is dictated by both common sense and the demands of efficient administration. The Detaining Power, being responsible for the state of health of all prisoners in its hands, and indeed of the entire population, must necessarily retain full powers of direction and control. The retained personnel whose help it receives are therefore absorbed, as it were, into the larger organization of its Medical Service and are subject in their work to the same rules as the national staff. It is difficult to see what other course could be adopted in practice. The medical personnel will naturally be placed under the authority of the Medical Service of the Detaining Power, while chaplains will come under the appropriate service— doubtless the same as that to which the chaplains of the Detaining Power are attached.

Compulsion by the detaining authority must end, however, when we enter a domain which, for the doctor as for the priest, is governed by the rules of professional conscience or of the sacerdotal mission.

The prisoners of war in whose behalf retained personnel are to carry out their duties shall be " preferably those belonging to the armed forces upon which they depend ". This clarification was inserted in the Geneva Convention in 1929 in reference to medical personnel awaiting repatriation. It was adopted only by a narrow majority, some delegates considering that it was contrary to a fundamental principle of the Convention—the principle, namely, that the wounded are to be cared for without distinction of nationality. These fears may have arisen from a confusion of thought. The fundamental obligation laid down in the Geneva Convention is that the captor is to treat and care for the enemy wounded as well as he does his own. Similarly a Power fighting against several countries must give equal care to the wounded of each ; but there is no restriction as to the methods chosen to ensure such equality of treatment. A Power is thus entirely justified in having prisoners of a particular nationality cared for by doctors, medical orderlies or chaplains who are their own countrymen. Such a course is, in fact, eminently desirable, one of the main reasons which led to the decision to sanction the retention of medical personnel being that prisoners preferred to be looked after by doctors of their own nationality.

In any case, this is only a recommendation and exceptions may be made where circumstances so demand.

2. *Second sentence and sub-paragraphs (a), (b), and (c). — Facilities*

The preceding clauses confer the benefits and protection of the Prisoners of War Convention on retained medical personnel and chaplains, and give them the right to continue their proper work.

The present paragraph sets out the additional facilities which should be accorded to such personnel. It is stated quite clearly at the outset, and emphasized in the clauses which deal with the details, that the facilities accorded are for " the exercise of their medical or spiritual functions ". The authors of the 1949 Convention wished again to emphasize in this way that medical personnel—who should normally be repatriated—are retained only because of the duties which they perform. The ultimate justification of their privileged status is the good of the combatants who need their assistance.

It should also be noted that these facilities, being expressly mentioned in the Convention, should always take precedence over similar provisions in regard to prisoners in general in the Prisoners of War Convention.

The first facility accorded to the personnel, under *sub-paragraph (a)*, is the right to make periodic visits to prisoners of war in labour detachments or hospitals outside the camp, and to have the necessary transport for the purpose.

Prisoners need medical and spiritual aid, no matter where they are, and those whose duty it is to bring them such aid must be able to make whatever journeys are required. The specific mention of hospitals and labour detachments should not be considered as limiting the scope of the provision, because prisoners in penitentiaries or living with private families also need medical or spiritual aid. The Detaining Power is free to exercise such supervision as it considers necessary over these journeys, and will decide if the circumstances call for an escort or not. It might, for instance, dispense with an escort in the case of medical personnel who had promised not to abandon their posts. Retained personnel cannot misuse the right so conferred upon them : they are entitled to leave the camp and travel only in order to visit prisoners entrusted to their care.

The Convention next provides, under *sub-paragraph (b)*, that the senior medical officer shall be responsible to the camp military authorities for everything connected with the activities of retained medical personnel.

The necessity of placing retained medical personnel under a chief follows logically from the fact that they have an important role to play. An organized and graded staff, such as there is in a hospital, is necessary for the satisfactory performance of their duties, and it is for this reason that the Diplomatic Conference rightly amended at this point the draft submitted to it, which provided that medical personnel could elect a spokesman from amongst their number. As in the case of the appointment of the prisoners' representative in officers' camps, the senior medical officer of the highest rank is automatically selected.

It was in order to make it possible to decide upon the nominee that mention was retained of an agreement to be concluded between the Parties to the conflict to determine the corresponding seniority of the ranks of their medical personnel, including the members of Red Cross Societies and other societies authorized to collaborate with the Medical Services of the armed forces.

The Article under review gives the responsible medical officer two prerogatives : he is to have direct access to the camp authorities in all questions arising out of his duties, and he is to be allowed the necessary facilities for correspondence relating to such questions. Thus the number of letters and cards which it may be necessary for him as responsible medical officer to write and receive must never be limited,

as the number of letters and cards written and received by prisoners of war may be in certain circumstances. It is important that the responsible medical officer should remain in close touch with medical circles in his own country, with the Protecting Power, the International Committee of the Red Cross, relief organizations, the families of captured personnel and so forth.

It should be noted that the appointment of a " responsible " officer affects only medical personnel, and not chaplains. On the other hand, individual chaplains are, like the responsible medical officer himself, to have direct access to the camp authorities. They will also have similar facilities for correspondence.

As retained personnel receive in principle the protection and all the benefits of the Prisoners of War Convention, it follows that chaplains could, if they so wished, avail themselves of the services of the prisoners' representative in their camp and take part in his election. The point is immaterial, however, in view of the fact that the Convention places each chaplain on the same level (so to speak) as the prisoners' representative and the responsible medical officer, conforming, in this respect, to the practice followed during the Second World War.

It is, furthermore, most unlikely that chaplains in a camp could have one of their number recognized as their representative, or as responsible for them. The Convention does not provide for such representation in their case, whereas it does so expressly in the case of medical personnel. The situation is altogether different, since chaplains do not form a separate corps, are few in number, and are often of different denominations.

The 1929 Convention accorded to medical personnel in enemy hands the same conditions of maintenance, housing, allowances and pay as to corresponding members of the detaining forces. The 1949 Conference did not consider it possible to continue this system, and retained personnel are now to have the same maintenance, housing and pay as prisoners of war, with the proviso that those conditions should be regarded as a minimum which the Detaining Power is invited to exceed.

In *sub-paragraph* (*c*) we find two elements which appear to have been grouped together for convenience in drafting, but between which there is little or no connection.

Retained personnel are not to be required to perform any work outside their medical or religious duties. This was implied in the 1929 text, but difficulties in the Second World War proved the need for putting it down in black and white.

The rule is now absolute ; so much so that retained personnel cannot even be obliged to do work connected with the administration, installation and upkeep of the camp, should they happen to be unoccupied for the time being. Nevertheless, the expression " medical duties " must be understood in its broadest sense. It must be remembered that the term " medical personnel " includes men who are engaged in the administration of medical units and hospitals. Although such work is not, strictly speaking, medical, these men will continue to carry out the duties assigned to them in their own forces.

The same sentence provides that retained personnel are to be subject to the internal discipline of their camp. They will thus come under the authority of the commander of the camp except when actually carrying out their duties. Every military organization is subject to military discipline, and this rule applies with even greater force to prisoner-of-war camps. Personnel of enemy nationality who are in a camp and take part in its life cannot conceivably escape the discipline common to all.

We may note that Article 35 is devoted entirely to chaplains who are retained, and to a large extent duplicates the present one.

* * *

We now have to consider how far the provisions of the present Convention are applicable to retained personnel.

We have seen above that retained personnel are to " receive as a minimum the benefits and protection of the present Convention ". One may summarize as follows the special status and treatment accorded to retained personnel :

1. They are not prisoners of war, but enjoy the special immunity which attaches to their status.

2. Because of their position as " retained personnel ", their enemy nationality and the fact that it is necessary for a Detaining Power to ensure its security, their liberty may, in practice, be restricted.

3. They are subject to the laws and regulations of the Detaining Power, and to camp discipline.

4. They carry out their duties in accordance with their professional ethics.

5. They may not be compelled to do any work outside their proper sphere of duty.

6. They may visit labour detachments and hospitals.

7. The " responsible medical officer " and the chaplains have direct access to the authorities and special facilities for correspondence.

8. They receive, as a minimum, the benefits and protection of the Convention, in so far as express provision has not already been made to meet their case (see points 3 to 7 above) [1].

Paragraph 3. — Relieving of medical personnel

During the Second World War, certain belligerents planned to relieve doctors retained in enemy camps with personnel from the home country. A start was made in the case of Yugoslav and French doctors retained in Germany.

The Diplomatic Conference did not consider that it could make such arrangements compulsory ; it merely provided for their possibility, by agreement between the Powers concerned.

The 1949 Diplomatic Conference, in its Resolution No. 3, requested the International Committee of the Red Cross to prepare a model agreement for use in such cases, and this was done [2]. Like various other model agreements drawn up by the Diplomatic Conference itself, this one is merely a model proposed to States, and the latter are at liberty to make any amendments they deem advisable.

Paragraph 4. — General obligations of the Detaining Power

The last paragraph of the Article is designed to eliminate any possible misunderstanding. The Detaining Power continues to be responsible for providing the maintenance and care required by prisoners of war, as laid down by the Convention, regardless of the assistance which may be available from retained personnel.

The Detaining Power can have no justification for failing to recruit the necessary personnel from among its own nationals in order to carry out its obligations, if sufficient retained personnel are not available.

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[1] In this connection, reference may usefully be made to *Commentary I*, pp. 242-257.

[2] See *Revue internationale de la Croix-Rouge*, January 1955, pp. 7 ff. *La rétention et la relève du personnel sanitaire, Accords-types.*

Retention must remain a supplementary measure taken for the good of the prisoners themselves and to assist the Detaining Power. The latter continues to be fully responsible for the prisoners of war who have fallen into its hands [1].

Chapter V

Religious, Intellectual and Physical Activities

ARTICLE 34. — RELIGIOUS DUTIES

Prisoners of war shall enjoy complete latitude in the exercise of their religious duties, including attendance at the service of their faith, on condition that they comply with the disciplinary routine prescribed by the military authorities.

Adequate premises shall be provided where religious services may be held.

General Remarks and Historical Background

From the very first days of the Red Cross, Henry Dunant had raised the question of " the moral welfare of prisoners of war ".

Morale always exerts a physical effect, but it is more acute in the case of persons who have lost their freedom, because their inner life tends to grow in importance. It has often been noticed that people who paid little or even no attention to their religion reverted to their childhood practices once they became prisoners of war, and found comfort. This phenomenon has been observed not only among Christians, but among the followers of all religious faiths.

By helping prisoners of war to endure the hardship to which they are exposed, religion has beneficial results on their physiological state and thus eases the task of the Detaining Power. The humanitarian spirit, which takes into account the highest aspirations of the individual, is in harmony with the interests of the Powers concerned, and this is why, even before the Geneva Convention relative to the Treat-

[1] For the commentary on this paragraph, see *Commentary I*, pp. 257-258.

ment of Prisoners of War was drawn up, Article 18 of the 1907 Hague Regulations stated the following principle: " Prisoners of war shall enjoy complete liberty in the exercise of their religion, including attendance at the services of whatever church they may belong to, on the sole condition that they comply with the measures of order and police issued by the military authorities ".

The same principle was again proclaimed in similar terms by Article 16 of the 1929 Convention which added that: " Ministers of religion, who are prisoners of war, whatever may be their denomination, shall be allowed freely to minister to their co-religionists ".

In the memorandum which it addressed to all the belligerent Powers on July 14, 1943 [1], the International Committee of the Red Cross noted that after a long period of confinement the prisoners and internees increasingly sought spiritual help from religious directors and pointed out that, in order to be able to carry out their task, these men ought to enjoy the facilities generally granted to members of the medical staff in the camps (permission to leave camp regularly, to write more frequently, etc.). The request was well received in most quarters, and when the International Committee undertook to draw up a draft Convention for the protection of civilians, it convened in Geneva, to obtain the benefit of their experience and advice, an expert commission composed of representatives of the various charitable organizations which had co-operated with it in bringing spiritual or intellectual aid to victims of the war.

The commission included representatives of the following organizations: the World Young Women's Christian Association, World Alliance of Young Men's Christian Associations, Caritas Internationalis, World Jewish Congress, World Council of Churches, World's Student Christian Federation, Pax Romana, Catholic Relief, and War Relief of National Catholic Welfare Conference. It helped to prepare a draft text which, after being adopted with certain additions by the XVIIth International Red Cross Conference, held at Stockholm in 1948, was taken as a basis for discussion by the 1949 Diplomatic Conference at Geneva.

At this Conference, the Delegation of the Holy See undertook to redraft the text and submit it " in a clear, systematic and accurate form ", as some of the clauses adopted at Stockholm appeared to overlap other provisions of the Convention [1]. When submitting his

[1] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, p. 275.

[2] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 331. See also below, p. 230, Note 1.

amendment—which was exactly the same in the case of prisoners of war and civilian internees—the Delegate of the Holy See stated that it represented the views of various religious organizations which had studied the Convention.

Certain clauses of the Stockholm draft were either dropped altogether or inserted in other Articles of the Convention (Article 125, paragraph 1). In addition, the text was presented in a new form, divided into four Articles which correspond to Articles 34 to 37 of the present Convention.

The 1929 text, which merely set forth the principle of religious freedom and stated that ministers of religion should be allowed to carry out their duties, was thus considerably enlarged in scope.

1. *First sentence.—Freedom of religion*

This provision appeared in almost identical terms in Article 16, paragraph 1, of the 1929 Convention. It affords to prisoners of war religious freedom covering even the observance of religious creeds which are prohibited for the civilian population of the Detaining Power, and is a specific instance of the application of the principle of equality of treatment without any adverse distinction based on race, nationality, religious belief, etc. (Article 16).

In fact, the experience of the Second World War showed that various interpretations could be given to the requirement in Article 16, paragraph 1, of the 1929 Convention to " comply with the routine and police regulations prescribed by the military authorities " [1].

In applying this principle of freedom, the Detaining Power may have two different kinds of obligation to fulfil. In the first place, it must ensure that no pressure is brought to bear on prisoners of war. A similar principle is set forth in Article 38, paragraph 1, in connection with intellectual, educational, and recreational pursuits, sports and games, and also in Article 14, paragraph 1. The provision also implies, however, that the organization and administration of the camp must not be such as to hinder the observance of religious rites. A balance must be found between the prisoners' obligation to comply with the disciplinary routine prescribed by the military authorities and the obligation for the Detaining Power to afford complete latitude to prisoners in the exercise of their religious duties. The words " disci-

[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 262-263.

plinary routine " which have replaced the term " routine and police regulations " used in the 1929 Convention, indicate that the exercise of religious duties, as well as attendance at services, must be compatible with the routine administration of the camp. The present wording seems more liberal than that of the 1929 text. Respect of the " disciplinary routine " implies that the exercise of religious duties, including attendance at services, is allowed without special authorization as part of the normal system of administration, general timetable and other activities. There is no need to wait for special " routine and police regulations " to be laid down before prisoners may practise their religious faith, whatever it may be. Nevertheless, although the Convention refers to all " religious faiths " without discrimination, reservations should be made concerning the performance of certain rites if such rites obviously conflict with the normal disciplinary routine in a prisoner-of-war camp.

It should also be noted that Article 53, paragraph 2, stipulates that the Detaining Power must allow prisoners of war a rest of twenty-four consecutive hours every week, preferably on Sunday or the day of rest in their country of origin. This day is often determined by religious rules. One should also refer to Article 120, paragraph 4, which provides, *inter alia*, that the detaining authorities must ensure that prisoners of war who have died in captivity are honourably buried, if possible according to the rites of the religion to which they belonged.

On the other hand, the religious denomination is not mentioned among the information which prisoners of war are required to give when questioned (Article 17, paragraph 1), nor need it be recorded in the identity documents of prisoners of war. Governments are, however, at liberty to include such a reference if they wish, since there is nothing in the Convention to preclude it. It is even necessary to record the religious denomination in order to meet the requirements of Article 120, paragraph 4, in the case of the death of prisoners of war during captivity [1].

2. *Second sentence. — Premises*

This new provision was inserted by the Diplomatic Conference [2]. The premises need not be used solely for religious services ; it is

[1] For an example of an identity card including a reference to the holder's religion, see *Revue internationale de la Croix-Rouge*, September 1953, p. 694.

[2] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 357.

sufficient if any necessary modifications can be made. On the other hand, they must be " adequate ", that is to say sufficiently large, clean and so constructed as to provide adequate accommodation for those who attend the services. A hut, a tent or a room in a building may be quite suitable.

One other question which arose during the Second World War concerns the articles necessary for the holding of services. Although the 1929 Convention, like the present text, said nothing on this subject, in principle the detaining authorities supplied the articles required. In addition, relief societies and the International Committee of the Red Cross sent the chaplains of the camps bibles, prayer books, missals and religious publications, and articles required for religious observances. Special interest was paid to prisoners of war from the East. Relief supplies of this kind are expressly mentioned in Article 72, paragraph 1 [1].

ARTICLE 35. — RETAINED CHAPLAINS

Chaplains who fall into the hands of the enemy Power and who remain or are retained with a view to assisting prisoners of war, shall be allowed to minister to them and to exercise freely their ministry amongst prisoners of war of the same religion, in accordance with their religious conscience. They shall be allocated among the various camps and labour detachments containing prisoners of war belonging to the same forces, speaking the same language or practising the same religion. They shall enjoy the necessary facilities, including the means of transport provided for in Article 33, for visiting the prisoners of war outside their camp. They shall be free to correspond, subject to censorship, on matters concerning their religious duties with the ecclesiastical authorities in the country of detention and with the international religious organizations. Letters and cards which they may send for this purpose shall be in addition to the quota provided for in Article 71.

[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 368. See also *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, p. 276.

General

As has already been done in connection with Article 33, reference should be made here to the difficulties which arose at the Diplomatic Conference in 1949 [1].

As will be seen in considering the present Article, the contradictions referred to do not all seem to have been eliminated. They are, however, mitigated by the fact that Article 33 applies mainly to medical personnel, while the present Article and Articles 34, 36 and 37 were drawn up to apply expressly to chaplains and to the exercise of religious duties in prisoner-of-war camps.

Some confusion arose in the past from the reference in the corresponding provision in the 1929 Convention (Article 16, paragraph 2) to " ministers of religion, who are prisoners of war " because of the often widespread belief that ministers of religion are always chaplains in the army. This is not so, and the distinction is an important one since chaplains are entitled to protection under the First Geneva Convention, relative to the wounded and sick, and therefore may not be prisoners of war. The question is settled by the Third Convention in a way which leaves no room for doubt ; the present Article refers exclusively to chaplains, while other ministers of religion are the subject of Article 36 [2].

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[1] The text finally proposed by the Committee included the following text, as Article 29B, instead of the present Article 33, which corresponds almost identically to Article 28 of the First Convention. The text of Article 29B read as follows :

> " Members of medical personnel and chaplains whilst retained by the Detaining Power to look after prisoners of war shall be granted all facilities necessary to provide for the medical care of and religious ministrations to prisoners of war. Such retained personnel shall not be considered prisoners of war but shall receive all the benefits and protection of this Convention ".

(See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 583.)

The present Articles 34 to 37 were finally adopted in the form in which they were drafted with the exception of a few amendments subsequently made to Article 35, as we shall see.

At a plenary meeting, however, the above text of Article 29B was strongly opposed and a delegation submitted an amendment providing for the inclusion of Article 28 of the First Convention (Article 33 of the present Convention) referring to the rights and privileges of retained personnel.

A protracted discussion ensued during which some delegations asserted that the new Article 29B (now Article 33) and Article 30A (now Article 35) of the draft text were incompatible because they contained certain conflicting provisions (see *Final Record*, Vol. II-B, pp. 282-288). Finally, a working party was instructed to co-ordinate the two provisions and they were both adopted at a plenary meeting (see *Final Record*, Vol. II-B, p. 342).

[2] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 332. See also *Remarks and Proposals*, p. 46.

1. *First sentence. — Free exercise of ministry*

This provision has certain elements in common with Article 33, paragraph 2, and Article 34, paragraph 1 : retention, freedom to exercise their duties, professional and religious conscience, and respect for the routine prescribed by the military authorities. This similarity, however, also serves to emphasize certain differences. The present Article refers not only to " retained " chaplains but also to those " who remain ", that is to say, who remain of their own free will.

The prerogatives of retained chaplains are based on their mission, which is that of " assisting prisoners of war ". Chaplains who remain voluntarily in the hands of the Detaining Power have the same mission. An identical situation therefore calls for identical status, the more so as such voluntary internment is subject to the consent of the Detaining Power [1].

Moreover, the right officially granted to chaplains to minister to prisoners of war and to exercise freely their ministry should, in our view, be examined in the light of Article 34. The provisions of Article 33, which require respect for the military laws and regulations of the Detaining Power are more restrictive than the reference to " disciplinary routine prescribed by the military authorities " in Article 34, paragraph 1. In our view, the principle of religious freedom and free exercise of ministry cannot be limited by any regulations which the Detaining Power, has laid down for its own armed forces ; in this instance, the special provision (Article 34) seems to override the general one.

The Convention next states that chaplains must be allowed to minister to prisoners of war " in accordance with their religious conscience ". This condition is absolutely essential, since religion is inspired directly by the faith and conviction of those who profess it. The same is true of the assurance that chaplains are to be allowed to exercise their ministry among prisoners of war of the same religion. The principle is stated here in an absolute form ; the following sentence provides for its practical application.

2. *Second sentence. — Allocation*

This sentence, which provides for the allocation of chaplains between camps, was included following interventions by the Inter-

[1] See *Commentary I*, pp. 240-242.

national Committee of the Red Cross [1] and it in no way conflicts with Article 33. On the contrary, it falls naturally within the scope of the arrangements made by the Detaining Power in accordance with paragraph 2 of that Article.

3. *Third sentence. — Facilities*

The " necessary " facilities include, in the first place, those listed in Article 33, but that list is by no means exhaustive. Reference should also be made to Section VI, Chapter II (Articles 79 to 81) and to the commentary on Article 81, which concerns the prerogatives of prisoners' representatives ; libraries, reading rooms or the circulation of a newspaper may prove most useful for chaplains.

Lastly, it should be noted that the Detaining Power must grant such personal facilities to chaplains as are necessary if they are to carry out their duties. For instance, they should if possible be given separate quarters so that they may converse freely and frankly with prisoners. Similarly, the fact that Article 33 (*c*) exempts them from other work is no justification for giving them the same rations as prisoners who do not work, if the exercise of their ministry calls for really arduous effort on their part [2]. They will receive working pay from the Detaining Power, in accordance with the provisions of Article 62, paragraph 2.

4. *Fourth and fifth sentences. — Freedom to correspond*

A clause similar to that contained in the two concluding sentences of the present Article, but providing for " all necessary facilities for correspondence ", appears at the end of Article 33 (*c*).

Such facilities will include not only exemption from restriction as to quantity, but also, if need be, the right of priority for censorship,

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[1] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pp. 274-276. See also *Report on the Work of the Conference of Government Experts*, pp. 149-150.

[2] It should be pointed out, moreover, that the draft text proposed by Committee II contained a further paragraph, which was deleted by the Working Party of the plenary assembly. The text was as follows : " They shall be granted additional rations as provided for working prisoners of war in the second paragraph of Article 24, and they shall also be granted additional opportunities for exercise and recreation including some freedom of movement in order to maintain the state of mental and physical fitness required to carry out their religious duties." (*Final Record of the Diplomatic Conference of Geneva of 1949*. Vol. II-A, p. 583.)

since considerable delays may otherwise occur. The Detaining Power might also grant special privileges to chaplains regarding the language to be used in correspondence.

Freedom and facilities for correspondence are granted for questions relating to their ministry (Article 33 *(b)*) and for matters concerning their religious duties, according to the present provision. The text should be interpreted liberally, so as to include all correspondence concerning spiritual assistance for prisoners of war, whether individually or as a group. In accordance with Article 125, paragraph 2, limitations may be placed on the number of international religious organizations with which such correspondence is permitted.

ARTICLE 36. — PRISONERS WHO ARE MINISTERS OF RELIGION

Prisoners of war who are ministers of religion, without having officiated as chaplains to their own forces, shall be at liberty, whatever their denomination, to minister freely to the members of their community. For this purpose, they shall receive the same treatment as the chaplains retained by the Detaining Power. They shall not be obliged to do any other work.

Under this Article, the Detaining Power must allow ministers of religion who are not chaplains and who are, consequently, prisoners of war to exercise their ministry, and must grant them the same treatment as retained chaplains to the extent necessary for this purpose. It therefore applies to ministers of religion who were members of combatant units at the time of their capture [1].

Such authorization will be granted " whatever their denomination ". This very broad wording confirms the principle of religious freedom set forth in Article 34. Assimilation is, however, not automatic ; it is subject to consent by the Detaining Power. This reservation stems from the fact that the Detaining Power is only obliged to grant the permission to the extent that it is necessary. The case might well arise of a minister belonging to a religious faith which is not that of the prisoners of war concerned. In that event, there is no obligation to grant either permission to minister or the privileged treatment mentioned in the second sentence, for it is stated expressly that such treatment shall be accorded in order to permit the full exercise of the

[1] The text of the first sentence of this Article is almost identical to that of Article 16, paragraph 2, of the 1929 Convention (see below, p. 701).

ministry. The same applies to the exemption from work specified in the last sentence, despite its categorical wording. The whole Article in fact depends on its prime purpose, which is to enable ministers of religion to carry out their duties among prisoners of war of the same faith. The view was expressed, however, at the 1949 Diplomatic Conference that, although the Detaining Power may not compel ministers of religion to undertake any work except their religious duties, they are nevertheless free to take part in the work done by other prisoners, if they prefer not to appear specially favoured [1].

The general authorization to which the present Article refers may be granted for a limited period and renewed regularly, if need be. Throughout its validity, a prisoner of war who is a minister of religion will not only be exempted from work, but will also enjoy all the privileges granted to retained chaplains. Articles 33 and 35 will be fully applicable to him.

ARTICLE 37. — PRISONERS WITHOUT A MINISTER OF THEIR RELIGION

When prisoners of war have not the assistance of a retained chaplain or of a prisoner of war minister of their faith, a minister belonging to the prisoners' or a similar denomination, or in his absence a qualified layman, if such a course is feasible from a confessional point of view, shall be appointed at the request of the prisoners concerned to fill this office. This appointment, subject to the approval of the Detaining Power, shall take place with the agreement of the community of prisoners concerned and, wherever necessary, with the approval of the local religious authorities of the same faith. The person thus appointed shall comply with all regulations established by the Detaining Power in the interests of discipline and military security.

The purpose of this Article is to ensure spiritual assistance for prisoners of war who, despite the facilities provided by Articles 33, 35 and 36, have no access to a minister of their faith.

In such a case, spiritual assistance may be given by a minister belonging to another denomination, or even by a layman [2], if such a

[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 332.

[2] This reference was inserted by the 1949 Diplomatic Conference in order to meet a point raised by the Indian Delegate. See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 439.

course is feasible from a confessional point of view. Several delegations considered, however, that there was a risk that this might give the Detaining Power an opportunity of introducing among prisoners of war a person who, although fully qualified from the religious point of view, might actually be a propaganda agent. The Article therefore specifies that the appointment shall be made at the request of the prisoners concerned and shall be subject to the approval of the Detaining Power and, wherever necessary, of the local religious authorities [1].

The text is rather ambiguous—probably intentionally so—and does not specify by whom the appointment is to be made. Since the person in question may be chosen either from among the prisoners of war or from the civilian population of the country of detention, one might expect the proposal to be made by the prisoners, by the military authorities, or by the local religious authorities, at the request of the prisoners concerned.

It seems reasonable that the actual appointment should, if possible, be made by the competent religious authorities, or, in the absence of religious authorities, by the community of prisoners. The appointment is, of course, subject to the approval of the Detaining Power.

The agreement of the prisoners involves no special problems. It will be given by a majority vote and may at any time be withdrawn, if the majority so desire. The question is rather more delicate in regard to the Detaining Power. A similar situation arises in connection with Article 79, paragraph 4, which concerns the election of prisoners' representatives and states: " Every representative elected must be approved by the Detaining Power before he has the right to commence his duties . . . ". But the second sentence of the same paragraph goes on to say: " Where the Detaining Power refuses to approve a prisoner of war elected by his fellow prisoners of war, it must inform the Protecting Power of the reason for such refusal ". This clause limits arbitrary action. Although there is no such reference in Article 37, it would be desirable that the Detaining Power should follow the procedure of Article 79 regarding prisoners' representatives if it refuses to approve the appointment of a minister of religion or a qualified layman pursuant to the present Article.

The concluding sentence requires the minister or layman thus appointed to comply with all regulations in the interests of discipline and military security. This phrase, which has no exact equivalent in the provisions relating to exercise of religion by prisoners of war, was included because, in most instances, the persons concerned will not be

[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 332-333.

members of the camp community. Once they enter the camp, they must nevertheless comply with the regulations, in accordance with this clause. As a reciprocal measure, such persons should be afforded the various facilities referred to in Articles 33 and 34 to 36 by virtue of the duties which they perform.

ARTICLE 38. — RECREATION, STUDY, SPORTS AND GAMES

While respecting the individual preferences of every prisoner, the Detaining Power shall encourage the practice of intellectual, educational, and recreational pursuits, sports and games amongst prisoners, and shall take the measures necessary to ensure the exercise thereof by providing them with adequate premises and necessary equipment.

Prisoners shall have opportunities for taking physical exercise including sports and games and for being out of doors. Sufficient open spaces shall be provided for this purpose in all camps.

General

Captivity makes great demands not only on the bodily health of prisoners of war but also on their morale and it may even have the gravest psychical effects. It is therefore essential to ensure that prisoners of war have time for mental and physical relaxation. During the First World War, there was considerable development of " intellectual relief ", as a result of joint action by the Governments of neutral States, Red Cross Societies and other philanthropic or cultural associations. In the Second World War, when large numbers of prisoners were held captive for years, special efforts were made throughout the world to combat the detrimental effects of captivity [1].

Paragraph 1. — General obligations of the Detaining Power

Intellectual, educational and recreational pursuits, sports and games must, in the first place, afford prisoners of war with a means of relaxation ; every prisoner must be able to follow his individual preferences. This is clearly stipulated in the opening phrase of the

[1] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pp. 276-281.

paragraph, which requires the Detaining Power to respect " the individual preferences of every prisoner ". The use of radio in camps for the entertainment of prisoners must not, therefore, be recommended too categorically, since it can easily be used for propaganda purposes.

The following comments may be made in this connection : where propaganda involves inhuman treatment, it is *ipso facto* contrary to the Conventions, since such treatment is expressly prohibited. Where no inhuman treatment is involved, propaganda is nevertheless usually dangerous for prisoners of war and contrary to the Conventions, since it may be inconsistent with equality of treatment, respect for honour and, in particular, the present provision which affirms the right of prisoners to use their leisure time according to their own preferences.

Article 17 of the 1929 Convention referred expressly to " the organization of intellectual and sporting pursuits by the prisoners of war ", which the Detaining Power was to encourage. This wording was somewhat restrictive and the present text requires the Detaining Power to provide " adequate premises and necessary equipment " for the organization of leisure time. During the Second World War the problem was often solved to the complete satisfaction of the prisoners of war. They were provided with musical instruments, theatrical accessories, books, language courses, recreation rooms, football fields, etc. The necessary equipment was usually supplied by relief societies or purchased by the prisoners themselves [1].

PARAGRAPH 2. — PHYSICAL EXERCISE

This paragraph is based on Article 13, paragraph 4, of the 1929 Convention, which sometimes served as a pretext for persecution during the Second World War [2]. However, prisoners were usually able to play games [3]. The present text is more explicit than the 1929 provision which, in stating the principle, implied that the Detaining Power must permit its application. One of the characteristics of the new Convention is that some of its provisions are stated in such a detailed way that no violation can pass unnoticed.

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[1] One should also refer to Article 72 of the present Convention, which states expressly, in paragraph 1, that prisoners of war must be allowed to receive by post or by any other means articles of a religious, educational or recreational character which may meet their needs.

[2] See BRETONNIÈRE, *op. cit.*, pp. 114-115.

[3] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pp. 280-281.

Chapter VI

Discipline

The prime purpose of measures of discipline is to ensure that the prisoner of war remains in the hands of the Detaining Power, so that he can neither do any harm to that Power within the camp, nor by escaping be enabled to take up arms again. It must not be forgotten that his life has been spared only on condition that he is no longer a danger to the enemy.

It should also be realised, however, that the Detaining Power can carry out its duty to treat prisoners of war in accordance with the Convention only if it ensures that discipline is maintained in prisoner-of-war camps. And in fact disciplinary measures do assist the application of standards designed to improve the situation of the prisoners in the camp.

A considerable part of the Convention is therefore composed of Articles providing for the establishment or strengthening of discipline in prisoner-of-war camps: Article 21 (partial or complete release on parole or promise); Articles 39 to 42 (which are examined in this chapter); Articles 82 to 98 (penal and disciplinary sanctions); Articles 79 to 81 (prisoners' representatives). One may also refer to Articles 82 and 41, paragraph 2, which relate to the laws, regulations and orders applicable to prisoners of war.

In considering the question of prisoners of war submitting to or even supporting the system of discipline established by the detaining State, a clear distinction must be made between the dual aspects of discipline.

To the extent that the Convention must be operative in the normal way, there is no doubt that prisoners of war are legally required to respect the rules set forth in it. This is indisputable if captivity is to be bearable for prisoners of war and they are to receive humane treatment. Otherwise, the Detaining Power would have no alternative but to resort to force in order to overcome lack of co-operation on the part of the prisoners. It is therefore essential for the implementation of the Convention that prisoners of war should be subject to military discipline.

The same reasoning does not apply, however, as regards the principal aspect of detention, that is to say the Detaining Power's interest in keeping prisoners of war captive. There can be no question

of it being the duty of prisoners of war to remain in the hands of the enemy. Although an attempt to escape is punishable by disciplinary measures, one cannot consider it as being a breach of any duty on the part of prisoners of war to obey the Detaining Power [1].

ARTICLE 39. — ADMINISTRATION ; SALUTING

Every prisoner-of-war camp shall be put under the immediate authority of a responsible commissioned officer belonging to the regular armed forces of the Detaining Power. Such officer shall have in his possession a copy of the present Convention; he shall ensure that its provisions are known to the camp staff and the guard and shall be responsible, under the direction of his Government, for its application.

Prisoners of war, with the exception of officers, must salute and show to all officers of the Detaining Power the external marks of respect provided for by the regulations applying in their own forces.

Officer prisoners of war are bound to salute only officers of a higher rank of the Detaining Power : they must, however, salute the camp commander regardless of his rank.

PARAGRAPH 1. — ADMINISTRATION AND RESPONSIBILITY FOR THE APPLICATION OF THE CONVENTION

From the moment of capture, the order of hierarchy of the captured unit is disrupted and officers and other ranks are separated from one another. The first task of the Detaining Power must therefore be to organize discipline on a new basis.

1. *First sentence. — Appointment of a responsible commander*

The principle that a responsible commander should be appointed in each camp was already set forth in the 1929 Convention, Article 18, paragraph 1 : " Each prisoners-of-war camp shall be placed under the

[1] The position of a prisoner of war in this respect is expressly recognized by Article 87, paragraph 2, which instructs the courts or authorities of the Detaining Power to " take into consideration, to the widest extent possible, the fact that the accused, not being a national of the Detaining Power, is not bound to it by any duty of allegiance and that he is in its power as the result of circumstances independent of his own will ". See JACCARD, *Capture et captivité en cas de guerre continentale*, thesis, Lausanne, 1922, pp. 103 ff.

authority of a responsible officer ". The brevity of that text led to considerable abuse of the provision when disciplinary powers were delegated to non-commissioned officers and even to prisoners of war. The present Convention stipulates in Article 96 that disciplinary powers may be delegated only to an officer. The term " prisoner-of-war camp " refers not only to the central camp but also to all the labour detachments under its administration and in some cases authority might be delegated, outside the main camp, to an officer acting under the responsibility of the officer in command not only of the main camp but also of all its outlying units.

2. *Second sentence. — Responsibility for applying the Convention*

Under this clause the camp commander is personally responsible for the application of the Convention both in the main camp and in all its annexes. He would be held responsible for any breach of the Convention attributable to one or more of his subordinates.

His personal responsibility is involved " under the direction of his Government ". Any lack of adequate control on the part of the Government would certainly not relieve the camp commander of his obligations ; but could he evade his responsibilities if his Government gave him orders contrary to the provisions of the Convention ? In our view the answer must be in the negative. The camp commander is responsible not only towards his Government which has undertaken to respect and to ensure respect for the Convention, but also towards all the countries which are party to the Convention. This seems at least to be the significance of the French text of this provision (" sous le *contrôle* de son gouvernement "). The word " direction " in the English text seems slightly to lessen the individual responsibility of the camp commander.

Be this as it may, the requirement that the camp commander must have in his possession a copy of the Convention (and not merely receive instructions from his Government which may or may not be in accordance with that instrument) emphasizes the nature of the responsibility which remains his in all circumstances [1].

PARAGRAPH 2. — SALUTE AND EXTERNAL MARKS OF RESPECT

This provision requires prisoners of war to show the relevant external marks of respect to all officers ; at the same time, it automati-

[1] See below, pp. 622-623.

cally excludes from this privilege any representative of the Detaining Power who is not an officer or does not wear officer's uniform. Similarly, it excludes all non-commissioned officers, regardless of the laws and regulations of the Detaining Power.[1]

The present provision does not merely state to whom prisoners of war must give the salute and show external marks of respect ; it also determines the form and conditions for doing so, by referring explicitly to the regulations applying in the armed forces to which the prisoners belong. This provision is likely to prevent any recurrence of incidents such as those which took place during the Second World War, when certain belligerents insisted on prisoners conforming to the regulations for saluting applicable in the armed forces of the Detaining Power [2].

There is one more question, in this connection, which gave rise to some difficulty : that of officers of the Detaining Power returning the salute of prisoners of war. The Conference of Government Experts considered that this was a matter of courtesy and did not call for precise ruling [3].

Paragraph 3. — Saluting by officers

The 1929 Convention required officer prisoners of war to salute only officers of the Detaining Power who were their superiors or equals in rank. The Conference of Government Experts considered that the exchange of salutes between equal ranks was so much a matter of courtesy that the Convention could not enter into such matters of detail [4].

During the Second World War, moreover, certain Powers insisted that officer prisoners of war should salute the camp commander, whatever his rank, and this gave rise to numerous discussions [5]. The Conference of Government Experts, however, took the view that it was normal for prisoners to salute the camp commander, since he represented the Detaining Power, and a provision to that effect was included in the present paragraph.

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[1] These questions sometimes gave rise to difficulties during the Second World War ; see *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, p. 250. See also Bretonnière, *op. cit.*, pp. 141-142.

[2] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, p. 250. See also Bretonnière, *op. cit.*, p. 141.

[3] See *Report on the Work of the Conference of Government Experts*, p. 152.

[4] *Ibid.*, p. 153.

[5] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, p. 250.

ARTICLE 40. — BADGES AND DECORATIONS

The wearing of badges of rank and nationality, as well as of decorations, shall be permitted.

Despite the categorical wording of Article 19 of the 1929 Convention, badges of rank and decorations were often taken away from prisoners of war during the Second World War. This was a direct attack on their dignity and honour and constituted a violation of the requirement that prisoners of war must be treated with due regard to their rank (Article 21, paragraph 2).

It was, however, not always the result of any deliberate action, but rather of negligence, particularly when worn-out uniforms were withdrawn and replaced by new clothing with no provision for the wearing of badges of rank and nationality on the latter [1].

Article 40 of the new Convention therefore corresponds to Article 19 of the 1929 Convention, with an additional reference to badges of nationality. It is supplemented by Article 18, paragraph 3, which specifies that following capture, prisoners of war must be allowed to keep badges and decorations, and also by Article 87, paragraph 4, which forbids the Detaining Power to deprive a prisoner of war of his rank or to prevent him from wearing his badges as a penal or disciplinary sanction.

ARTICLE 41. — POSTING OF THE CONVENTION AND OF REGULATIONS AND ORDERS CONCERNING PRISONERS

In every camp the text of the present Convention and its Annexes and the contents of any special agreement provided for in Article 6, shall be posted, in the prisoners' own language, at places where all may read them. Copies shall be supplied, on request, to the prisoners who cannot have access to the copy which has been posted.

Regulations, orders, notices and publications of every kind relating to the conduct of prisoners of war shall be issued to them in a language which they understand. Such regulations, orders and publications shall be posted in the manner described above and copies shall be handed to the

[1] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pp. 250-251. See also *Report on the Work of the Conference of Government Experts*, p. 153.

prisoners' representative. Every order and command addressed to prisoners of war individually must likewise be given in a language which they understand.

The right to be informed in all circumstances of the regulations etc. pertaining to captivity corresponds to two cardinal principles of the Convention. The first is that the text of the Convention should be disseminated as widely as possible ; the second is an essential right of man and might be expressed in the following terms : no one may be punished pursuant to legislation with which he has not had an opportunity to acquaint himself [1].

The right of prisoners to be informed is the basis of the right to make complaints ; moreover, if prisoners are well informed, the general atmosphere of the camp is likely to be better and thus conducive to the willing acceptance of discipline.

The first paragraph of this Article corresponds to Article 84 of the 1929 Convention, which was included under the heading " Execution of the Convention ". The second paragraph corresponds to Article 20 of the earlier Convention, under " Discipline ".

Paragraph 1. — Dissemination of the text of the Convention

1. *First sentence. — Posting in the camps*

The only express provision concerning the posting of the Convention refers to prisoner-of-war camps. The camp commander is nevertheless responsible for ensuring that prisoners of war working in labour detachments outside the camp are at all times informed of the provisions of the Convention. He may select the most appropriate means of doing so, for instance by circulating a text or, possibly, by posting it in the case of large labour detachments.

The number of copies posted will depend on the number of prisoners and the administrative organization of each camp ; the essential consideration is that each prisoner of war must be able to acquaint himself with the text of the Convention.

The main objection raised against the compulsory posting of the Convention related to translation difficulties [2].

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[1] The first of these principles is set forth in Article 127 ; the second is implicitly referred to in Article 100, for instance.

[2] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 265.

The 1929 Convention made the situation still more difficult by stipulating that the text must be posted " in the native language of the prisoners of war " ; the present Article refers merely to " the prisoners' own language ", this being the official language of the prisoners' country of origin—the language used in that country for official records and the publication of legislation. Where there is more than one official language in the country of origin, the Convention should, if possible, be posted in the language actually used by the prisoners concerned.

The detaining State is responsible for preparing the texts to be posted, but it would nevertheless be desirable that at the outset of hostilities, through the good offices of either the Protecting Power or the International Committee of the Red Cross, the Power on which prisoners depend should forward to the Detaining Power the text of the Convention in the prisoners' own language. It is also advisable that these translations, which are considered as a means of disseminating the Convention, should be prepared in peace-time [1].

This obligation is mandatory. The 1929 Convention merely stated that the text should be posted " whenever possible " ; consequently, at the beginning of the Second World War, the text of the Convention was not available in many camps, and certain camp commanders were not even aware of its existence.

The obligation is not so far-reaching in the case of special agreements : their " contents " must be posted but not necessarily the full text. They must nevertheless be posted in sufficient detail so as to include all the essential provisions of such agreements, giving prisoners accurate information on all matters concerning them.

2. *Second sentence. — Supply of copies to prisoners without access to the copy posted*

This provision is for the benefit of sick or detained prisoners of war and those who are working on the land or in certain detachments, for although they are in special circumstances, they have the same right to be informed as other prisoners.

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[1] In fact Article 128 provides that States shall communicate to one another, either through the Swiss Federal Council or, during hostilities, through the Protecting Powers, the official translations of the Convention. In war-time, this may also be done through the International Committee of the Red Cross, which has a collection of all the translations prepared by Governments.

PARAGRAPH 2. — DISSEMINATION OF REGULATIONS AND ORDERS

1. *First sentence. — Posting and collective notices*

Notices and the like must obviously be issued in such a way that prisoners of war can understand them. A similar provision is to be found in Article 17, paragraph 6, Article 105, paragraph 4, and Article 107, paragraph 1. It is therefore an important factor in the relationship between prisoners of war and the detaining State, and the latter is in fact responsible for ensuring that prisoners have understood the orders given.

The 1929 Convention made no provision for the posting of regulations and orders, or for the distribution of such texts to the prisoners' representative. The latter requirement serves a dual purpose : it will enable the prisoners' representative to explain to the prisoners the orders given by the Detaining Power, and will also give him an opportunity to make any necessary observations if the orders contain anything contrary to the Convention.

2. *Second sentence. — Individual communications*

May guards use a language other than that of the prisoners (their own, for instance) provided that the prisoners understand what they say ? A case of this sort would be that of verbal commands which can be condensed into short phrases that are easy to remember, even in another language. This seems permissible provided that the prisoners actually understand the commands. For this purpose and in order to make themselves understood, guards should learn a few phrases in the prisoners' language or, better still, an interpreter should be called upon whenever possible.

ARTICLE 42. — USE OF WEAPONS

The use of weapons against prisoners of war, especially against those who are escaping or attempting to escape, shall constitute an extreme measure, which shall always be preceded by warnings appropriate to the circumstances.

The Brussels Declaration stated, in Article 28, paragraph 2 : " Arms may be used, after summoning, against a prisoner of war

attempting to escape ". That clause was not, however, included either in the Hague Regulations or in the 1929 Convention, not because its validity was disputed, but simply because " it was felt that this was a delicate matter to express in a Convention " [1].

Following abuses which occurred during the Second World War, the Conference of Government Experts supported the proposal by the International Committee of the Red Cross that an express provision on this subject should be inserted in the chapter concerning discipline [2].

Captivity is based on force, and although there can be no doubt on the matter, it is recognized in international customary law that the Detaining Power has the right to resort to force in order to keep prisoners captive [3]. At the same time, this consideration also limits the use of weapons against prisoners. Whether in the case of attempted escape or any other demonstration (e.g. mutiny or revolt), the use of weapons " shall constitute an extreme measure, which shall always be preceded by warnings appropriate to the circumstances ".

Let us first consider escape. " An extreme measure " means that fire may be opened only when there is no other means of putting an immediate stop to the attempt. From the moment the person attempting to escape comes to a halt, he again places himself under the protection of the Detaining Power, and Article 23 *(c)* of the Hague Regulations concerning the Laws and Customs of War on Land is applicable to him [4].

It is also important, however, to make a distinction between escape proper and acts or phases preparatory thereto. If a prisoner is surprised within the camp limits while making preparations to escape, there is no justification for opening fire on him. During the Second World War, the belligerents generally solved this problem by establishing " death-lines " *(lignes de sécurité, Sicherheitslinien)*, which

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[1] Fauchille, quoted by BRETONNIÈRE, *op. cit.*, p. 338. In his report on the Peace Conference (*Actes de la Conférence de la Paix*, The Hague, 1899, p. 52), ROLIN stated : " The sub-committee deleted this clause. In so doing its intention was in no way to dispute the right to fire on an escaping prisoner of war, if military regulations so permit ; but it considered it useless, to say the least, to include in the Declaration an Article which would in some way appear to give specific approval to such an extreme measure ".

[2] See *Report on the Work of the Conference of Government Experts*, pp. 212-213.

[3] See SCHEIDL : *op. cit.*, p. 446.

[4] This provision reads as follows : " In addition to the prohibitions provided by special Conventions, it is especially forbidden : . . . (*c*) To kill or wound an enemy who, having laid down his arms, or having no longer means of defence, has surrendered at discretion."

prisoners of war were absolutely forbidden to cross, under penalty of being fired on by guards and sentries [1].

Even when there is justification for opening fire, the Convention follows international custom and the national legislation of most countries, and gives prisoners of war one last chance to abandon the attempt and escape the penalty. Fire may not be opened automatically, even when all the required material conditions have been met ; the use of weapons must always be preceded by warnings " appropriate to the circumstances ", which may either be verbal, by means of an instrument (whistle, bell, etc.), or by a warning shot. The essential thing is that the warnings must be clearly perceived and understood by those to whom they are addressed. The number of warnings is not stipulated, but it will be noted that the Convention uses the plural form, which necessarily implies at least two warnings ; the figure of three is generally considered as statutory. It should also be pointed out that although, during the Second World War, some countries took very harsh measures against attempts to escape, the Power of Origin was often in part responsible because it encouraged such attempts by every possible means. One cannot require the Detaining Power to reinforce the sentry units indefinitely at the expense of its active combat forces. The only remaining alternative is therefore to adopt very strict measures in order to intimidate prisoners of war [2].

The use of force by guards may also be justified in the case of rebellion, and the remarks already made above concerning attempts to escape are applicable here also. The analogy is not absolute, however, and in the event of mutiny there may be other possibilities as regards the weapons to be used. Before resorting to weapons of war, sentries can use others which do not cause fatal injury and may even be considered as warnings—tear-gas, truncheons, etc. These measures may prove inadequate, however, and from the moment when the guards and sentries are about to be overwhelmed, or are obliged to act in legitimate self-defence, they are justified in opening fire. Events in Korea provided a tragic example of a situation of this kind [3], and it

[1] For examples, see BRETONNIÈRE, *op. cit.*, pp. 339-343, and Hans K. FREY : *Die disziplinarische und gerichtliche Bestrafung von Kriegsgefangenen*, thesis, Berne, Vienna, 1948, pp. 44-45.

[2] See FREY : *op. cit.*, pp. 45-46.

[3] The following were the most tragic events which occurred in Korea : on October 1, 1952, 56 prisoners were killed and 111 wounded at Cheju Island ; on December 14 of that year, 84 were killed and 118 wounded at Pongam Island ; on March 7, 1953, 23 were killed and 42 wounded at Yoncho Island, where there were also 4 killed and 45 wounded on April 18 of the same year.

cannot be too strongly emphasized, therefore, that the Detaining Power must keep a close watch on the situation in order to avoid any such serious developments. In any case, if the guards or sentinels have to open fire on prisoners of war, they should first aim low, unless they are themselves in imminent danger, so as to avoid inflicting fatal wounds.

Chapter VII

Rank of Prisoners of War

ARTICLE 43. — NOTIFICATION OF RANKS

Upon the outbreak of hostilities, the Parties to the conflict shall communicate to one another the titles and ranks of all the persons mentioned in Article 4 of the present Convention, in order to ensure equality of treatment between prisoners of equivalent rank. Titles and ranks which are subsequently created shall form the subject of similar communications.

The Detaining Power shall recognize promotions in rank which have been accorded to prisoners of war and which have been duly notified by the Power on which these prisoners depend.

PARAGRAPH 1. — NOTIFICATION OF RANKS

The 1929 Convention provided, in Article 21, paragraph 1, that the belligerents must " inform each other of the titles and ranks in use in their respective armed forces, with the view of ensuring equality of treatment between the corresponding ranks of officers and persons of equivalent status ". Difficulties arose, however, in the application of this rule.

Having been instituted in order to ensure equality of treatment between the corresponding ranks of officers and persons of equivalent status, the 1929 provision therefore seemed to apply only to that category of prisoners of war and not to all the categories protected by the Convention. Numerous difficulties arose during the Second World War, since certain armed forces considered that those who held certain ranks had the status of officers, although that was not the case in the

armed forces of the Detaining Power [1]. But it also happened that officers or non-commissioned officers were without the papers proving their rank, through either loss or confiscation, and were unable to establish a claim to the treatment to which their rank entitled them [2].

The Conference of Government Experts therefore considered that the provision should be made more specific and should clearly cover all persons to whom the Convention is applicable by requiring reciprocal notification of " the titles and ranks of all persons named in Article 4 " [3].

PARAGRAPH 2. — PROMOTIONS

This provision is new. During the Second World War, some belligerents refused to recognize promotions granted to prisoners of war during their captivity. The present paragraph requires the Detaining Power to recognize such promotions, provided they have been " duly notified ".

Such notifications will be made through the good offices of either the Protecting Power or, if there is none, the International Committee of the Red Cross [4].

ARTICLE 44. — TREATMENT OF OFFICERS

Officers and prisoners of equivalent status shall be treated with the regard due to their rank and age.

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[1] See BRETONNIÈRE, *op. cit.*, pp. 148-149.

[2] See *Report on the Work of the Conference of Government Experts*, pp. 154-155 ; *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pp. 251-252. It must be pointed out, however, that several belligerents did communicate lists of the ranks in use in their armed forces at the beginning of the Second World War (*ibid.*, p. 283).

[3] The French text differs from the English, here and in Articles 44 and 45, in that it uses the word " grade " for the English " rank ". The distinction applies mainly in the case of the navy, in which sailors may be of the same rank (neither officers nor non-commissioned officers) but of different grade. The French term " grade " does not reflect this and makes no distinction between a private, first class, and a private, second class. The English text is therefore broader in scope.

[4] During the Second World War, the International Committee of the Red Cross came to the conclusion that such transmissions did not really form part of its customary work and should be left to the diplomatic services. See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, p. 252.

In order to ensure service in officers' camps, other ranks of the same armed forces who, as far as possible, speak the same language, shall be assigned in sufficient numbers, account being taken of the rank of officers and prisoners of equivalent status. Such orderlies shall not be required to perform any other work.

Supervision of the mess by the officers themselves shall be facilitated in every way.

The 1929 Convention did not provide for officers to be interned in special camps (or, in the absence of special camps, in buildings separate from the quarters assigned to other ranks). In fact, however, separate accommodation was always provided for officers by the belligerents in the First and Second World Wars, and the authors of the present Convention therefore considered it unnecessary to insert a clause confirming this custom.

PARAGRAPH 1. — RESPECT FOR RANK AND AGE

This provision, which was included in the 1929 Convention (Article 21), was generally respected during the Second World War, with very few exceptions [1].

The present paragraph relates to officers and " prisoners of equivalent status ". The latter phrase was adopted in 1929 because in some armies, certain non-commissioned officers are considered to be of equivalent status to officers without having all the prerogatives of the latter [2]. It therefore refers to prisoners of war who, without actually having the rank, nevertheless have the status of an officer. In particular, this applies to journalists and war correspondents [3].

PARAGRAPH 2. — ORDERLIES

Because of the position and responsibilities of officers, military regulations and custom usually relieve them of personal fatigue duties,

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[1] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pp. 252-253. See also BRETONNIÈRE, *op. cit.*, p. 149.

[2] See *Actes de la Conférence de 1929*, p. 477.

[3] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 267-268. This clause clearly indicates the necessity for the Parties to the conflict to communicate to one another lists of the titles and ranks in use in their armed forces, as provided in Article 43, paragraph 1.

this work being assigned to orderlies who are detailed to individual officers. It was therefore logical that the Convention should recognize this practice by an explicit provision, and Article 22, paragraph 1, of the 1929 text contained a provision almost identical to that expressed in the present paragraph.

These are, of course, matters of detail, but the details in question were not always respected during the Second World War. The number of orderlies was often inadequate, and sometimes there were even none at all [1].

The Government Experts considered the possibility of specifying the minimum number of orderlies to be detailed to a group of officers, but decided not to do so in order not to burden the text [2]. Moreover, it would be difficult to set a figure, since the amount of work to be done depends partly on the living conditions of the prisoners. On the other hand, the Convention settles one question which gave rise to many complaints during the Second World War, by stipulating that prisoners of war who are assigned to serve as orderlies may not be required to perform any other work [3].

PARAGRAPH 3. — SUPERVISION OF THE MESS

As regards food and clothing, the 1929 Convention provided that officer prisoners of war should procure their own from the pay to be paid to them by the Detaining Power (Article 22, paragraph 2). In practice, however, because of rationing of foodstuffs and textile products, only the camp authorities are actually able to make the necessary purchases. During the Second World War, several States therefore concluded special agreements on a reciprocal basis, providing that the Detaining Power should supply officer prisoners of war with food rations and clothing, free of charge, while some other States undertook to provide for the maintenance of officers and made a corresponding deduction from their pay.

Officers were consequently on the same footing with other ranks as regards maintenance, and the Conference of Government Experts felt that it would be preferable to omit from the Convention any

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[1] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, p. 253.

[2] See *Report on the Work of the Conference of Government Experts*, pp. 155-156.

[3] See BRETONNIÈRE, *op. cit.*, p. 150.

special provision on the matter [1]. The only remaining obligation for the Detaining Power, therefore, is to facilitate supervision of the mess by the officers themselves. Here the French text (" gestion ") seems more liberal than the English word " supervision ". Within the limits of the economic measures which war makes necessary, it will no doubt be possible to leave officers a certain amount of freedom to organize their messing facilities. It should also be remembered that Article 26, paragraph 4 (food), requires the Detaining Power to permit prisoners of war to be associated as far as possible with the preparation of their meals.

ARTICLE 45. — TREATMENT OF OTHER PRISONERS

Prisoners of war other than officers and prisoners of equivalent status shall be treated with the regard due to their rank and age.

Supervision of the mess by the prisoners themselves shall be facilitated in every way.

This provision is new. It was introduced at the 1949 Diplomatic Conference after one delegation pointed out that, with the exception of orderlies, Article 44 dealt only with officers and prisoners of war with equivalent status [2].

What we have said in connection with paragraphs 1 and 3 of Article 44 therefore applies also, *mutatis mutandis*, to the present Article, which uses the same basic text. During the discussion it was suggested that the scope of the provision might be limited to non-commissioned officers, but one delegation then pointed out that in the navy, for instance, sailors could be of different grades without being non-commissioned officers [3]. The Conference therefore approved a more general wording.

As regards supervision of the mess (" gestion " in the French text), the comments on Article 44 are applicable here also.

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[1] See *Report on the Work of the Conference of Government Experts*, pp. 156-157 ; *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, p. 253.

[2] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 267-268.

[3] *Ibid.*, p. 359.

Chapter VIII

Transfer of Prisoners of War after Their Arrival in Camp

ARTICLE 46. — CONDITIONS

The Detaining Power, when deciding upon the transfer of prisoners of war, shall take into account the interests of the prisoners themselves, more especially so as not to increase the difficulty of their repatriation.

The transfer of prisoners of war shall always be effected humanely and in conditions not less favourable than those under which the forces of the Detaining Power are transferred. Account shall always be taken of the climatic conditions to which the prisoners of war are accustomed and the conditions of transfer shall in no case be prejudicial to their health.

The Detaining Power shall supply prisoners of war during transfer with sufficient food and drinking-water to keep them in good health, likewise with the necessary clothing, shelter and medical attention. The Detaining Power shall take adequate precautions especially in case of transport by sea or by air, to ensure their safety during transfer, and shall draw up a complete list of all transferred prisoners before their departure.

PARAGRAPH 1 [1] — INTERESTS OF THE PRISONERS

The interests of the prisoners of war themselves will not always correspond to what is most convenient for the Detaining Power, especially in matters of repatriation, as this paragraph appropriately notes. The need to take into account the possibility of repatriation may, however, conflict with the obligation to treat prisoners in accordance with the terms of the Convention, for not all regions are equally suitable for the internment of prisoners of war. In this case, the general obligations set forth in the Convention certainly override the recommendation in the present paragraph, and the Detaining

[1] The insertion of this paragraph was proposed by Italy at the 1949 Diplomatic Conference (see *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 268 ; Vol. II-B, pp. 289-290). In presenting the amendment, the Italian representative called it " an appeal to the good faith and to the very conscience of all civilized nations " (*ibid.*, Vol. II-B, p. 289). In this connection, one may also refer to the *Report on the Work of the Conference of Government Experts*, pp. 163-164.

Power could not cite the need to take account of the possibility of repatriation at a date still unknown as justification for interning prisoners of war in regions where their rights could not be respected in full.

PARAGRAPH 2. — GENERAL PRINCIPLES

The basic principle underlying this paragraph is that of assimilation to the forces of the Detaining Power, which is referred to earlier in Article 20 (conditions of evacuation).

One might presume that the transport conditions accorded to such troops would be generally acceptable for prisoners of war, but this is not certain, particularly since troops trained in different climates might be unaccustomed to such conditions [1].

Moreover, it is clear from the second sentence of this paragraph that, in any case of doubt, humanitarian considerations must override the principle of assimilation.

PARAGRAPH 3. — MAINTENANCE AND SECURITY

1. *First sentence. — Maintenance*

During transfer, the supply of food, water and shelter will always give rise to difficult problems which cannot be settled by improvised arrangements.

Furthermore, the obligations set forth in the present paragraph are similar to those incumbent upon the Detaining Power pursuant to the general provisions of the Convention, and they are implicit in the second paragraph.

2. *Second sentence. — Security*

During the Second World War, many prisoner-of-war convoys, particularly those transferred by sea, were attacked and heavy losses were caused. The International Committee of the Red Cross therefore appealed to the Detaining Powers to resort to conveyance of prisoners of war by sea only for imperative reasons.

[1] The amendment proposed by the New Zealand Delegation was adopted by the 1949 Diplomatic Conference (see *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 268 and 359-360).

While it is regrettable that no agreement could be reached on a text more explicit than that of the present paragraph, nevertheless the Detaining Power is obliged to take every possible precaution when transferring prisoners of war [1].

The preparation of lists is an elementary measure to be taken by the commander responsible for any detachment. Although the text does not say so, one may logically consider that these lists should be drawn up in several copies and should be sufficiently detailed to preclude any possible confusion or dispute at a later date. Transfers should preferably be notified and copies of the lists sent :

(a) to the Protecting Power ;

(b) to the Central Prisoners of War Agency ; this is an extremely important precaution.

ARTICLE 47. — CIRCUMSTANCES PRECLUDING TRANSFER

Sick or wounded prisoners of war shall not be transferred as long as their recovery may be endangered by the journey, unless their safety imperatively demands it.

If the combat zone draws closer to a camp, the prisoners of war in the said camp shall not be transferred unless their transfer can be carried out in adequate conditions of safety, or if they are exposed to greater risks by remaining on the spot than by being transferred.

GENERAL

Article 25 of the 1929 Convention read as follows :

" Unless the course of military operations demands it, sick and wounded prisoners shall not be transferred if their recovery might be prejudiced by the journey."

In the preliminary documentation prepared for the Conference of Government Experts, the International Committee of the Red Cross proposed that wounded or sick prisoners of war who could not be removed in suitable conditions should remain on the spot, even should they then fall into the hands of the Detaining Power's adversary.

A draft text in this sense was approved at the Stockholm Conference and was subsequently adopted unanimously and without objection at the Geneva Diplomatic Conference [2].

[1] See *Revue internationale de la Croix-Rouge*, 1944, p. 199.

[2] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 270.

PARAGRAPH 1. — TRANSFER OF WOUNDED OR SICK PRISONERS OF WAR

In order to determine whether recovery may be jeopardized by the journey, one must know not only the patient's state of health, but also the travelling conditions. The doctor will therefore give an opinion on each case, after making all relevant enquiries.

The transfer must be justified by reasons of absolute necessity. This implies pressure of circumstances which cannot be evaded. If the reason is the proximity of the battlefield, before effecting the transfer one should endeavour to make contact with the belligerents in order to notify them that prisoners of war are in the vicinity.

PARAGRAPH 2. — TRANSFER IN THE VICINITY OF THE COMBAT ZONE

This paragraph was motivated by the tragic events towards the end of the Second World War, when prisoners of war were forced to march under inhuman conditions until finally it was decided perforce to let them be taken by the adverse party. The provision refers to able-bodied prisoners as well as wounded and sick. " Adequate conditions of safety " are those set forth in Article 46 ; if these conditions cannot be fulfilled, the transfer may be effected only if the prisoners would be " exposed to greater risks " by remaining on the spot.

The camp commander must therefore, in the first place, endeavour to reduce risks by applying the provisions of the Convention which relate to evacuation immediately following capture (Article 19, paragraph 1, and Article 20) and to the marking of camps (Article 23, paragraph 4). Detaining Powers are required to give each other, through the intermediary of the Protecting Powers, " all useful information regarding the geographical location of prisoner-of-war camps " (Article 23, paragraph 3) and the Detaining Power must avoid keeping prisoners of war in any area or place which might be of tactical or strategic interest.

The present Article must be read in conjunction with other Articles relating to transfers of prisoners of war : Article 12 (transfer to another Power), Article 19 (evacuation after capture), Article 20 (conditions of evacuation). These Articles, which are based on the same principle, obviously overlap, and the same precautions and measures must be taken in all the different cases of transfer so as to ensure that it is effected humanely. Reference should therefore be made to the commentary on Articles 12, 19 and 20 for any additional remarks which may be useful in connection with the present Article.

ARTICLE 48. — PROCEDURE FOR TRANSFER

In the event of transfer, prisoners of war shall be officially advised of their departure and of their new postal address. Such notifications shall be given in time for them to pack their luggage and inform their next of kin.

They shall be allowed to take with them their personal effects, and the correspondence and parcels which have arrived for them. The weight of such baggage may be limited, if the conditions of transfer so require, to what each prisoner can reasonably carry, which shall in no case be more than twenty-five kilograms per head.

Mail and parcels addressed to their former camp shall be forwarded to them without delay. The camp commander shall take, in agreement with the prisoners' representative, any measures needed to ensure the transport of the prisoners' community property and of the luggage they are unable to take with them in consequence of restrictions imposed by virtue of the second paragraph of this Article.

The costs of transfers shall be borne by the Detaining Power.

PARAGRAPH 1. — NOTIFICATION TO PRISONERS OF WAR OF THEIR DEPARTURE

For humanitarian reasons, prisoners of war must be given advance notice of their impending transfer [1], so that they may prepare their kit and inform their families. At the Conference of Government Experts, the International Committee of the Red Cross suggested that prisoners should be so informed at least twenty-four hours before their departure.

Article 26 of the 1929 Convention specified that prisoners of war should be notified of their new destination ; for security reasons, some delegations asked that this requirement should be omitted. A compromise was finally reached, that the 1929 text should stand with the substitution of " postal address " for the word " destination ". The destination may therefore be indicated by a cipher.

[1] The 1929 Convention contained a similar provision, in Article 26.

PARAGRAPH 2. — AMOUNT OF BAGGAGE PERMITTED

It is only natural that prisoners of war should try to take with them as much kit as possible, whereas the aim of the Detaining Power is to limit the amount of baggage. In order to avoid difficulties, the Conference of Government Experts approved the proposal of the International Committee of the Red Cross that the weight of the baggage permitted should be specified, and this was adopted without difficulty by the 1949 Diplomatic Conference.

PARAGRAPH 3. — FORWARDING OF MAIL, PARCELS AND COMMUNITY PROPERTY

No special comments are called for concerning the forwarding of mail and parcels addressed to the former camp ; the Detaining Power must make the necessary arrangements.

On the other hand, the prisoners' representative is responsible for the prisoners' community property. This includes consignments of food and medicaments, blankets, training and trade equipment, books, sports equipment, etc., as well as canteen profits. During the Second World War, the Detaining Power usually arranged for community property to be forwarded to the new camp, but in some instances it insisted that such property should be left behind for the use of the new arrivals. Prisoners of war never willingly accepted this ruling, and the authors of the 1949 Convention therefore decided to specify that community property must follow prisoners of war who were transferred.

PARAGRAPH 4. — COSTS OF TRANSFER

This paragraph needs no comment.

* * *

It seems essential to point out that the Information Bureau set up under Article 122 must be notified immediately of any transfer of prisoners of war. Transfer is one of the changes which, pursuant to paragraph 5 of that Article, must be communicated to the Information Bureau by the Detaining Power. The Information Bureau should therefore receive the " complete " list of transferred prisoners, drawn up in accordance with Article 46, paragraph 3.

SECTION III

LABOUR OF PRISONERS OF WAR

The work done by prisoners of war is of value for the Detaining Power, since it can make a substantial contribution to the latter's economic resources ; it is also a matter of interest to the Power of Origin, which may fear that prisoners of war may thereby contribute to the enemy's war effort. For the prisoners themselves, work is an essential antidote to the trials of captivity, and that is why the 1907 Hague Regulations, in Article 6, introduced the possibility of work by prisoners of war. During the First World War, this clause was the subject of numerous implementing directives which in turn led to a codification in the 1929 Convention. The rules contained in the 1929 text have been maintained and developed by the present Section [1].

ARTICLE 49. — GENERAL OBSERVATIONS

The Detaining Power may utilize the labour of prisoners of war who are physically fit, taking into account their age, sex, rank and physical aptitude, and with a view particularly to maintaining them in a good state of physical and mental health.

Non-commissioned officers who are prisoners of war shall only be required to do supervisory work. Those not so required may ask for other suitable work which shall, so far as possible, be found for them.

If officers or persons of equivalent status ask for suitable work, it shall be found for them, so far as possible, but they may in no circumstances be compelled to work.

This Article is based on Article 27, paragraphs 1, 2 and 3 of the 1929 Convention.

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[1] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I., pp. 327 ff. ; *Report on the Work of the Conference of Government Experts*, p. 170 ; BRETONNIÈRE : *op. cit.*, p. 162.

PARAGRAPH 1. — GENERAL CONDITIONS

The basic principle stated in this paragraph is the right of the Detaining Power to require prisoners of war to work.

The wording is similar to that of the corresponding texts in the Hague Regulations (Article 6) and the 1929 Convention (Article 27, paragraph 1).

Provision is made for prisoners of war to work because of humanitarian considerations and not on account of the economic interest of the Detaining Power ; the primary purpose is, through work, to preserve the bodily health and morale of prisoners of war. In addition, camp administration is made easier and, lastly, the prisoners are materially better off because of the pay which they receive.

The application of the general principle is subject to certain conditions : the Detaining Power may only require physically fit prisoners to work, in order precisely to maintain them in a good state of physical and mental health. Prisoners who are " physically fit " are those who are healthy, vigorous and able to work ; this will be verified by the medical service which is required to hold medical examinations, under Article 55.

The Detaining Power must also consider the following factors :

A. *Age.* — Pursuant to Article 16, for reasons of age the Detaining Power may derogate from the general principle of equal treatment ; this is a typical case for application of that rule.

B. *Sex.* — Here, too, Article 16 is applicable.

C. *Rank.* — The reference to rank in this paragraph is only by way of a general indication, and more detailed provisions are contained in paragraphs 2 and 3 below.

D. *Physical aptitude.* — The 1929 Convention stated, in Article 29, that prisoners of war must not be employed on work for which they were physically unsuited. Nevertheless, this provision was frequently violated during the Second World War [1]. On the other hand, Article 27, paragraph 1, of the 1929 Convention merely stated that prisoners of war were to be assigned to work according to their " abi-

[1] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pp. 329-332.

lity ", which might be taken to refer to professional ability [1]. It is difficult, however, to make vocational aptitude a general rule applicable to captivity. The work done by prisoners of war will often be manual labour, involving a physical effort which must be proportionate to the strength of the workers concerned, since the principal purpose of work is to maintain prisoners of war in good health.

E. *Interest of prisoners.* — Here the text leaves no room for doubt, and refers specifically to the maintenance of prisoners of war in a good state of physical and mental health.

PARAGRAPH 2. — WORK BY NON-COMMISSIONED OFFICERS

During the Second World War, great difficulties arose in this connection. In the first place, non-commissioned officers who were prisoners of war often had no means of proving their status as their identity documents had been taken away from them when they were captured. It also happened that varying interpretations were placed on the term " non-commissioned officer " [2] as well as on the expression " supervisory work ".

The new Convention tries to overcome some of these difficulties. In accordance with Article 17, every person liable to become a prisoner of war must be furnished with an identity card which may in no case be taken away from him. This card will enable non-commissioned officers to prove their status at all times. Moreover, under the new Convention the provisions requiring the belligerents to communicate to one another titles and ranks are applicable to " all the persons mentioned in Article 4 " (Article 43), while the 1929 Convention provided this advantage only for officers and persons of equivalent status. These more detailed provisions should preclude any differences of interpretation concerning the recognition of the status of non-commissioned officers. It should also be noted that, unlike the arrangements concluded on this subject during the First World War, the Convention makes no distinction between the various categories of non-commissioned officers [3].

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[1] Germany made an effort in this direction during the Second World War ; see BRETONNIÈRE, *op. cit.*, pp. 165-167 and 179.

[2] In Switzerland, for instance, a corporal is a non-commissioned officer, but in France he is not.

[3] See SCHEIDL : *op. cit.*, p. 376 ; see also *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 361.

The term " supervisory work " is generally recognized as denoting administrative tasks which usually consist of directing the other ranks ; it obviously excludes all manual labour [1].

No pressure may be brought to bear on prisoners of war to compel them to do other work. On the other hand, non-commissioned officers may ask for other suitable work and there is therefore a risk that the Detaining Power may try to influence them, either by granting them certain advantages or by paying them for the work done, which cannot be forbidden. On the other hand, it is essential that non-commissioned officers who are unwilling to work should not be punished in any way for refusing to do so. This rule was not always respected during the Second World War [2].

The Convention encourages the Detaining Power to accede to the request of non-commissioned officers who wish to work, since it states that such work " shall, so far as possible, be found for them ". Work under this heading is not covered by the list in Article 50, which refers only to compulsory labour. Those concerned, however, are under a moral obligation not to request any work which might be prejudicial to the Power in whose armed forces they fought.

Non-commissioned officers are free to undertake work, and they must similarly be free to renounce that undertaking. The Detaining Power may, at its discretion, regulate this possibility, for instance by providing for employment for a fixed term, which may be extended for regular periods. During the Second World War, however, prisoners of war were sometimes more or less compelled to sign a contract for an indefinite period which bound them throughout their captivity ; that would be absolutely contrary to the present provision.

Paragraph 3. — Work by officers

This provision reproduces the text of Article 27, paragraph 2, of the 1929 Convention, with the addition of a reminder that officers may not be compelled to work.

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[1] See Bretonnière : *op. cit.*, pp. 171-172 ; Scheidl : *op. cit.*, p. 376.

[2] Germany ordered non-commissioned officers who were prisoners of war to work, but was not always prepared to recognize the right of non-commissioned officers who were prisoners in German hands to avail themselves of Article 27, paragraph 3, of the 1929 Convention. See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pp. 338-339 ; Bretonnière : *op. cit.*, pp. 170-178.

Officers are therefore free to request suitable work, and this right was generally respected during the Second World War [1].

Like non-commissioned officers, officer prisoners of war are entitled to give up the work which they requested.

In the past, when officer prisoners of war worked, they generally did so without causing any prejudice to the Power in whose armed forces they served and almost always without accepting remuneration. There therefore seemed no justification for the accusations made after their return from captivity against certain officers who had availed themselves of the possibility of working [2]. Moreover, the States would certainly not have adopted the present provision at the 1949 Diplomatic Conference if they had felt that it left the way open for treasonable acts.

ARTICLE 50. — AUTHORIZED WORK

Besides work connected with camp administration, installation or maintenance, prisoners of war may be compelled to do only such work as is included in the following classes :

(a) *agriculture ;*

(b) *industries connected with the production or the extraction of raw materials, and manufacturing industries, with the exception of metallurgical, machinery and chemical industries ; public works and building operations which have no military character or purpose ;*

(c) *transport and handling of stores which are not military in character or purpose ;*

(d) *commercial business, and arts and crafts ;*

(e) *domestic service ;*

(f) *public utility services having no military character or purpose.*

Should the above provisions be infringed, prisoners of war shall be allowed to exercise their right of complaint, in conformity with Article 78.

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[1] In fact, only rarely did officers avail themselves of this possibility. See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pp. 337-338 ; BRETONNIÈRE : *op. cit.*, pp. 169-170.

[2] See *Report on the Work of the Conference of Government Experts*, p. 172.

HISTORICAL AND GENERAL

In accordance with Article 6 of the Hague Regulations, the Detaining Power was allowed to utilize the labour of prisoners of war, provided the tasks were not excessive and had " no connection with the operations of the war ".

Had the provision been maintained in that form, it would virtually have amounted to prohibiting the employment of prisoners of war. For with the development of modern warfare, there are only very few activities which do not directly or indirectly affect the war effort of the belligerents. The corresponding provision in the 1929 Convention (Article 31, paragraph 1) was already more explicit [1].

How is one to interpret a provision such as this? What constitutes direct connection with the operations of the war ? When is it indirect ? What does the term " combatant units " cover ? Does it refer only to units engaged in the fighting, or does it also include those which for the time being are not taking part in the fighting, while remaining in the front-line area ? To these many questions, commentators have given as many different answers. In the first place, one needs to know the attitude of the contracting parties. Is the intention to protect prisoners from the dangers of war, or to safeguard their military honour by not requiring them to contribute in any way to the campaign waged against their fellow-countrymen [2] ?

For one must be under no illusion : whatever the services rendered to the Detaining Power by prisoners of war who work, their labour contributes to the economic resources of the nation. Leaving aside questions of security, it matters little whether it is the prisoner of war who works on the land while the farm worker transports munitions, or *vice versa.* According to their own conception of the principle on which this rule is founded, various authors have given different opinions concerning the interpretation of the 1929 text, and during the Second World War the belligerents themselves took very different views [3].

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[1] " Work done by prisoners of war shall have no direct connection with the operations of the war. In particular, it is forbidden to employ prisoners in the manufacture or transport of arms or munitions of any kind, or on the transport of material destined for combatant units."

[2] See BRETONNIÈRE : *op. cit.*, pp. 196-201 ; SCHEIDL : *op. cit.*, pp. 378-384.

[3] See BRETONNIÈRE : *op. cit.*, pp. 201-206 ; see also *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pp. 332-335, and *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 272.

The text approved by the Conference of Government Experts [1] was an attempt to solve the considerable difficulties which arose during the Second World War from the application of Article 31 of the 1929 Convention, as the belligerents could never agree on the scope of that provision. It was difficult to find a solution, since most work can be considered as a contribution to the national war effort. There were, however, two possible methods: either to include a more explicit enumeration of prohibited work or, on the contrary, to list those occupations which alone would be permitted [2].

The International Committee of the Red Cross finally favoured the second method, and submitted to the Stockholm Conference a text similar to that of the present Article 50. Like any other system which might be found to regulate labour of prisoners of war, this one obviously presented certain disadvantages, particularly because any enumeration necessarily involves an arbitrary element. The Stockholm Conference therefore rejected the proposal in favour of a fresh draft [3], which the 1949 Diplomatic Conference considered even less satisfactory. Despite objections, the latter Conference finally adopted the text which had been submitted at Stockholm [4].

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[1] See *Report on the Work of the Conference of Government Experts*, pp. 177-178. This text read as follows:

"With the exception of work connected with the removal of mines, bombs or similar devices laid by themselves or by other members of their armed forces, prisoners of war shall not be employed on work directly connected either with active military operations or with war production of an exclusively military character. They may not be employed, in particular, in the manufacturing, handling or transport of munitions, gas, explosives or any other offensive substance; nor may they be employed in the construction, handling or transport of any weapon of war, or of equipment or material of an exclusively military character. They shall not be employed to deliver any material to combatant units, or to depôts from which such material is issued direct to such units, nor may they work in such depôts. They shall not be employed to construct or repair fortifications, installations or earth-works which may be used for the conduct of active military operations.

In the event of any violation of the above provisions, prisoners of war are entitled to exercise their right of complaint in accordance with Article 42."

[2] See *Report on the Work of the Conference of Government Experts*, pp. 178-179.

[3] "In addition to labour performed in connection with camp administration, installation or maintenance, prisoners of war may only be required to do work which is normally required for the feeding, sheltering, clothing, transportation and health of human beings, but may not be employed in work which is otherwise of value in assisting the conduct of active military operations."

For other texts proposed, see *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. III, pp. 70-71.

[4] See *Diplomatic Conference for the Establishment of International Conventions for the Protection of War Victims*, Working Document No. 3, pp. 22-23. For the discussion, see *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 342-344. See also *Remarks and Proposals*, pp. 51-53.

PARAGRAPH 1. — CLASSES OF WORK AUTHORIZED

1. *Work in the camps*

Before listing the various classes of work authorized, this paragraph mentions work " connected with camp administration, installation or maintenance ", implying a general authorization for such work.

In actual fact, all work of this kind falls more or less into the classes listed in sub-paragraphs *(a)* to *(f)* of the present paragraph. It must be emphasized that work in the camps is done by prisoners of war in their own interest, while other work is done in the interest of the Detaining Power ; no basic problem arises in the case of the former, but the latter raises the thorny question of participation by prisoners of war in the war effort of the Power in whose hands they are.

2. *Other work*

The authors of the new Convention tried to overcome some of the difficulties which had occurred during the Second World War by drawing up a list of types of work authorized to the exclusion of all others. It would, however, be vain to believe that the essence of the problem has changed. The core of the question is still the distinction to be made between activities considered as being connected with war operations and those which are not. In order wherever possible to prevent divergent interpretations, however, an interpretation of the principle stated in Article 31 of the 1929 Convention was adopted. The new feature of the 1949 Convention is that it enumerates those activities which are not to be considered as being connected with war operations. It is not given in definitive form, however, and the various types of work authorized are divided into three groups :

A. *Work authorized without restriction.* — Prisoners of war may be required in any circumstances and without restriction to do work relating to agriculture, commercial business, arts and crafts [1], and domestic service. Regardless whether the agricultural produce resulting from their labour is intended for soldiers in the front line or for the civilian population of the country, prisoners of war are

[1] Although " crafts " are mentioned in the English text, the French text refers only to " activités commerciales ou artistiques ".

obliged to do this work if instructed to do so. It is of little consequence whether prisoners of war are assigned to domestic service in an hotel or in an officers' mess, provided that the security regulations (Article 23) are not infringed. Any possible connection between the work done and the operations of the war is therefore not a relevant factor in the case of work listed under sub-paragraphs *(a)* *(d)*, and *(e)*.

B. *Work which is authorized provided it has no military character or purpose.* — This refers to industries other than the metallurgical, machinery and chemical industries, and to public works and building operations, transport and handling of stores, and public utility services (sub-paragraphs *(b)*, *(c)* and *(f)*). It will be noted that while the scope of the new Convention is broader as regards the first group, here it is more restrictive. The prohibition in the 1929 Convention referred only to work directly connected with the operations of the war, and although such a provision is difficult to interpret, the present text seems more strict [1]. The distinction made by Scheidl, on the basis of the 1929 text, between activities connected with offensive operations and those related to defensive operations is therefore no longer pertinent [2].

What is the connotation of " military character or purpose " and what is the difference berween these two concepts ?

As we have already seen, a belligerent State engaged in total war directs all its efforts towards the war. The life of a State nevertheless falls into two distinct spheres of activity—the civil and the military ; in our view, the concept of " military character " should be taken in this sense, i.e. the contrary of " civil character ". Everything which is commanded and regulated by the military authority is of a military character, in contrast to what is commanded and regulated by the civil authorities.

The second concept, that of " military purpose " is more difficult to define. In each case, the ultimate purpose of the activity will have to be determined, even if the activity is directed and controlled by the civil authorities or by civil undertakings. Thus, in the case of public works, it would not be permissible for prisoners of war to participate in road-building operations carried out under the direction of a private enterprise if the purpose of such operations were clearly military, as is almost invariably the case in war-time. Prisoners of

[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 342-343.

[2] See SCHEIDL : *op. cit.*, p. 383.

war may be employed on clearance work in a bombed city, since it is necessary for the normal life of the city. This would not be true, however, of a strategically important defile used only by military transport.

" Purpose " may therefore be interpreted in a fairly flexible way. In war-time, anything may have an incidental military purpose, depending on circumstances, and this is not the only consideration. Public utility services—water, gas, electricity, telegraph, telephone, etc.—have a truly military purpose only in sectors where they are under military administration, and then they have a " military character ". In most of the country, however, they continue to supply the civilian population as well as circumstances permit, even if armed forces and headquarters stationed in the rear also use them on an equal basis or with priority.

Lastly, the same criteria will apply to transport and handling of stores. Prisoners of war may not be required to load trucks or vans, for a private enterprise, with supplies intended for fortification work or for the armed forces. It will not always be easy, however, to determine the ultimate purpose of certain consignments. Prisoners of war may therefore be employed on all work which, in the categories under consideration, normally serves to maintain civilian life, even if the military authorities incidentally benefit by it. The participation of prisoners of war in such work is prohibited, however, whenever it is done for the sole or principal benefit of the military, to the exclusion of civilians. In our opinion, the term " military purpose " must be construed in this relatively broad sense in order to avoid an excessively restrictive interpretation of the letter of the Convention which would ultimately lead only to continual and recurring infringements of the present provision.

C. *Prohibited work.* — The Convention expressly forbids the employment of prisoners of war in three types of industry—metallurgical, machinery and chemical. This prohibition is stated less clearly in the French text than in the English [1], but it must be considered as absolute, for in the event of a general war, these industries will always be turned over to armaments production. The best means of ensuring that prisoners of war would not be called upon to participate in war production was therefore to forbid their employment in these industries. The prohibition is also justified by the fact that these industries, which are vital for national defence, are among the

[1] In the English text, the semi-colon between " chemical industries " and " public works " makes the scope of the prohibition perfectly clear.

key objectives of enemy air operations, as was amply proved during the Second World War ; it has already been seen in considering Article 23 that for reasons of safety, prisoners should not be assembled in the neighbourhood of key military objectives.

PARAGRAPH 2. — RIGHT OF COMPLAINT

Article 78, paragraph 2, establishes the right of prisoners of war to make complaints on any matter regarding conditions of captivity. In principle there was therefore no need to include a second reference in the present paragraph. The drafters of the new Convention considered, however, that because of its importance, it was advisable to maintain this clause, which had been included in the 1929 Convention (Article 31, paragraph 2). Reference should therefore be made to the commentary on Article 78.

ARTICLE 51. — WORKING CONDITIONS

Prisoners of war must be granted suitable working conditions, especially as regards accommodation, food, clothing and equipment; such conditions shall not be inferior to those enjoyed by nationals of the Detaining Power employed in similar work; account shall also be taken of climatic conditions.

The Detaining Power, in utilizing the labour of prisoners of war, shall ensure that in areas in which prisoners are employed, the national legislation concerning the protection of labour, and, more particularly, the regulations for the safety of workers, are duly applied.

Prisoners of war shall receive training and be provided with the means of protection suitable to the work they will have to do and similar to those accorded to the nationals of the Detaining Power. Subject to the provisions of Article 52, prisoners may be submitted to the normal risks run by these civilian workers.

Conditions of labour shall in no case be rendered more arduous by disciplinary measures.

GENERAL

Article 50 referred to just above shows the importance which the drafters of the new Convention attached to labour of prisoners of war and this was fully justified by the experience of the Second World War.

Article 51 refers to the normal risks run by civilian workers (paragraph 3, second sentence) ; but Article 52 prohibits the employment of prisoners of war on labour of an unhealthy or dangerous nature unless they be volunteers [1]. How can these two clauses be reconciled ? During the discussions at the 1949 Diplomatic Conference, Article 51 was developed from the present Article 52, that is to say from the notion of what is unhealthy and dangerous and what is not (with particular reference to mine clearance). The Conference decided, however, to separate the two provisions and to devote the present Article to general safeguards connected with the work authorized by Article 50 [2].

PARAGRAPH 1. — GENERAL PRINCIPLE OF ASSIMILATION

This paragraph specifies a new rule. The 1929 Convention stated [3] that the quarters and food of prisoners of war must be equivalent to those provided for the depôt troops of the Detaining Power. The authors of the new Convention preferred to set specific standards and Article 26 (food) and 27 (clothing) make express reference to labour.

The working conditions to be given to prisoners of war are therefore to be based, not on the conditions granted to the depôt troops of the Detaining Power, but on those enjoyed by civilian workers. Because of the general requirement to work as stated in Article 49, this rule applies to all prisoners ; it might therefore be considered as a concession to action taken during the Second World War by some belligerents who " transformed " certain categories of prisoners of war into civilian workers ; this was contrary to their obligations under the Convention. In our opinion, however, prisoners of war who are

[1] See the United Kingdom amendment ; *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 273-274. See also *International Labour Review*, Montreal, July 1944, pp. 55-56 : " The prohibition contained in Article 32 of the Geneva Convention is construed by the War Department to forbid the employment of prisoners of war on jobs considered to be unhealthy or dangerous either because of their inherent nature, or because of the particular conditions under which they are performed, or by reason of the individual's physical unfitness or lack of technical skill. The particular task is considered, not the industry as a whole. The specific conditions attending each job are decisive. For example, an otherwise dangerous task may be made safe by the use of a proper appliance, and an otherwise safe job rendered dangerous by the circumstances in which the work is required to be done. Work which is dangerous for the untrained may be safe for those whose training and experience have made them adept in it."

[2] For the discussions, see *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 273-275, 345-346, 445-447, 470-471.

[3] In Article 10, para. 3, and Article 11, para. 1.

employed on the land, in construction yards, etc., cannot avail themselves of the present provision in order to claim living conditions equivalent to that of farmers, workmen, etc., even if such accommodation has sometimes been given to them [1]. On the other hand, the present provision must be taken as justifying equivalent working premises, wherever the work performed normally requires special arrangements there.

With regard to food and clothing, as we have already seen, Articles 26 and 27 contain a special clause relating to work. The principle of assimilation stated here is obviously included only in order to specify a minimum standard of treatment. It may not, however, prevent the application of the other provisions of the Convention, if, for instance, the standard of living of citizens of the Detaining Power is lower than the minimum standard required for the maintenance of prisoners of war [2].

The list (accommodation, food, clothing, equipment) is not exhaustive, as is clear from the inclusion of the word " especially ".

Article 27, relating to clothing, refers to special climatic conditions, but the reference at the end of the present paragraph is broader in scope since it concerns working conditions in general, that is to say both the kind of work and its duration.

PARAGRAPH 2. — PROTECTION OF LABOUR, SAFETY

The requirement that the national legislation concerning the protection of labour and, more particularly, the regulations for the safety of workers must be applied to prisoners of war is a new provision, introduced at the 1949 Diplomatic Conference by a Soviet amendment [3]. In no case may a provision such as this impede the full application of the Convention. The legislation concerning working conditions varies greatly from country to country and may not always necessarily correspond to the minimum standard required by

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[1] In Great Britain, during the Second World War, when prisoners of war were employed in agriculture, the employer had to " supply healthy, comfortable and warm premises, straw to fill palliasses, crockery, artificial light, and facilities for washing and baths ". See *International Labour Review*, February 1944, p. 192.

[2] In connection with the inadequacy of rations issued to prisoners compelled to do heavy manual labour, see *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pp. 335-337.

[3] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 273.

the Convention for prisoners of war at all times and in all circumstances. We have in mind particularly the various safeguards set forth in the present section as well as those in Article 13 (humane treatment of prisoners).

The same is true of the more specific question of safety. In this respect, some countries have very advanced legislation while in other States labour regulations are still at a very early stage of development [1].

PARAGRAPH 3. — MEANS OF PROTECTION, RISKS

1. *First sentence. — Training and means of protection*

During the Second World War, prisoners of war were frequently assigned to work for which they were already trained [2]. The require-

[1] In this connection, see the various Conventions adopted by the International Labour Conference, and in particular : Convention No. 62 concerning Safety Provisions in the Building Industry, which came into force on July 4, 1942 ; Recommendation No. 53, of June 3, 1937, concerning Safety Provisions in the Building Industry ; Recommendation No. 32, of May 30, 1929, concerning Responsibility for the Protection of Power-Driven Machinery ; Convention No. 28, concerning the Protection against Accidents of Workers employed in loading or unloading Ships, which came into force on April 1, 1932, and was revised in 1932 (Convention No. 32 of April 30, 1932) ; Convention No. 13 concerning the Use of White Lead in Painting, which came into force on August 31, 1923. One may also recall, for reference purposes—for only rarely do belligerents enlist in their armed forces young persons below the age of fifteen years—the various Conventions concerning the minimum age for admission to employment of certain kinds.

[2] In this connection, the following was the procedure in the United States : " Before approving a work project, an on-the-job determination is made in each instance as to the suitability of the work, taking into account such basic factors as the inherent nature of the job, the actual working conditions, the prisoner's physical fitness and training, and the informed advice of persons familiar with the operations concerned. To ensure further compliance with the standards prescribed by the War Department, preliminary job training is given when necessary ; protective clothing and accessories, including hard-toed shoes, goggles and gloves, are secured when required ; and the existence and adequacy of safety devices are ascertained. Safety devices on prisoner-of-war projects must be of a parity with the safeguards provided for civilian labour. Periodic inspections of approved projects are made to ensure that satisfactory conditions are maintained at all times.

In accordance with the following standards, the War Department has authorized the employment of prisoners of war on the production of logs, pulpwood, chemical wood, fuelwood and other forest products, and on the production of lumber and wood products. Prisoners are selected for work in these industries who are physically fit for the work and who are qualified by civilian occupation and training or by preliminary job training. With the advice and assistance of the United States Forest Service, all prisoners who work in these industries receive both before and during such employment the necessary training in American methods and procedures, in the use of tools and equipment, and in

ment that suitable means of protection should be provided seems to have been generally respected [1].

2. *Second sentence. — Risks*

Prisoners of war may be submitted to the " normal " risks run by civilian workers. This is a logical sequence of the principle of assimilation.

This proposal, which was presented at the 1949 Diplomatic Conference [2], gave rise to a number of objections in view of the fact that working conditions vary widely in different countries and the term " normal risks " is consequently extremely vague. In the Far East, for instance, working conditions which are perfectly normal for the local population may be intolerable for European prisoners [2]. The objection, however, concerns the qualifications of workers rather than the risks involved in the work. Article 51 as a whole is intended precisely to preclude the danger of inadequate preparation. On the basis of equal ability and equivalent equipment, its purpose is to ensure that prisoners are granted the same working conditions as the workers of the Detaining Power, it being understood that all manual labour involves a certain risk. A similar conclusion might be drawn from the preceding paragraph, and it was perhaps not necessary to make this express statement.

Paragraph 4. — Disciplinary measures

The disciplinary measures applicable to prisoners of war are listed in Article 89. If prisoners refuse to work, they are liable to disciplinary

safety measures particularly applicable to their work. In addition to the prohibitions already noted, prisoners may not be used in many types of work in the logging industry, including swamp logging, stream driving, booming or other occupations which present a hazard of drowning, or of wetting clothing to the detriment of health, power skidding and loading, and broadcast slash burning. All prisoners are excluded from the woods during periods of critical fire hazard." See *International Labour Review*, July 1944, pp. 56-57. Similarly, Germany always endeavoured to employ prisoners of war in their civilian occupations and at the beginning of 1941 it was estimated that almost 80 per cent of the prisoners taken on the western front had been so reclassified. See *International Labour Review*, September 1943, p. 320.

[1] In Great Britain, for instance, it was expressly laid down that employers were to provide " any special working kit ". Prisoners working on wet land drainage were, whenever possible, provided with rubber boots. See *International Labour Review*, February 1944, p. 192.

[2] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 274.

punishment, but it must be emphasized that the working conditions set forth in the present section represent a minimum standard which the Detaining Power must observe, and none of these safeguards may be withdrawn from prisoners of war by way of disciplinary punishment.

During the Second World War, by way of disciplinary punishment, certain belligerents extended the working hours for prisoners of war [1]; this is absolutely prohibited [2]. It is, however, not forbidden to withdraw certain advantages attached to the work to which they are assigned, by way of punishment. Thus, the Detaining Power is entitled to withhold from prisoners of war the extra food rations granted over and above the minimum specified in Article 26, if they do not carry out the work required.

ARTICLE 52. — DANGEROUS OR HUMILIATING LABOUR

Unless he be a volunteer, no prisoner of war may be employed on labour which is of an unhealthy or dangerous nature.

No prisoner of war shall be assigned to labour which would be looked upon as humiliating for a member of the Detaining Power's own forces.

The removal of mines or similar devices shall be considered as dangerous labour.

In connection with Article 51, reference has already been made to the difficulties encountered by the participants in the 1949 Diplomatic Conference when trying to define the significance of " unhealthy or dangerous " work. These difficulties arose from the fact that the term could not be defined in the abstract, but only in the context of the conditions in which the work must be done (equipment, training, general safety measures). Article 51 overcame the first difficulty by ensuring for prisoners of war in all circumstances working conditions at least as favourable as those normally enjoyed by civilian workers. A solution still had to be found, however, to the problem of work which might involve risks other than the " normal risks " run by civilian workers. That is the purpose of the present Article.

A distinction must be made between the following :

(a) Work which is not dangerous in itself but which may be dangerous by reason of the general conditions in which it is carried out.

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[1] See BRETONNIÈRE, *op. cit.*, pp. 209-210.

[2] And moreover, it was prohibited by the 1929 Convention (Article 32).

This refers especially to work done in the vicinity either of key military objectives (ports, barracks, airfields, munition dumps, factories), or of the battlefield. We mention this here although it actually concerns the general security of prisoners of war which is covered by Article 23.

(b) Work which by its very nature is dangerous or unhealthy.

As an example of this, one may cite work done in a tropical climate involving a risk of sunstroke, etc. Mine-lifting may also be mentioned, because of its importance and of its influence on the discussion concerning the present provision ; this matter will be referred to again later, in connection with the third paragraph of the present Article.

(c) Work which is not in itself dangerous but which may be or may become so if it is done in inadequate technical conditions.

At the Stockholm Conference, various proposals were presented, some relating to general safety conditions and others concerning the special question of mine-lifting, which was in fact the most dramatic example of dangerous work [1]. At the 1949 Diplomatic Conference, the first draft text proposed by the Second Committee read as follows :

" Subject to the stipulations contained in Article 42, second paragraph (now Article 51), no prisoner of war may be employed on labour which is of an unhealthy or dangerous nature " [2].

The principle that prisoners must not be employed on unhealthy or dangerous work was therefore confirmed, but without any examples being listed. A number of delegations, however, were in favour of forbidding the employment of prisoners of war for removing mines

[1] Article 43, paragraph 1, of the draft submitted to the Stockholm Conference provided :

" No prisoner of war may be employed on any work of an unhealthy or dangerous nature, unless he has received previous adequate training and is provided with all the necessary means of protection . . . " (These provisions are now contained in Article 51).

In addition, Article 42 (*e*) contained the following provision :

" Work connected with the removal of mines or similar devices placed by the prisoners themselves before they have been taken, or by other members of the forces to which they belonged, shall however be authorized, on condition that it is carried out in areas distant from the theatre of military operations and under conditions defined in the following Article."

Following the discussions at the Stockholm Conference, the text was amended as follows (Article 43, paragraph 1) :

" No prisoner of war may be employed on labour which is of an unhealthy or dangerous nature, in view of climatic conditions ".

There was no longer any express reference to mine-lifting.

[2] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 586.

or other similar devices. After lengthy discussion, both during the first reading and in the Special Committee, the majority approved a provision stating that mine-lifting would be considered as dangerous labour. In those circumstances, several delegations considered that it was necessary, from the humanitarian point of view, that prisoners of war should no longer be exposed to the risks entailed by that particular kind of work.

The opposite thesis was that it would be equally inhuman to exclude the possibility of employing prisoners of war—who might themselves have laid the mines and who could, as members of a disciplined military force, be easily trained to remove them—when otherwise, mine removal would have to be carried out by civilians, who, it was said, would be sacrificed for the benefit of those who had invaded their territory [1].

The question was again discussed at length in plenary session, in connection with an amendment proposed by Canada, and the supporters of both theses spoke with great feeling. The amendment simply forbade the employment of prisoners of war on mine-lifting. The latter proposal was finally approved, but at the suggestion of France, the Conference decided not to prevent the employment of prisoners of war who volunteered for such work, thus taking into account to some extent the interest of the civilian population, and in this way the text of Article 52 as it now stands was adopted [2].

Paragraph 1. — Unhealthy and dangerous labour

Unhealthy and dangerous work is forbidden unless prisoners of war volunteer for it. With the exception of the express reference to mine-lifting in the third paragraph, the Convention unfortunately gives no list nor any criteria for defining dangerous work.

We shall not repeat here what has already been said in connection with Article 51 concerning the external safety measures which must be taken in any work, whatever it may be, and without which accidents cannot easily be avoided. It is assumed that those measures will always be taken. The essential difference between what is authorized and what is not therefore lies in the nature of the work, not in the external conditions in which it is performed.

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[1] See Report of Committee II, *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 566.

[2] *Ibid.*, Vol. II-B, pp. 290-298.

It must be pointed out that the reference to volunteering in no way diminishes the responsibility of the Detaining Power and cannot excuse any lack of discernment in the selection of prisoners for such work. The Detaining Power must choose from among the volunteers who come forward those best qualified to do the work required with the maximum safety, and it must give them all the necessary training or, if they claim to have been trained already, check their ability and reject all those who do not meet the required standards. Furthermore, all the provisions of Article 51 remain applicable. It should also be added that if prisoners volunteer for such work on the basis of certain promises, the Detaining Power must naturally keep those promises. Any prisoner who is the victim of injustice has the right to appeal through the prisoners' representative and the Protecting Power, in accordance with Article 78. But in our view, if arrangements are to be made for the employment of a certain number of prisoners of the same nationality or depending on the same belligerent, it would be preferable to resort to special agreements pursuant to Article 6 of the present Convention.

PARAGRAPH 2. — HUMILIATING LABOUR

The 1929 Convention contained no provision concerning humiliating labour. The present clause was introduced at the Stockholm Conference on the basis of Article 71 of the Oxford Manual. The honour of prisoners is referred to in general provisions, and in particular in Article 13, paragraph 2, and Article 14, paragraph 1, but the present provision is somewhat more specific in that it establishes a rather bold analogy with the customary rules of the Detaining Power's own forces. This rule has the advantage of being clear and easy to apply. The reference is to objective rules enforced by that Power and not the personal feelings of any individual member of the armed forces. The essential thing is that the prisoner concerned may not be the laughing-stock of those around him.

PARAGRAPH 3. — REMOVAL OF MINES

Because of its very great importance, the problem of mine-lifting had a determining influence on the development of Articles 51 and 52 during the 1949 Diplomatic Conference. The relevant facts are as follows. The question arose for the first time in North Africa in March 1943, when it was decided that German prisoners of war should

remove mines laid by the German army. Such work was prohibited during hostilities by Article 31 of the 1929 Convention, and once hostilities were over it remained prohibited, under Article 32 of the same Convention. The representative of the International Committee of the Red Cross immediately made a protest and although he was not entirely successful he did obtain the concession that only men who had served as sappers should in future be assigned to mine-removal.

The problem arose in an acute form in France at the beginning of 1945. Public opinion considered that mines should be cleared by those who had laid them. In September 1945, the French War Ministry estimated the number of mines to be cleared in France at about one hundred million. The monthly rate of fatal accidents among German prisoners engaged on this work was two thousand [1]. Special safety precautions were subsequently taken, however, and the accident-rate decreased almost to nil [2].

It is nevertheless understandable that this question was such a matter for concern at the 1949 Diplomatic Conference that it had a decisive influence on the drafting of the present Article and, as has already been seen, of Article 51. As a result the removal of mines or all similar devices (shells, grenades, bombs and explosives of all kinds) is expressly stated by the present paragraph to be dangerous work and only volunteers may therefore engage in it.

It should be emphasized that this clause in no way relieves the Detaining Power of the obligation to respect the other provisions of the Convention relating to the safety of prisoners, and in particular Article 23, paragraph 1, which states that prisoners of war may not be exposed to the fire of the combat zone.

On the other hand, contrary to the implications of Article 31 of the 1929 Convention, the present text does not appear to prevent the Detaining Power from employing volunteers to remove mines during hostilities. The present Article 50 states that prisoners of war may not be compelled to assist in the handling of stores which are military in character or purpose. But although the Detaining Power may not compel them to do so, nowhere is it stated that they may not at any time volunteer to do such work. Ultimately, therefore, their participation in work connected with war operations depends only on the prisoners themselves, provided it takes place outside the theatre of operations.

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[1] I.e. a ratio of one accident per five thousand mines.

[2] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pp. 333-334.

ARTICLE 53. — DURATION OF LABOUR

The duration of the daily labour of prisoners of war, including the time of the journey to and fro, shall not be excessive, and must in no case exceed that permitted for civilian workers in the district, who are nationals of the Detaining Power and employed on the same work.

Prisoners of war must be allowed, in the middle of the day's work, a rest of not less than one hour. This rest will be the same as that to which workers of the Detaining Power are entitled, if the latter is of longer duration. They shall be allowed in addition a rest of twenty-four consecutive hours every week, preferably on Sunday or the day of rest in their country of origin. Furthermore, every prisoner who has worked for one year shall be granted a rest of eight consecutive days, during which his working pay shall be paid him.

If methods of labour such as piece work are employed, the length of the working period shall not be rendered excessive thereby.

Article 30 of the 1929 Convention, which already limited the duration of work, was not always respected during the Second World War. There were many abuses, either because the time of the journey to and from work was not taken into account as it should have been, or because civilian workers were required to work excessively long hours. [1] In drafting the present Article, the authors of the new Convention therefore tried to include specific safeguards concerning the duration of labour.

PARAGRAPH 1. — DURATION OF DAILY LABOUR

This paragraph includes three safeguards : the first, which is of a general nature, provides that the duration of labour may not be excessive ; the second states that the time of the journey to and from work must be counted as part of the hours of work ; the third relates to the limits permitted for civilian workers.

A. *General safeguard.* — This rule is an essential part of the present provision, since the main purpose of work is to maintain prisoners of war in a good state of health.

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[1] In this connection, see BRETONNIÈRE : *op. cit.*, pp. 189-192. See also *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, p. 329.

One may, therefore, find it surprising that the authors of the Convention did not adopt fixed standards, such as working days of eight or ten hours, as was in fact proposed at the 1949 Diplomatic Conference [1]. The suggestion was rejected because the delegates wished to avoid too specific a provision, for two reasons. In the first place, prisoner-of-war labour cannot be assimilated completely to civilian labour. The living conditions of prisoners of war, their technical ability, moral status, pay—in fact, everything distinguishes them from civilian workers. Moreover, they remain subject to military discipline and their daily routine is governed by the military authorities.

The second reason is still more important. One can easily imagine how difficult it would have been for the authors of the Convention to make provision for the application to prisoners, in war-time, of standards which in the case of civilian workers are generally modified when circumstances so require. The civilian population would probably rise in protest against the privileged treatment which prisoners of war would thus receive [2].

It is nevertheless important to have some idea as to the " normal " duration of work if one is to attempt to define what it "excessive". In this connection, reference may be made to the standards established or recommended by the International Labour Organisation which normally limit the duration of labour for workers to eight hours per day and forty-eight hours per week [3]. Circumstances may warrant an extension beyond these limits, but only by a reasonable amount.

B. *Allowance for time spent travelling to and from work.* — The requirement that the time spent in travelling to and fro between the

[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 362.

[2] In this connection, see *Report on the Work of the Conference of Government Experts*, p. 176.

[3] Convention No. 1, limiting the hours of work in industrial undertakings to 8 in the day and 48 in the week, which came into force on June 13, 1921—Recommendation No. 7, dated June 15-July 10, 1920, concerning the limitation of hours of work in the fishing industry (8 hours in the day and 48 in the week)—Convention No. 30, concerning the regulation of hours of work in commerce and offices, which came into force on August 29, 1933 (8 hours in the day and 48 in the week ; 10 hours in the day in exceptional cases)—Convention No. 31, limiting the hours of work in coal mines (time spent in underground mines limited to 7 hours 45 minutes in the day)—Convention No. 43 for the regulation of hours of work in automatic sheet-glass works, which came into force on January 13, 1938 (the work to be done by successive shifts, the hours of work not to exceed 42 per week, calculated over a period not exceeding 4 weeks, the length of a spell of work not to exceed 8 hours)—Convention No. 51 concerning the reduction of hours of work on public works (maximum hours of work to be 40 to 42 hours per week).

camp and the place of work must be counted as part of working hours is a very important one. The journey is usually made on foot, and often requires great effort which must be taken into account if the safeguard is to be of any real value. The Convention makes no distinction between journeys made on foot and those for which transport is provided.

C. *Maximum limit.* — In no case may the daily working hours of prisoners of war exceed those permitted for civilian workers in the district who are nationals of the Detaining Power and employed on the same work. This is an additional safeguard, for it is assumed that the legal working conditions of the country are neither " excessive " nor " inhuman ". If they were, however, the present clause could not deprive prisoners of war of the safeguards to which they are entitled under the Convention—in particular under Article 13 and the other provisions of the present paragraph—by lowering standards of treatment to the level of those granted to nationals of the Detaining Power.

PARAGRAPH 2. — REST

1. *First sentence. — Daily rest*

The 1929 Convention made no provision for a daily rest period. The present clause allows prisoners of war a rest of one hour or the same as that to which civilian workers are entitled, if the latter is of longer duration. As is stated in paragraph 1, the civilian workers referred to are those in the district who are nationals of the Detaining Power employed on the same work.

2. *Second sentence. — Weekly rest*

The observance of Sunday as a day of rest corresponds to a Christian principle and is also a widespread custom throughout the world ; it was accepted without reserve by the authors of the 1929 Convention, which stated, in Article 30, that prisoners of war must be allowed a rest of twenty-four consecutive hours each week, preferably on Sunday. At the 1949 Diplomatic Conference, the delegation of Israel proposed that the day of rest should be that observed in the country of origin of the prisoners concerned. There were some objections to this proposal, as certain delegations were afraid that it might cause

confusion. In view of the universal nature of the Convention, however, the amendment was finally adopted [1].

It will be noted, however, that this is not a requirement and the Convention only obliges the Detaining Power to allow a rest of twenty-four consecutive hours each week. Whether the day is Sunday or the day of rest observed in the prisoners' country of origin, this is merely a recommendation.

3. *Third sentence. — Annual rest*

Prisoners of war are granted an annual rest of eight consecutive days during which the working pay provided under Article 54 must be paid them. This is an entirely new provision, introduced by the Conference of Government Experts. With regard to its implementation, the national legislation of the Detaining Power concerning the protection of labour must be recognized as applicable, pursuant to Article 51, paragraph 2, to the extent that it covers working conditions for prisoners of war. A number of problems may arise, especially in the case of any temporary interruption because of accident or illness, or because of transfer. A distinction must be made, for instance, between interruptions for which the prisoner is not responsible and those which are the result of action by him, as in the case of attempted escape. One may even wonder in the latter case if, from the point of view of work, such an attempt does not constitute a breach of contract.

PARAGRAPH 3. — PIECE WORK

It is obviously in the interest of the Detaining Power to require prisoners of war to follow work methods such as jobbing or piece work and this was widespread during the Second World War. If such methods are applied, however, it must be borne in mind that very often the prisoners concerned are not qualified in the occupation assigned to them and consequently find it more difficult than civilian workers to achieve the output required. In case of any obvious lack of co-operation on the part of prisoners of war, the Detaining Power may exercise its disciplinary power in accordance with the provisions of Article 89.

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[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 361-362.

ARTICLE 54. — WORKING PAY. OCCUPATIONAL ACCIDENTS AND DISEASES

The working pay due to prisoners of war shall be fixed in accordance with the provisions of Article 62 of the present Convention.

Prisoners of war who sustain accidents in connection with work, or who contract a disease in the course, or in consequence of their work, shall receive all the care their condition may require. The Detaining Power shall furthermore deliver to such prisoners of war a medical certificate enabling them to submit their claims to the Power on which they depend, and shall send a duplicate to the Central Prisoners of War Agency provided for in Article 123.

Under the 1929 Convention, the problem of occupational accidents was covered by Article 27, paragraph 4, but during the Second World War many difficulties arose in connection with the interpretation of that provision [1]. The International Committee of the Red Cross was consulted many times as to the scope of this text [2]. According to the most liberal interpretation and conditional upon reciprocity, the liability of the captor State to pay disability allowances to prisoners of war injured at work did not cease with their release and repatriation. This was the view of the International Committee of the Red Cross, basing itself less on the letter of the Convention than on the legitimate interest of prisoners of war [3]. According to another, more restrictive, interpretation, however, this obligation ceased on the date of release of prisoners of war, and thereafter each State was responsible for paying the allowances due to its nationals [4].

Another question which arose was whether or not the insurance should cover illness contracted at work. The International Committee of the Red Cross was consulted, and replied that the provision covered

[1] It read as follows: " During the whole period of captivity, belligerents are required to admit prisoners of war who are victims of accidents at work to the benefit of provisions applicable to workmen of the same category under the legislation of the Detaining Power. As regards prisoners of war to whom these legal provisions could not be applied by reason of the legislation of that Power, the latter undertakes to recommend to its legislative body all proper measures for the equitable compensation of the victims ". The last sentence is addressed especially to federative States.

[2] See *Revue internationale de la Croix-Rouge*, 1941, pp. 707 and 787; 1942, p. 631; 1943, pp. 486 and 849.

[3] For the arguments presented in support of this view, see *Revue internationale de la Croix-Rouge*, 1943, pp. 849-852.

[4] *Ibid.*, p. 852.

only accidents properly so called ; in its opinion, however, if the social insurance scheme of the Detaining Power included certain illnesses under the heading of accidents at work, prisoners of war should be given the benefit of those provisions [1].

The experience of the Second World War had therefore shown that the 1929 text should be made more specific, and the present provision was prepared by the Conference of Government Experts [2].

Paragraph 1. — Working pay

This is merely a reference to Article 62, which regulates the question of working pay, and that Article is commented upon hereafter. The question of working pay which may be due during captivity to prisoners of war who sustain accidents or contract a disease in consequence of their work is not dealt with by Article 62 and will be considered in connection with the second sentence of paragraph 2 below.

Paragraph 2. — Compensation for occupational accidents and diseases

1. *First sentence. — Medical care*

This provision may be read in conjunction with Articles 15 and 30. Article 15 obliges the Detaining Power to provide free of charge for the medical attention required by the state of health of prisoners of war, while Article 30 contains detailed provisions concerning the care to be given them.

The application of the present paragraph implies, however, certain precautionary measures on the part of the Detaining Power. Prisoners of war who are required to work are usually grouped in labour detachments which may or may not be close to the main camp, where the central infirmary and the main administrative services are situated. It is therefore important that, according to its size, a doctor or first-aid worker should be attached to every labour detachment, and that it should be supplied with essential medicaments as well as with the necessary facilities for transporting victims to a selected infirmary

[1] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, p. 339.

[2] See *Report on the Work of the Conference of Government Experts*, pp. 173-174.

or hospital. A single first-aid station may be available to several detachments ; this is a question of organization to be settled by the Detaining Power. In case of emergency, one may call on the civilian doctor in the area [1].

In addition, pursuant to Article 51, paragraph 2, the national legislation concerning the protection of labour is applicable to prisoners of war.

2. *Second sentence. — Compensation*

As already noted, the provisions of the 1929 Convention relating to compensation for occupational accidents (Article 27, paragraph 4), which extended to prisoners of war the national legislation of the Detaining Power, proved inadequate during the Second World War. The new Convention therefore adopted another solution : it requires the Detaining Power to deliver to victims " a medical certificate enabling them to submit their claims to the Power on which they depend ".

The question is therefore settled : compensation is to be paid by the Power in whose armed forces the prisoner of war served, and the certificate delivered by the Detaining Power will constitute justification for the claim. A number of practical problems still remain to be solved, however.

All countries nowadays have more or less advanced social legislation [2], but in what form should this certificate be drawn up ? The States party to the Convention may conclude special agreements in this regard, pursuant to Article 6 of the Convention. In the absence

[1] The question must be considered according to the best interest of the prisoners of war ; Article 30, paragraph 3, provides that " prisoners of war shall have the attention, preferably, of medical personnel of the Power on which they depend and, if possible, of their nationality ".

[2] Reference may also be made to the Conventions and Recommendations of the International Labour Organisation (in this connection, see extracts on pp. 287-289, Note 1, concerning workmen's compensation for accidents and the minimum scale of such compensation). Mention should also be made of Convention No. 37, which came into force on July 18, 1937, concerning compulsory invalidity insurance for persons employed in industrial or commercial undertakings, in the liberal professions, and for outworkers and domestic servants, and Convention No. 38, which came into force on July 18, 1937, concerning compulsory invalidity insurance for persons employed in agricultural undertakings.

of any agreement, the Detaining Power will apply the corresponding provisions of its own legislation [1].

Although the problem of compensation after the release of the prisoner concerned can be settled by delivery of a certificate, the question of the period of captivity still remains. In actual fact—and unlike the 1929 Convention—the present provision does not cover this period. This is, however, a relatively slight disadvantage, since in the interest of prisoners of war it was essential to provide a gua-

[1] We give below, as an indication, extracts from Recommendation No. 97 of the International Labour Organisation, concerning the protection of the health of workers in places of employment. In Section III, this Recommendation provides for a " notification of occupational diseases ", with a view particularly to " allowing the initiation or development of measures designed to ensure that victims of occupational diseases receive the compensation provided for such diseases " :

" 15. National laws or regulations should—

(a) specify the persons responsible for notifying cases and suspected cases of occupational disease ; and

(b) prescribe the manner in which cases of occupational disease should be notified and the particulars to be notified and, in particular, specify—

(i) in which cases immediate notification is required and in which cases notification at specified intervals is sufficient ;

(ii) in respect of cases in which immediate notification is required, the time limit after the detection of a case or suspected case of occupational disease within which notification is required ;

(iii) in respect of cases in which notification at specified intervals is sufficient, the intervals at which notification is required.

16. The notification should provide the authority concerned with the protection of the health of workers in places of employment with such information as may be relevant and necessary for the effective performance of its duties, including, in particular, the following details :

(a) age and sex of the person concerned ;

(b) the occupation and the trade or industry in which the person is or was last employed ;

(c) the name and address of the place or last place of employment of the person concerned ;

(d) the nature of the disease or posioning ;

(e) the harmful agent and the process to which the disease or poisoning is attributed ;

(f) the name and address of the undertaking in which the worker presumes that he was exposed to the risk to which the disease or poisoning is attributed ; and

(g) so far as is known or can readily be ascertained by the person making the notification, the date of the beginning and, where appropriate, the cessation of exposure to the risk in each of the occupations, trades or industries in which the worker concerned is or has been exposed to the risk."

rantee not for the period of captivity, during which the loss of earning power is in any case minimal, but for the period following release. In this respect, the new Convention therefore goes considerably further than did the 1929 Convention. The prisoner is not thereby deprived of all protection until he is released, since under Article 51, paragraph 2, he is covered by the national legislation concerning the protection of labour, and is therefore eligible for the benefits provided thereunder in case of occupational accidents or diseases [1].

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[1] It may be useful to note a series of documents relating to labour legislation :

A.

Extracts from Convention No. 17 of the International Labour Organisation, concerning Workmen's Compensation for Accidents, which came into force on April 1, 1927.

. . . . .

Article 5. — The compensation payable to the injured workman, or his dependants, where permanent incapacity or death results from the injury, shall be paid in the form of periodical payments ; provided that it may be wholly or partially paid in a lump sum, if the competent authority is satisfied that it will be properly utilized.

Article 6. — In case of incapacity, compensation shall be paid not later than as from the fifth day after the accident, whether it be payable by the employer, the accident insurance institution, or the sickness insurance institution concerned.

Article 7. — In cases where the injury results in incapacity of such a nature that the injured workman must have the constant help of another person, additional compensation shall be provided.

Article 8. — The national laws or regulations shall prescribe such measures of supervision and methods of review as are deemed necessary.

Article 9. — Injured workmen shall be entitled to medical aid and to such surgical and pharmaceutical aid as is recognized to be necessary in consequence of accidents. The cost of such aid shall be defrayed either by the employer, by accident insurance institutions, or by sickness or invalidity insurance institutions.

Article 10. — (1) Injured workmen shall be entitled to the supply and normal renewal, by the employer or insurer, of such artificial limbs and surgical appliances as are recognized to be necessary : provided that national laws or regulations may allow in exceptional circumstances the supply and renewal of such artificial limbs and appliances to be replaced by the award to the injured workman of a sum representing the probable cost of the supply and renewal of such appliances, this sum to be decided at the time when the amount of compensation is settled or revised.

(2) National laws or regulations shall provide for such supervisory measures as are necessary, either to prevent abuses in connection with the renewal of appliances, or to ensure that the additional compensation is utilized for this purpose.

Article 11. — The national laws or regulations shall make such provision as, having regard to national circumstances, is deemed most suitable for ensuring in all circumstances, in the event of the insolvency of the employer or insurer, the payment of compensation to workmen who suffer personal injury due to industrial accidents, or, in case of death, to their dependants.

[*Continued on next page*]

ARTICLE 55. — MEDICAL SUPERVISION

The fitness of prisoners of war for work shall be periodically verified by medical examinations, at least once a month. The examinations shall have particular regard to the nature of the work which prisoners of war are required to do.

If any prisoner of war considers himself incapable of working, he shall be permitted to appear before the medical authorities of his camp. Physicians or surgeons may recommend that the prisoners who are, in their opinion, unfit for work, be exempted therefrom.

In the 1929 Convention, the question of the fitness of prisoners of war for work was covered by Article 29, which read as follows : " No prisoner of war may be employed on work for which he is physically unsuited." As this provision was frequently abused during the Second

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B.

Extract from Recommendation No. 22 of the International Labour Organisation, concerning the Minimum Scale of Workmen's Compensation (May 1925).

N. B. — In the case of prisoners of war, the rates indicated would have to be based on their normal pay, and not on the allowances paid to them during captivity.

I

When incapacity for work results from the injury, the national laws or regulations should provide for the payment of compensation at rates not lower than those hereinafter indicated :

1. In the case of permanent total incapacity, a periodical payment equivalent to two-thirds of the workman's annual earnings ;
2. In case of permanent partial incapacity, a proportion of the periodical payment due in the event of permanent total incapacity calculated in reference to the reduction of earning power caused by the injury ;
3. In case of temporary total incapacity, a daily or weekly payment equivalent to two-thirds of the workman's basic earnings as calculated for purposes of compensation ;
4. In case of temporary partial incapacity, a proportion of the daily or weekly payment payable in the case of temporary total incapacity calculated in reference to the reduction of earning power caused by the injury.

Where compensation is paid in a lump sum, the sum should not be less than the capitalized value of the periodical payment which would be payable under the foregoing paragraphs.

II

Where the injury is such that the workman requires the constant help of another person, additional compensation should be paid to the workman, which should not be less than half the amount payable in the case of permanent total incapacity.

III

Where death results from the injury, those entitled to be regarded as dependants for purposes of compensation should include at least the following :

[*Continued on opposite page*]

World War [1], it was necessary to insert provisions relating to its application. As has already been seen, some of these provisions are contained in Article 49, paragraph 1 ; the medical supervision established by the present Article was introduced by the Conference of Government Experts [2].

PARAGRAPH 1. — PERIODIC CHECK

This provision may be read in conjunction with Article 31, which requires monthly medical inspections [3].

Since the Convention does not specify by whom these examinations must be made, one should refer to the other clauses relating to medical care. The examinations should therefore be made preferably by medical personnel of the Power on which the prisoners depend, in accordance with Article 30, paragraph 3.

1. deceased's husband or wife ;
2. deceased's children under eighteen years of age, or above that age if, by reason of physical or mental infirmity, they are incapable of earning ;
3. deceased's ascendants (parents or grandparents), provided that they are without means of subsistence and were dependent on the deceased, or the deceased was under an obligation to contribute towards their maintenance ;
4. deceased's grandchildren and brothers and sisters, if below eighteen years of age, or above that age if, by reason of physical or mental infirmity, they are incapable of earning, and if they are orphans, or if their parents, though still living, are incapable of providing for them.

Where compensation is paid by means of periodical payments, the maximum total of the yearly sum payable to all the dependants should not be less than two-thirds of the deceased's annual earnings.

Where compensation is paid in a lump sum, the maximum sum payable to all the dependants should not be less than the capitalized value of periodical payments equivalent to two-thirds of the deceased's annual earnings.

IV

The vocational re-education of injured workmen should be provided by such means as the national laws or regulations deem most suitable.

Governments should encourage institutions which undertake such re-education.

[1] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pp. 329-332 ; BRETONNIÈRE, *op. cit.*, pp. 167-169.

[2] See *Report on the Work of the Conference of Government Experts*, p. 175. The members of Mixed Medical Commissions who met in Geneva in September 1945 even proposed that neutral medical commissions should undertake such supervisory examinations, but the suggestion was not adopted. See *ibid.*, p. 171.

[3] Provision is also made in Recommendation No. 97, Section II, of the International Labour Organisation for medical examinations for workers engaged on jobs which involve special risks.

The fitness of prisoners of war for work naturally depends on the nature of the work, and the drafters of the Convention therefore had every reason to include this stipulation in the second sentence of the present paragraph. Any prisoner of war declared unfit for certain work can probably be assigned to less arduous duties.

PARAGRAPH 2. — MEDICAL INSPECTIONS AND RESPONSIBILITY OF MEDICAL AUTHORITIES

This paragraph establishes the right of prisoners of war to have medical inspections. In view of the fact that labour detachments may be dispersed, however, this provision can be complied with only if the Detaining Power makes appropriate arrangements. The best solution would seem to be a daily medical inspection at a fixed time known to the prisoners, which every man in a labour detachment is free to attend. The doctors must be provided with the necessary means of transport to enable them to hold inspections.

The second sentence of this paragraph expressly recognizes the right of physicians or surgeons to recommend that prisoners whom they consider unfit for work should be exempted therefrom. This is a recommendation, and the decision must be taken by the military authorities. It is quite obvious, however, that if the authorities of the Detaining Power were to ignore such a recommendation, they would be violating the principles on which the labour of prisoners of war is based.

ARTICLE 56. — LABOUR DETACHMENTS

The organization and administration of labour detachments shall be similar to those of prisoner-of-war camps.

Every labour detachment shall remain under the control of and administratively part of a prisoner-of-war camp. The military authorities and the commander of the said camp shall be responsible, under the direction of their Government, for the observance of the provisions of the present Convention in labour detachments.

The camp commander shall keep an up-to-date record of the labour detachments dependent on his camp, and shall communicate it to the delegates of the Protecting Power, of the International Committee of the Red Cross, or of other agencies giving relief to prisoners of war, who may visit the camp.

General

A distinction must be made between two categories of workers who are detached : in the first place, those who continue to live in the camp, which they leave each morning to go to work but return to each evening, and secondly, those who are permanently lodged at their place of work. The labour detachments to which this Article refers comprise the latter category. The provision is all the more important because, in practice, it applies to the majority of prisoners of war [1].

The organization of labour detachments may vary greatly according to the nature of the work, the distance from the base camp and the attitude of the commander of the detachment and the employer. Prisoners of war employed in agriculture are usually given accommodation by their employer, and their living conditions are similar to those of the other persons living at the farm. Detachments working in mines or in industry may be quartered either near their place of work, or on the premises in buildings attached to the mine or industry. The latter solution is not always conducive to respect of the Convention, particularly as regards hygiene.

During the Second World War, many mobile labour detachments were formed, to be sent to places where a job had to be completed rapidly. When detachments were independent, it was often difficult to ensure that the provisions of the Convention were applied, and delegates of the International Committee of the Red Cross intervened on many occasions to request that such mobile detachments should be attached to a base camp.

Prisoners of war were sometimes scattered in small groups over the whole country, and this too made it almost impossible to apply any uniform system.

Paragraph 1. — Organization and administration of labour detachments

A similar provision was included in the 1929 Convention, and it gave by way of indication a list of the principal respects in which the conditions in labour detachments must correspond to those of prisoner-of-war camps : hygiene, food, care in case of accidents or sickness, correspondence and the receipt of parcels.

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[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 276.

This text was not amended during the preparatory work which preceded the 1949 Diplomatic Conference, but the Conference decided that it was preferable to delete any such enumeration. The deletion implies that the application to labour detachments of the conditions existing in prisoner-of-war camps must not be limited to a few major elements, but must in principle extend to all conditions. This is in fact the true meaning of the word " régime " used in the French text, which may be taken as referring to everything connected with living conditions, and not merely to questions of organization and administration ; in this instance the English text seems more restrictive than the French. But although it is specified that the conditions in labour detachments must be similar to those of prisoner-of-war camps, nowhere is it stated that they must be identical. As has already been said, the special conditions pertaining to each detachment must be taken into account.

Thus, as regards organization and administration, the time-table for each day must obviously be arranged so as to take into account the work to be done and also the fact that working hours in agriculture cannot be the same as those in industry.

As regards maintenance, it has already been seen that housing conditions may vary according to circumstances ; but the principles set forth in the Convention (Article 25) must be respected, and this was not always the case during the Second World War in labour detachments assigned to industrial work [1]. The question of housing is an important one, for it is impossible to administer a detachment of prisoners who live in private dwellings in the same way as a detachment assembled in appropriate quarters.

Food and clothing (Articles 26 and 27) must be suited to the living conditions and particularly to the nature of the work and the effort required. The same will be true of medical care and medical inspections (Articles 30 and 31). A labour detachment may be so large as to warrant the full-time assignment to it of a doctor. Sometimes one medical officer may be sufficient for several detachments in the same area, and sometimes it will suffice if prisoners can avail themselves of the services of a civilian doctor living near the place where they are stationed. The latter solution also applies to dental care. Each detachment should nevertheless include one or more members of the medical personnel with supplies of medicaments for emergency needs.

Canteens (Article 28) may also be established for prisoners of war and supplied by the base camp, so that prisoners may purchase the

[1] Especially in regard to hygiene. See BRETONNIÈRE, *op. cit.*, pp. 214-216.

same commodities and ordinary articles as their fellow prisoners who have remained in the camp.

Prisoners of war who are members of a labour detachment must be able to satisfy their religious, intellectual and physical needs (Articles 34-38). A minister of their faith will bring them the spiritual assistance they need, but the same considerations will apply as in the case of doctors, and in many cases one chaplain may be able to minister to several labour detachments.

Prisoners of war must be able to receive individual parcels or collective shipments regularly, through the camp to which the labour detachment is attached. The same will apply to correspondence. Unless the detachment is a very large one, censorship will be carried out at the base camp.

Lastly, it must be remembered that a prisoners' representative must be available to each labour detachment, in accordance with Articles 79-81. If the prisoners' representative in the base camp can also attend to a labour detachment to the satisfaction of the prisoners of war concerned, another one will not be required ; it seems preferable, however, that as a general rule each labour detachment should have its own prisoners' representative on the spot.

PARAGRAPH 2. — CONTROL, ADMINISTRATIVE DEPENDENCY AND RESPONSIBILITY

A. *Control.* — The word " control " must be taken here in its English connotation (and in fact in French it is coming more and more to have the same meaning) ; it undoubtedly implies an idea of domination, direction and supervision. The labour detachment will therefore be under the authority and supervision of the commander of the base camp who, as already stated in connection with Article 39, must be a commissioned officer belonging to the regular armed forces of the Detaining Power. It is obvious, however, that authority must be exercised in the camp through subordinates acting on the commander's instructions. The rank of the commander of the labour detachment will depend on the size of the detachment and the camp commander will have full discretion in this matter, within the limits of his competence according to the laws of his country ; since Article 39 requires that the camp commander must belong to the regular armed forces of the Detaining Power, so must commanders of labour detachments. Inspections and the exercise of authority will be organized by the camp commander, according to the regulations applicable to the armed forces of the Detaining Power.

B. *Administrative dependency.* — A labour detachment which cannot be administratively part of a prisoner-of-war camp should be established as an independent camp. Although this is the rule, certain exceptions may be permissible in the light of circumstances. During the Second World War, for instance, in the prisoners' own interest, the correspondence of labour detachments was sometimes censored, not in the base camp, but at a place less far removed. Exceptions of this kind are perfectly permissible and in no way detract from the general principle.

C. *Responsibility.* — The dual responsibility specified here is based not only on the fact that the labour detachment is under the control of the base camp, but also on the general principle of military subordination.

The expression " *direction* of the Government " [1], which appears in the present paragraph as well as in Article 39, cannot in any event exclude individual responsibilities as defined by Articles 12 and 129 to 132. When the clause was adopted, the participants at the 1949 Diplomatic Conference made a point of specifying this [2].

PARAGRAPH 3. — RECORDS

The 1929 Convention did not contain this provision, and during the Second World War, delegates of the International Committee of the Red Cross sometimes found it difficult to visit labour detachments because the commander of the main camp did not always have a list of the prisoners of war in the detachments. When the list was in the keeping of the military authorities, long delays sometimes ensued before it was made available.

The present provision states clearly that the lists must be communicated to delegates of the Protecting Power or of the International Committee of the Red Cross ; they should at least record the exact location of the detachment and the prisoners of war who are assigned to it.

With regard to the " agencies giving relief to prisoners of war ", once they have been authorized by the military authorities of the Detaining Power to visit prisoner-of-war camps, they will be in the same position [3].

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[1] In French, " contrôle ".

[2] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 277.

[3] In this respect, see the commentary on Article 125, paragraph 2.

ARTICLE 57. — PRISONERS WORKING FOR PRIVATE EMPLOYERS

The treatment of prisoners of war who work for private persons, even if the latter are responsible for guarding and protecting them, shall not be inferior to that which is provided for by the present Convention. The Detaining Power, the military authorities and the commander of the camp to which such prisoners belong shall be entirely responsible for the maintenance, care, treatment, and payment of the working pay of such prisoners of war.

Such prisoners of war shall have the right to remain in communication with the prisoners' representatives in the camps on which they depend.

Like other prisoners of war, those who work for private employers remain in the hands of the Detaining Power alone (Article 12) ; and like their fellow-prisoners, they are under the direct authority of a camp commander, who must himself be a commissioned officer belonging to the regular armed forces of the Detaining Power (Articles 39 and 56). There is therefore no change in the legal status of this category of prisoners of war as regards the basic principles which the Convention makes applicable to captivity. In fact, however, their situation is very different from that of their fellow-prisoners living in the camp, for in a way the Detaining Power delegates its powers to the employer. Subject to certain conditions, the Convention does not forbid this, as will be seen ; it is, however, merely an internal arrangement.

PARAGRAPH 1. — TREATMENT AND RESPONSIBILITY

1. *First sentence. — Minimum standard of treatment*

The first sentence was re-drafted several times. The participants at the Stockholm Conference recommended the following text, in order to make it clear that the employer is responsible for guarding prisoners :

The treatment of prisoners of war working in the employ of private persons and placed under their direct control shall be equal at least to that which is foreseen by the present Convention. The Detaining Power shall ensure the supervision and take the entire responsibility for these prisoners [1].

[1] See *XVIIth International Red Cross Conference, Draft Revised or New Conventions for the Protection of War Victims*, p. 86.

The delegates to the 1949 Diplomatic Conference considered, however, that this wording was not advisable, since it might possibly be construed as permitting a transfer of responsibility from the camp commander to the private employer, and, as we have already seen, this cannot be allowed in any circumstances [1]. In order to leave no ambiguity on this score, the Stockholm draft was amended and the text was approved as it now stands.

In the first place, therefore, it concerns prisoners of war whose employer takes on the responsibility for guarding and protecting them, it being understood that this responsibility is only an internal matter. The general rule is that, in the absence of any express provision to the contrary in the Convention, the Detaining Power is responsible for carrying out the Convention. The camp commander may therefore be authorized by his superiors to entrust the guarding of prisoners of war to civilians as well as to members of the armed forces ; this is implicitly allowed by the present paragraph.

In matters of discipline, however, any delegation of powers is limited by paragraph 2 of Article 96, which provides that " disciplinary punishment may be ordered only by an officer with disciplinary powers in his capacity as camp commander, or by a responsible officer who replaces him or to whom he has delegated his disciplinary powers ". In no case, therefore, may a camp commander delegate such powers to civilian employers.

Similarly, any delegation of the responsibility for guarding prisoners of war cannot in any circumstances imply that civilians have the right to use weapons against prisoners of war attempting to escape. The justification for firing on an escaping prisoner of war lies in the fact that he is committing an act of war in his capacity as a member of the enemy armed forces ; but only military personnel can respond by an act of war. Whatever the responsibility of private employers vis-à-vis the national authorities concerning the guarding of prisoners of war, such employers are forbidden to use weapons against prisoners, except in legitimate self-defence, which cannot arise solely from the fact that a prisoner attempts to escape.

Two solutions are therefore open to the Detaining Power : either it may detail military personnel to be responsible for guarding prisoners of war employed by private persons, or such civilian employers may be responsible for guarding only prisoners partially released on parole, pursuant to Article 21, paragraphs 2 and 3.

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[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 277.

We come now to the principal clause in this provision, which expressly requires that the treatment of prisoners of war who work for private persons " shall not be inferior to that which is provided for by the present Convention ". This stipulation was inserted in the light of the experience of the Second World War. Although prisoners employed by private persons sometimes enjoy certain advantages as regards food, quarters or discipline, for instance, as compared with their comrades who are in camps, they may be deprived of other rights because of their isolation. We have in mind especially correspondence, medical care, relief consignments, religious services, access to canteens, and the preparation of legal documents. The fact that prisoners who are employed by private persons may enjoy certain other advantages is no justification for depriving them of the rights to which they are entitled under the Convention.

In accordance with Article 135, the present Convention is complementary to Chapter II of the Regulations annexed to the Hague Conventions for the Powers which are bound by the latter Conventions. Article 6 of the Hague Regulations, which provides that prisoners of war may be authorized to work " on their own account ", therefore remains applicable as between the Powers concerned.

2. *Second sentence. — Responsibility*

This sentence was inserted by the delegates to the 1949 Diplomatic Conference in order to emphasize the principle that in all cases the military authorities must be directly responsible for the well-being of prisoners of war [1].

Express reference is made here to various matters which may possibly be the subject of contractual arrangements between the military authorities and the employer when prisoners of war are assigned to work for the latter : maintenance, care, treatment in accordance with the Convention, and payment of working pay. Contracts of this kind are not forbidden, but they must be considered as purely internal arrangements within the context of measures for applying the Conventions. By signing such a contract, the Government of the Detaining Power, the military authorities, or the commander of the camp to which the prisoners of war are attached, are in no way relieved of their responsibilities.

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[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 277.

PARAGRAPH 2. — COMMUNICATION WITH THE PRISONERS' REPRESENTATIVE

The obligations imposed on the Detaining Power by the first paragraph are safeguarded by the present provision, which expressly recognizes the right of prisoners of war working for private persons to "remain in communication" with their prisoners' representative. This contact may be maintained by correspondence, telephone or periodic meetings. Article 81, paragraph 2, expressly states that all material facilities must be granted to prisoners' representatives, particularly a certain freedom of movement. Visits to labour detachments are mentioned, and reference may be made to the commentary on that Article.

SECTION IV

FINANCIAL RESOURCES OF PRISONERS OF WAR

The provisions relating to the financial resources of prisoners of war were contained in Articles 6, 22, 23, 24 and 34 of the 1929 Convention.

In accordance with the principles already set forth in the Hague Regulations of 1907 (Article 4, paragraph 3 ; Article 6, paragraphs 3-6 ; Article 17), those provisions specified that the personal belongings of prisoners of war remain their property, that officer prisoners of war must receive their pay from the Detaining Power, and that prisoners of war who work must receive working pay.

During the Second World War, however, certain shortcomings and even contradictions in the 1929 text became apparent. The drafters of the new Convention tried to remedy these defects.

The Conference of Government Experts agreed that all provisions relating to financial matters should be assembled in a single section of the Convention. A special Sub-Committee was appointed to study these problems in the light of the following three principles drawn up by participants in the Conference :

1. The amounts paid out to prisoners of war by the Detaining Power shall be limited so that a maximum sum may be available for the next of kin of prisoners of war.
2. The amounts paid shall be determined by rank or status.
3. Credit balances shall be made easily transferable to the next of kin of prisoners of war [1].

ARTICLE 58. — READY MONEY

Upon the outbreak of hostilities, and pending an arrangement on this matter with the Protecting Power, the Detaining Power may deter-

[1] See *Report on the Work of the Conference of Government Experts*, p. 157.

mine the maximum amount of money in cash or in any similar form, that prisoners may have in their possession. Any amount in excess, which was properly in their possession and which has been taken or withheld from them, shall be placed to their account, together with any monies deposited by them, and shall not be converted into any other currency without their consent.

If prisoners of war are permitted to purchase services or commodities outside the camp against payment in cash, such payments shall be made by the prisoner himself or the camp administration who will charge them to the accounts of the prisoners concerned. The Detaining Power will establish the necessary rules in this respect.

Article 24 of the 1929 Convention contained a rule similar to that which appears in the first paragraph of the present Article. During the Second World War, however, that rule was not applied in full, since certain Powers authorized prisoners to retain only " camp money ", which in principle restricted their purchases to what was available in the canteens. With the permission of the Detaining Power, however, this " camp money " could be converted either into local currency for puchases from local stores, or into foreign currency for transmission to next of kin.

The purpose of these measures was to prevent prisoners from having in their possession sums of money which might have facilitated escape [1].

PARAGRAPH 1. — POCKET MONEY AND MONEY CREDITED TO THE ACCOUNT OF PRISONERS OF WAR

1. *First sentence. — Pocket money*

At the time of the Stockholm Conference it was proposed that the amount of cash which prisoners of war might retain in their possession should depend on the agreement of the Protecting Power and not on any special agreement between belligerents ; it was felt that such a course would facilitate and hasten the determination of the said amount [2]. This proposal was opposed, however, during the 1949

[1] See BRETONNIÈRE, *op. cit.*, p. 154. See also *XVIIth International Red Cross Conference, Draft Revised or New Conventions for the Protection of War Victims*, p. 87, and *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, Sub-Committee of Financial Experts of Committee II, p. 529.

[2] See *XVIIth International Red Cross Conference, Draft Revised or New Conventions for the Protection of War Victims*, p. 87.

Diplomatic Conference, as experience had shown that a considerable time often elapsed before Protecting Powers functioned effectively. A literal interpretation of the Convention would have permitted the Detaining Power to leave the prisoners without any ready money at all, pending an agreement with the Protecting Power [1]. Finally, the Italian Delegation proposed a compromise solution, which was adopted by the Conference : the Detaining Power would be authorized to fix a maximum amount, subject to later confirmation by the Protecting Power [2].

The money is to be " in cash or in any similar form ", that is to say, in camp money, as we have already mentioned.

As for the amount, on the basis of Article 60 one might well consider that it should not be less than the amount of the monthly advance of pay which the Detaining Power is required to grant to each prisoner of war.

2. *Second sentence. — Excess*

This provision should be read together with Article 59 although, in fact, the latter refers only to cash taken from prisoners of war at the time of capture.

The excess may consist of cash in the possession of prisoners of war at the time of their capture which will be withdrawn in accordance with Article 18, paragraph 4, of money due to prisoners of war by the Detaining Power as working pay (Article 62) or advances of pay (Article 60), or again of sums of money sent to the prisoner by his Government or his family (supplementary pay, Article 61, transfer of funds, Article 63).

The excess must be placed to the account of the prisoners of war concerned in accordance with the provisions of Articles 64 and 65 and—a very important condition—may not be converted into any other currency without their consent ; this latter stipulation was included with a view to possible fluctuations in exchange rates.

At the 1949 Diplomatic Conference, one delegation pointed out that there was no provision for punishment if prisoners retained sums of money in excess of the maximum allowed [2]. One may reply that in accordance with the general rules set forth in Article 82, prisoners of

[1] For the discussion, see *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 529-530.

[2] *Ibid.*, p. 530.

war are subject to the laws, regulations and orders in force in the armed forces of the Detaining Power. If prisoners had in their possession excessively large sums of money, they would therefore be liable to the penalties applicable in such cases to members of the armed forces of the Detaining Power. In the event that no such penalty was provided, it would be for the Detaining Power to introduce regulations applicable only to prisoners of war but in that case, pursuant to Article 82, paragraph 2, such regulations could entail " disciplinary " punishment only.

PARAGRAPH 2. — PAYMENTS MADE OUTSIDE THE CAMP

The text presented to the Stockholm Conference was less liberal since it provided that any payments outside the camp should be made not by prisoners of war but by the camp authorities [1].

Prisoners of war are allowed to have pocket money so that they can make purchases at the canteen, but members of labour detachments do not always have access to a canteen. They must therefore be able to purchase goods in daily use from local tradespeople. Such transactions would naturally be very difficult if the camp administration did not allow prisoners of war to make payment themselves for the services or commodities which they receive. The present paragraph therefore applies particularly to current expenditure when for any reason prisoners of war do not have the facilities available inside the camp.

It may be, however, that prisoners have to meet expenses outside the camp which exceed the funds normally available to them, for instance in the case of legal consultations (Article 77), collective purchases of equipment for sports and recreation purposes, etc. Under the present paragraph, the Detaining Power may in such cases make payment and debit the account of the prisoners concerned accordingly. This intervention by the camp administration will in fact constitute a safeguard and a check, to the advantage of both the prisoners of war and the local suppliers.

[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 530.

ARTICLE 59. — AMOUNTS IN CASH TAKEN FROM PRISONERS

Cash which was taken from prisoners of war, in accordance with Article 18, at the time of their capture, and which is in the currency of the Detaining Power, shall be placed to their separate accounts, in accordance with the provisions of Article 64 of the present Section.

The amounts, in the currency of the Detaining Power, due to the conversion of sums in other currencies that are taken from the prisoners of war at the same time, shall also be credited to their separate accounts.

This Article refers only to cash taken from prisoners of war at the time of their capture. It is therefore a duplication of Article 18, paragraph 4, and Article 64, as was moreover pointed out at the 1949 Diplomatic Conference [1]. For the commentary, reference should therefore be made to those Articles.

In retaining the present Article the intention of the drafters of the Convention was, no doubt, as had been suggested by the International Committee of the Red Cross, to include in the Section dealing with the various resources of prisoners of war an Article referring to the sums which may be impounded at the time of capture and which in point of time constitute the first resources available to prisoners of war [2].

ARTICLE 60. — ADVANCES OF PAY

The Detaining Power shall grant all prisoners of war a monthly advance of pay, the amount of which shall be fixed by conversion, into the currency of the said Power, of the following amounts :

Category I : *Prisoners ranking below sergeants : eight Swiss francs.*

Category II : *Sergeants and other non-commissioned officers, or prisoners of equivalent rank : twelve Swiss francs.*

Category III : *Warrant officers and commissioned officers below the rank of major or prisoners of equivalent rank : fifty Swiss francs.*

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[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 531.

[2] See *XVIIth International Red Cross Conference, Draft Revised or New Conventions for the Protection of War Victims*, p. 88.

Category IV : *Majors, lieutenant-colonels, colonels or prisoners of equivalent rank : sixty Swiss francs.*

Category V : *General officers or prisoners of war of equivalent rank : seventy-five Swiss francs.*

However, the Parties to the conflict concerned may by special agreement modify the amount of advances of pay due to prisoners of the preceding categories.

Furthermore, if the amounts indicated in the first paragraph above would be unduly high compared with the pay of the Detaining Power's armed forces or would, for any reason, seriously embarrass the Detaining Power, then, pending the conclusion of a special agreement with the Power on which the prisoners depend to vary the amounts indicated above, the Detaining Power :

(a) *shall continue to credit the accounts of the prisoners with the amounts indicated in the first paragraph above ;*

(b) *may temporarily limit the amount made available from these advances of pay to prisoners of war for their own use, to sums which are reasonable, but which, for Category I, shall never be inferior to the amount that the Detaining Power gives to the members of its own armed forces.*

The reasons for any limitations will be given without delay to the Protecting Power.

Under Article 23 of the 1929 Convention, officer prisoners of war received from the Detaining Power the same pay as officers of corresponding rank in the armed forces of that Power, provided that such pay did not exceed that to which they were entitled in the armed forces in which they were serving prior to capture.

It was to be paid monthly, and was to be reimbursed at the end of hostilities by the Power in whose service the prisoners were, at a rate of exchange determined by special agreement between the belligerents.

On the whole, advances of pay were made regularly during the Second World War. Difficulties sometimes arose, however, in connection with the rate of exchange, and this was an essential factor since it established the equivalence between the sums paid in the currency of the Detaining Power and the amount which officers subsequently received in the currency of the Power on which they depended [1].

[1] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pp. 283-285.

The provisions of Article 23 applied only to officers ; non-commissioned officers who did not volunteer for work, and other ranks who were unfit for work, were left without any pecuniary resources. During the Second World War, there was some improvement in this situation as a result of the efforts of the International Committee of the Red Cross [1].

At the outset of their discussions on the financial resources of prisoners of war, the participants at the 1947 Conference of Government Experts agreed on the principle that the allowances to be paid to prisoners of war should be fixed according to rank, but not on the basis of assimilation, particularly because of monetary depreciation and the difficulty of establishing rank equivalents [2]. A scale of pay was drawn up, on the basis of the gold franc, and was included with very few changes in the text as it now stands. In making their recommendations, the Government Experts also took account of the suggestions made by the International Committee of the Red Cross, in particular that an allowance should be paid to all prisoners of war, and not merely to officers [3].

PARAGRAPH 1. — AMOUNT OF THE MONTHLY ADVANCE OF PAY

Unlike the 1929 text, the present Convention speaks not of " pay " but of " advances of pay ". This term was introduced by the 1949 Diplomatic Conference [4] and it seems well justified, for it indicates more clearly the nature of the payment to be made by the Detaining Power. Payment is made by one person to another in respect of labour or services, and pay cannot therefore be due by the Detaining Power to prisoners of war. At the same time it is and remains due to them by the Power on which they depend. Of this amount due, an " advance " [5] is paid by the Detaining Power in order to enable prisoners to improve their lot during captivity, but subject to reimbursement by the Power on which they depend. Reimbursement is to be made at the close of hostilities, in accordance with the provisions of Article 67.

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[1] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, p. 285. See also *Revue internationale de la Croix-Rouge*, 1944, p. 353.

[2] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 278.

[3] See *Report on the Work of the Conference of Government Experts*, pp. 158-159.

[4] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 533.

[5] Some delegations even proposed the use of the word " relief ". See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 533.

The advance is granted to all prisoners of war, who are divided into five categories ranging from other ranks to general officers. This is therefore a very important change as compared with the 1929 text, which provided for pay only in the case of officers.

The advance of pay must be paid in the currency of the Detaining Power, as is essential so that the beneficiaries may make use of it. For each category listed, the amount of the monthly advance of pay is computed by converting into the currency of the Detaining Power a sum expressed in Swiss francs. It is understood that the money must be made available to prisoners of war at once, and it may not be used to meet any charge which the Detaining Power might conceive it proper to make against them [1].

The reference is to Swiss paper francs, not Swiss gold francs [2]. This is because many countries have abandoned the gold standard and it is likely that gold will become increasingly unusable as a basis for assessing the comparative value in purchasing power of other currencies. In these circumstances, experts in the United Kingdom considered that the Swiss paper franc was more likely to retain its stability than any other currency. But what should the rate of exchange be ? One may reply that it should be the " normal " rate, based on the theory according to which, for paper money, a normal rate is established corresponding to the metal par value in the case of currency based on the gold standard. In view of the fact, however, that currency is intended for the purchase of goods, the theory of equivalent purchasing power requires in principle that the normal rate of exchange of the currency of two given countries should be determined according to the level of prices in each of those countries. In war-time the rate of exchange for gold rises very rapidly and the pay of prisoners might fluctuate widely if it were based on gold rather than on paper currency. Account must also be taken of general ex-

[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 279.

[2] Originally the Swiss franc referred to was the franc containing 203 milligrammes of fine gold (see *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 384). With regard to the rate of exchange to be used, some delegations proposed that current in Switzerland (*ibid.*, Vol. II-A, p. 532) ; others proposed the insertion of an additional paragraph specifying that if fluctuations in the rate of exchange affected the pay of prisoners of war, the Protecting Power must notify the Power concerned with a view to concluding a special agreement (*ibid.*, Vol. II-A, p. 532). The gold standard, however, which had been accepted by the United Kingdom Delegation during the preparatory work, was strongly opposed by that same Delegation at the 1949 Diplomatic Conference (see especially *ibid.*, Vol. II-A, pp. 384, 532-535, Vol. II-B, pp. 301-302) and ultimately the plenary assembly supported the United Kingdom view (*ibid.*, Vol. II-B, p. 302).

change control measures which may be taken by the Parties to the conflict.

In these circumstances, a prisoner of war who is granted as a monthly advance of pay the equivalent of eight Swiss paper francs in the currency of the Detaining Power, should thereby acquire a purchasing power corresponding to that of eight francs in Swiss territory. This system undoubtedly implies great confidence in the stability of the Swiss franc and its purchasing power at international level in years to come.

One may, of course, object that in practice this provision may result in a disparity in the situation of prisoners of war who depend on the same Power but are interned on the territory of different Powers. The purchasing power given to prisoners by converting a given sum in Swiss francs into the currency of the Detaining Power will vary according to the respective price levels. This is, however, an inevitable consequence which seems to have been deliberately accepted by the authors of this provision, since the disparity already existed in 1949 when the rule was adopted [1].

For payment of the monthly advance, prisoners of war are divided into five categories. The application of this provision implies that at the beginning of hostilities the belligerent Powers must communicate to each other the titles and ranks in use in their respective armed forces. This is in fact required by Article 43, which also stipulates that titles and ranks which are subsequently created must form the subject of similar communications to be taken into account by the Detaining Power. This would be the case if, following promotion, the prisoner concerned moved into a higher category.

PARAGRAPH 2. — SPECIAL AGREEMENTS — RESERVATION

Paragraph 2 permits the Parties to the conflict to modify the amount of advances of pay by special agreement. It must, however, be understood that in concluding such agreements the Parties must respect the spirit of the rule contained in paragraph 1.

Although the general cost-of-living index usually fluctuates only slightly in peace-time [2], things are very different in war-time. In

[1] It also existed in 1929, pursuant to the principle of assimilation.

[2] In Switzerland the index rose from 159 in August 1950 to 172 in August 1954 for the retail price of the principal consumer goods.
See *La vie économique, Rapports économiques et de statistiques sociales*, XVIIth year, 9th fascicule, Berne, September 1954, p. 349 ; see also, for trends in the indices of OEEC member countries during the same period, *OEEC Statistical Bulletins, General Statistics*, 1954.

Switzerland, for instance, the basic index rose from 100 in 1939 to 105 in January 1940, and 152 in January 1945 [1]. In the course of the war, a prisoner of war interned in Switzerland and entitled to a monthly advance of eight Swiss francs would therefore have suffered a reduction of one-third in the purchasing power of that sum. He would have needed twelve francs at the end of hostilities in order to meet his requirements to the same extent as at the beginning.

If during the Second World War such wide fluctuations were recorded in Switzerland, which was not a Party to the conflict, one can well imagine that the swing would be still greater in the countries at war. It may therefore be necessary for the belligerent States to revise the figures given in paragraph 1 of the present Article.

PARAGRAPH 3. — OTHER RESERVATIONS

In two expressly defined cases, there is a reservation concerning payment of the amounts indicated in the first paragraph : in the first place, if the amounts indicated in the first paragraph are unduly high compared with the pay of the Detaining Power's armed forces, and secondly if they would seriously embarrass the Detaining Power.

1. *Disproportion between the advance of pay and the amount paid by the Detaining Power.* —This reservation is justified ; the advance of pay granted to prisoners of war must not be considerably higher than the pay of the Detaining Power's armed forces, for the latter might react unfavourably if prisoners of war received such privileged treatment [2]. It must also be recalled that the advance is merely intended to enable prisoners of war to make minor purchases [3].

2. *Financial difficulties of the Detaining Power.* — The second reservation is expressed in a very general form ; the Convention refers to the possibility of the Detaining Power being " seriously embarrassed " by payment of the specified amounts. Such serious embarrassment might result in particular from " fluctuations in the rate of

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[1] See *Annuaire statistique de la Suisse, 1952,* published by the Federal Statistical Office, Basle, 1952, p. 335.

[2] See *Final Record of the Diplomatic Conference of Geneva of 1949,* Vol. II-A, p. 532.

[3] *Ibid.,* pp. 279-280 ; certain States nevertheless declared during the 1949 Diplomatic Conference that they could not accept the principle of assimilation to the pay of troops of the Detaining Power, since in many cases it would be far too low. (*Ibid.,* p. 532.)

exchange affecting the pay of prisoners of war " [1]. This would be the case if the currency of the country in whose armed forces prisoners of war had served remained firm while that of the Detaining Power was considerably devalued.

3. *Procedure applicable in the two cases mentioned under 1 and 2.* — If either of the two cases mentioned under 1 and 2 above exists, the Detaining Power may not vary the amount of the advance due to prisoners of war, but may modify the amount of the actual payment, the balance being credited to each prisoner's account, as provided in Articles 64 and 65. In this case, the payment would be limited to " sums which are reasonable ", that is to say to an amount sufficient to cover the current needs of prisoners. In practice, therefore, the amount will depend on what is available in the canteens. This was appropriately recalled at the 1949 Diplomatic Conference by one delegation, which requested that the present Article should be linked to Article 28 (canteens) [2]. In this connection, one should refer in particular to the first sentence of Article 58, paragraph 1, which authorizes the Detaining Power to determine the maximum amount of money in cash or in any similar form that prisoners may have in their possession. The Convention does, however, limit any unilateral decision by the Detaining Power, and this limitation applies to Article 58 as well as to the present provision : for prisoners of war in Category I, that is to say prisoners ranking below sergeants, the amount may never be inferior to that which the Detaining Power gives to the members of its own armed forces.

To sum up, the rule is therefore as follows :

1. In principle, advances of pay are granted according to the scale contained in paragraph 1.
   Exceptions : *(a)* by special agreement ;
   (b) by unilateral decision of the Detaining Power.

2. Such a unilateral decision is permitted pending the conclusion of a special agreement :
   (a) when the amounts indicated in paragraph 1 are unduly high compared with the pay of the Detaining Power's armed forces ;

[1] A draft amendment to this effect was presented at the 1949 Diplomatic Conference in order to reserve the position of countries whose financial situation is weak. See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 532.

[2] *Ibid.*, p. 535.

(b) when payment of these amounts would seriously embarrass the Detaining Power.

3. By such a unilateral decision, the Detaining Power may :
   (a) limit payments to Categories II to V to " reasonable " sums.
   (b) limit payments to Category I to the amount given to members of its own armed forces.

4. Such a unilateral decision does not relieve the Detaining Power of the obligation :
   (a) to credit the accounts of the prisoners concerned with the amounts indicated in paragraph 1 ;
   (b) to endeavour to conclude a special agreement with the Power on which the prisoners depend.

It should also be emphasized that this advance of pay must be granted without prejudice to any working pay which prisoners of war may receive for work done by them, in accordance with the provisions of Article 62 [1].

PARAGRAPH 4. — NOTIFICATION OF THE PROTECTING POWER

The Protecting Power must be notified without delay of the reasons which have led the Detaining Power, pursuant to paragraph 3, to limit the amounts of the advance of pay given to prisoners of war. This paragraph is self-explanatory and requires no comment.

ARTICLE 61. — SUPPLEMENTARY PAY

The Detaining Power shall accept for distribution as supplementary pay to prisoners of war sums which the Power on which the prisoners depend may forward to them, on condition that the sums to be paid shall be the same for each prisoner of the same category, shall be payable to all prisoners of that category depending on that Power, and shall be placed in their separate accounts, at the earliest opportunity, in accordance with the provisions of Article 64. Such supplementary pay shall not relieve the Detaining Power of any obligation under this Convention.

[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 538.

The advance of pay granted to other ranks amounts to eight Swiss francs per month, that is to say less than twenty-seven centimes per day. This is a very small sum indeed, although, it is true, it refers only to men who are required to work and whose daily income is generally increased to twice this amount by working pay. In accordance with Article 62, paragraph 1, the minimum working pay is one-fourth of one Swiss franc for a full working day. The amounts fixed for other categories of prisoners of war who are not required to work are also very modest : forty centimes per day for sergeants, one franc seventy centimes for officers below the rank of major, two francs for majors, lieutenant-colonels or colonels, and two francs fifty for general officers.

This advance represents only one-tenth of the normal pay in most armed forces, and perhaps even less if one takes into account the facilities and benefits in kind which are granted by some Powers.

The purpose of the present Article is to facilitate distribution of any supplementary pay which might be necessary [1].

1. *First sentence. — Conditions for forwarding*

The Power which forwards the money is primarily responsible for implementing the first two conditions (identical amounts, general distribution), since the Convention does not state that it is to be addressed to the Detaining Power, but directly to the prisoners (" may forward to them... "). In practice, it is unlikely that the Power on which prisoners depend would effect an individual transfer of funds for each prisoner in the category concerned who is interned on the territory of a given Power. A global transfer would probably be made, accompanied by all appropriate instructions for distribution. The instructions must, however, meet these two conditions and the Detaining Power must also respect them.

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[1] In the draft presented to the Stockholm Conference, this provision was contained in a paragraph inserted at the end of the present Article 60 (See *XVIIth International Red Cross Conference, Draft Revised or New Conventions for the Protection of War Victims*, p. 88) ; the provision was based on a recommendation by the Conference of Government Experts (see *Report on the Work of the Conference of Government Experts*, p. 158) ; several amendments were proposed at the 1949 Diplomatic Conference, in particular by the United Kingdom and New Zealand (see *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 384 ; Annex III, Nos. 119 and 120). The final text was the result of a compromise between the original version and the amendments proposed ; it was drawn up as a separate Article in order to avoid any confusion between the normal pay granted by the Detaining Power and any supplementary amount which might be provided by the Power on which prisoners depend (see *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 537).

According to the letter of the text, these sums are not placed on account but are " payable ", that is to say they must be placed at the disposal of the prisoners concerned, in the same way as the advance of pay provided under Article 60. A reservation must, however, be made for cases where the total of the advance of pay, granted pursuant to Article 60, paragraph 1, and the supplementary pay, forwarded to prisoners of war pursuant to the present Article, exceeds the maximum amount which prisoners may have in their possession, under Article 58, paragraph 1. In such cases, the Detaining Power must be authorized to delay the supplementary payment, in order that the provisions of Article 58 may be respected.

The sums to be paid to each prisoner must be recorded in his credit account, in accordance with Article 64. This Article requires the recording, not only of sums placed to the credit of prisoners of war, but also of payments which they receive directly.

2. *Second sentence. — Obligations of the Detaining Power*

This provision resembles that contained in Article 72, paragraph 2, stating that relief shipments may in no way free the Detaining Power from the obligations imposed on it by virtue of the present Convention. Although the latter provision refers to Articles 15 (free maintenance), 25 (quarters), 26 (food), and 27 (clothing), that contained in the present paragraph is related more closely to Article 60, which requires the granting of the advance of pay in all circumstances and independently of any supplementary amount which may be forwarded by the Power on which the prisoners depend [1].

ARTICLE 62. — WORKING PAY

Prisoners of war shall be paid a fair working rate of pay by the detaining authorities direct. The rate shall be fixed by the said authorities, but shall at no time be less than one-fourth of one Swiss franc for a full working day. The Detaining Power shall inform prisoners of war, as well as the Power on which they depend, through the intermediary of the Protecting Power, of the rate of daily working pay that it has fixed.

Working pay shall likewise be paid by the detaining authorities to prisoners of war permanently detailed to duties or to a skilled or semi-

[1] See the commentary on Article 72, paragraph 2.

skilled occupation in connection with the administration, installation or maintenance of camps, and to the prisoners who are required to carry out spiritual or medical duties on behalf of their comrades.

The working pay of the prisoners' representative, of his advisers, if any, and of his assistants, shall be paid out of the fund maintained by canteen profits. The scale of this working pay shall be fixed by the prisoners' representative and approved by the camp commander. If there is no such fund, the detaining authorities shall pay these prisoners a fair working rate of pay.

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Article 34 of the 1929 Convention stated that the working rate of pay was to be fixed by agreements between the belligerents; prisoners of war were not to be paid, however, for work connected with the administration, internal arrangement and maintenance of camps. Pending the conclusion of such agreements, which were also to specify the proportion of pay that might be retained by the camp administration and the manner in which payment was to be made, work was to be paid for either according to the rates in force or according to rates agreed upon between the employers and the military authorities. Any pay remaining to the credit of a prisoner was to be remitted to him on the termination of his captivity or, in case of death, remitted to his heirs.

In fact, no such agreements were concluded between the belligerents during the Second World War, and the wages of prisoners of war were in practice left entirely to the discretion of the Detaining Power; they therefore varied considerably.

Moreover, Article 34 did not fix the proportion of the wages which the Detaining Power was authorized to retain, and on this point also, prisoners of war were subject to arbitrary decisions. Nevertheless the sums withheld from them were seldom excessive, and in accordance with the practice followed by all the belligerents, in the spirit of the Convention, these sums were in fact spent on the maintenance of the prisoners of war [1].

In the reports which it submitted to the Conference of Government Experts, the International Committee of the Red Cross proposed that paragraph 1 of Article 34 should be amended, in order that prisoners

[1] Delays in payment of wages sometimes occurred, however; for further details, see *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pp. 286-289.

of war continuously employed on camp administration or artisanal work might receive wages. The Conference of Government Experts supported the proposal and made an appropriate recommendation [1].

It was also proposed that Article 34, paragraph 3, which allowed the camp management to make deductions from the wages of prisoners of war, should be deleted. This proposal was accepted. With regard to the rate of pay, the International Committee of the Red Cross considered that prisoners of war should receive the same pay as civilian workers of the Detaining Power, but the Conference of Government Experts did not agree with that suggestion. It recommended that the rate of pay should never be less than one-quarter of a Swiss gold franc for a whole day's work and that the Detaining Power should notify to the Government on which prisoners of war depended, through the Protecting Power, the rate of wages it might determine. It also recommended that as soon as prisoners of war commenced work, they should be informed of the salary they would earn, as well as the method of payment and the manner in which they might make use of it.

Lastly, it will be noted that the 1949 text speaks of " working pay " and not " wages ". The drafters of the new Convention considered that the word " wages " should be used to denote only the remuneration of a civilian worker responsible for maintaining himself and his family out of his wages, and that it was not appropriate for the case of a prisoner of war who was fed and housed at the expense of the Detaining Power ; the term " working pay " was therefore considered more suitable [2].

Paragraph 1. — Determination of rate of working pay ; Implementing measures

1. *First sentence. — Determination of rate of pay; payment*

A. *Amount of working pay.* — The amount must be " fair ", that is to say it must be established impartially and must correspond to the services rendered.

During the Second World War, prisoners of war in Germany received varying rates of pay according to the nature of the work. In the industries and trades, they received 60 per cent of the rate paid to civilian workers ; in agriculture, they received a very small daily wage but they were fed and housed by their employer. In the United

[1] See *Report on the Work of the Conference of Government Experts*, pp. 160-161.

[2] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 557.

States of America, the general rate was eighty cents per day, except where prisoners were paid according to results, the latter method being followed wherever possible [1].

In point of fact, the only way of determining whether the working rate of pay is " fair " is to compare it with the rate paid to civilian labourers for similar work, while taking into account that prisoners of war are not always specialized in the work they have to perform, and do not have to pay for their own maintenance out of what they earn. The drafters of the Convention decided not to specify the exact working rate of pay for prisoners of war, but they did fix a minimum amount : in accordance with the present paragraph, at no time may the rate be less than one-fourth of one Swiss franc for a full working day [2]. As in the case of advances of pay, the reference is to the Swiss paper franc, not the Swiss gold franc, and what has already been said in connection with Article 60 applies also to the present provision.

B. *Authority responsible for determining the working rate of pay.* — Pursuant to Article 12, the Detaining Power is responsible for prisoners of war in all circumstances ; that responsibility is unaffected by any contractual arrangements which may be made with private employers concerning the work of prisoners of war. It is therefore right and proper that the present paragraph should state that the rate shall be fixed by the detaining authorities, but the latter are naturally free to come to an agreement with the private employers on the subject.

C. *Payment.* — Working pay must be paid directly by the military authorities in the currency of the Detaining Power [3] ; if prisoners of war have to pay for their purchases at the canteen in camp money, they must receive their working pay in camp money. The Convention does not state how frequently payment should be made ; one may assume, however, that in this respect the Detaining Power would follow the customary practice for civilian workers doing similar work in the country of detention. This is in fact directly implied by Article 51, paragraph 2, which requires the Detaining Power to ensure that the national legislation concerning the protection of labour is applied to prisoners of war who work.

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[1] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pp. 286-289.

[2] For the duration of a working day, see the commentary on Article 53.

[3] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 539.

Prisoners of war may make use of the money which they earn within the general limits outlined in the Convention. It may also be credited to their account, in accordance with the provisions of Article 64. This will apply, at least as a temporary measure, pursuant to Article 58, paragraph 1, which states that the Detaining Power may determine the maximum amount of money that prisoners may have in their possession.

Lastly, prisoners may transfer funds according to the provisions of Article 63.

2. *Second sentence. — Prisoners of war and the Power on which they depend to be informed*

This requirement corresponds to the legal provisions concerning the protection of labour for civilian workers, which must also be applied to prisoners of war, pursuant to Article 51, paragraph 2.

The Power on which the prisoners depend must also be informed, through the intermediary of the Protecting Power. This opens a possibility for reciprocal treatment, although the Convention does not expressly say so.

Paragraph 2. — Camp work

The rate of advances of pay for other ranks is comparatively low, and the reason is precisely that they can augment their financial resources by working; all prisoners fit for work must therefore be given paid employment [1]. This principle is respected by the present provision, which states that prisoners of war permanently detailed to duties within the camp—and who are therefore not available for other work—must receive working pay from the Detaining Power.

There is, however, yet another reason for this provision; in accordance with Articles 15 and 25, the Detaining Power is responsible for providing prisoners of war with accommodation free of charge, according to certain minimum standards. It is, therefore, also responsible for ensuring that everything necessary is done in order to maintain

[1] At the 1949 Diplomatic Conference, one delegation nevertheless proposed an amendment providing that any prisoner receiving working pay should not receive his army pay, which should either be paid directly to his assignees in his country of origin, or be handed over to him at the end of his captivity. This proposal was rejected. (See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 280 and 538).

those standards in the camp, and the implication is that the Detaining Power must pay for such work, whether it is done by prisoners of war or by other workers.

The duties concerned are the following :

(a) work done by prisoners of war which relieves the Detaining Power of camp administration (for example, work in the camp commander's office) [1].

(b) other domestic service : work in the kitchen, laundry, infirmary, etc.

(c) maintenance and installation work, building, repairs, etc. [2]

(d) spiritual and medical assistance given on a full-time basis by prisoners so assigned (chaplains, doctors).

On the other hand, no payment is to be made for fatigues which prisoners of war take turns in doing in the morning or evening as part of their daily routine [3].

No payment is due for any work which prisoners do voluntarily in order to improve their quarters or other installations, unless such work relates to the maintenance of the premises according to the minimum standards stated in the Convention.

As for the rate of pay, the rule in the first paragraph states that it may at no time be less than one-fourth of one Swiss franc for a full working day, and this certainly applies also to prisoners who work in the camp. Payment will be made once or twice a month according to the rules in force in the corresponding civilian trades, or at the same time as the advance of pay.

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[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 540.

[2] In this connection the following amendment was proposed at the 1949 Diplomatic Conference : " Working pay shall likewise be paid by the Detaining Power to prisoners of war who are employed regularly on work which is primarily for the benefit of the Detaining Power ". (See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 542.)

[3] *Ibid.*, p. 540. Fatigue duties are also referred to in Article 89 by way of disciplinary punishment.

PARAGRAPH 3. — WORKING PAY OF THE PRISONERS' REPRESENTATIVE AND HIS ASSISTANTS

It would have been unjust not to grant working pay to the prisoners' representative, his advisers, if any, and his assistants, for their task is a difficult one which calls for devoted service. As a general rule, however, their working pay will be paid not by the Detaining Power, but out of the canteen profits. It may seem surprising that the Convention empowers the prisoners' representative to fix the scale of working pay for himself and his assistants, though subject to approval by the camp commander. One may assume that in including this provision, the drafters of the Convention intended to rely on the discretion of the prisoners' representative in fixing the scale of his working pay, since it is paid out of a fund established by the prisoners themselves. It should also be remembered that, because of his position, the prisoners' representative enjoys certain material facilities which are not available to other prisoners. His working pay should therefore not be higher than that of other categories of workers.

The last sentence provides that if there is no fund maintained by canteen profits, the Detaining Power must pay these prisoners a "fair" working rate of pay. This term appears also in the first paragraph. The provision was not adopted without difficulty, however, at the 1949 Diplomatic Conference; several delegations feared that it might make it possible for the Detaining Power to bring pressure to bear on the prisoners' representative [1]. This danger will not exist, however, if the pay of the prisoners' representative is fixed on the basis of the average amount paid to other prisoners of war.

ARTICLE 63. — TRANSFER OF FUNDS

Prisoners of war shall be permitted to receive remittances of money addressed to them individually or collectively.

Every prisoner of war shall have at his disposal the credit balance of his account as provided for in the following Article, within the limits fixed by the Detaining Power, which shall make such payments as are requested. Subject to financial or monetary restrictions which the Detaining Power regards as essential, prisoners of war may also have payments

[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 541.

made abroad. In this case payments addressed by prisoners of war to dependants shall be given priority.

In any event, and subject to the consent of the Power on which they depend, prisoners may have payments made in their own country, as follows : the Detaining Power shall send to the aforesaid Power through the Protecting Power, a notification giving all the necessary particulars concerning the prisoners of war, the beneficiaries of the payments, and the amount of the sums to be paid, expressed in the Detaining Power's currency. The said notification shall be signed by the prisoners and countersigned by the camp commander. The Detaining Power shall debit the prisoners' account by a corresponding amount ; the sums thus debited shall be placed by it to the credit of the Power on which the prisoners depend.

To apply the foregoing provisions, the Detaining Power may usefully consult the Model Regulations in Annex V of the present Convention.

During the Second World War many prisoners of war were able to send money regularly to their next of kin. These transfers sometimes gave rise to complaints, however, because of the arbitrary rate of exchange fixed by States either on the basis of special agreements, or in application of their monetary policy [1].

Despite the explicit provisions contained in Article 38 of the 1929 Convention, war-time restrictions on transfers of capital generally prevented prisoners of war from receiving money [2].

PARAGRAPH 1. — PERMISSION TO RECEIVE MONEY

Prisoners of war may receive remittances of money in accordance with Article 61, which requires the Detaining Power to accept as supplementary pay to prisoners of war sums that the Power on which they depend may forward to them.

The present provision is broader in scope. It sets forth the general principle that the Detaining Power must accept remittances of money addressed to prisoners of war individually or collectively. At the same time it does not impede the application of Article 58, which limits the amount of money that prisoners may have in their possession, or any other administrative measures which the Detaining Power

[1] Especially after the end of hostilities on the Western front, in May 1945.

[2] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pp. 289-291.

may take in order to restrict the purchasing facilities of prisoners of war. Lastly, the rate of exchange will depend solely on the internal monetary policy of the Detaining Power.

This provision only lays an obligation on the Detaining Power; the Power on which prisoners depend remains absolutely free to prohibit such transfers if it thinks fit to do so for domestic reasons.

PARAGRAPH 2. — PAYMENTS

1. *First sentence. — Right of the prisoner of war to make use of the credit balance of his account*

This possibility is understandably limited, when it does not involve meeting the normal requirements of prisoners through purchases in the canteens, but the transfer of funds outside the camp. In the latter case, the transfer might be either to the territory of the Detaining Power or to another country. The second sentence of the present paragraph refers particularly to the latter possibility.

As a general rule, funds may be transferred within the territory of the Detaining Power, and that Power must make the payments requested. It may limit such payments, however, since it obviously could not accord to prisoners of war interned on its territory economic and financial facilities which are not available to its own nationals.

Purchases can generally be made outside the camp only with money saved from the working pay and the advance of pay [1]. On this limited basis, the restrictions imposed by the Detaining Power must therefore not be more severe in the case of prisoners of war than in the case of the civilian population; the kind of transaction might be restricted (articles which are prohibited or under quota) but prisoners of war must be free to make use of their credit balance.

Payment will be made by the Detaining Power, that is to say by the camp administration, at the request of the prisoner, as provided by the present Convention.

2. *Second and third sentences. — Payments abroad*

The outstanding feature of the present provision is that it permits payments to be made abroad, but it is also in this connection that the principal difficulties arise. If prisoners are to be able to make pay-

[1] Because of monetary restrictions, to which reference has already been made, the possibility of the transfer of large amounts from the country of origin may be discounted.

ments outside the territory of the Detaining Power, the implication is that that Power must purchase foreign exchange for the benefit of citizens of enemy countries, and this will not easily be accepted [1]. The obligation for the Detaining Power is therefore " subject to financial or monetary restrictions " which it " regards as essential ". In practice, this exception is so broad in scope that it could bring to a halt all transfers of funds abroad. The drafters of the Convention therefore provided another procedure, in paragraph 3 of the present Article—a delegation of pay; under this arrangement the Power of origin makes payment on its territory to the beneficiaries of the amounts requested by the prisoners of war.

PARAGRAPH 3. — DELEGATION OF PAY

This method was recommended by the Conference of Government Experts [2]. It is based on the system of the bill of exchange, as established by the Convention providing a Uniform Law for Bills of Exchange and Promissory Notes, signed at Geneva on June 7, 1930. The system is briefly as follows: the Detaining Power will forward to the Power on which the prisoners depend a notification signed by the prisoner and countersigned by the camp commander (the details to be included in the notification are specified in Model Regulations annexed to the Convention, Annex V); this notification specifies the amount to be paid and the name and address of the payee. Payment is made by the Power receiving the notification and the Detaining Power will debit the prisoner's account by a corresponding amount; the sums thus debited will be placed to the credit of the Power to which the notification was addressed.

This arrangement is obviously subject to the consent of the Power of origin which may also, if it wishes, extend to this notice of payment one or more of the other characteristics of a bill of exchange.

The application of any such system by the belligerents is, however, dependent on complete respect, in all circumstances and in every detail, of the provisions of Article 67 concerning compensation arrangements after the end of hostilities.

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[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 281.

[2] See *Report on the Work of the Conference of Government Experts*, p. 163.

PARAGRAPH 4. — MODEL REGULATIONS

These Regulations contain a certain number of specific conditions intended to afford all desirable safeguards in connection with the procedure for delegation of pay ; it is recommended that the States party to the Convention should respect these conditions when drawing up the notification referred to in paragraph 3. The Model Regulations are not mandatory for the States, however ; they are merely by way of an outline intended to be of assistance in the absence of any other agreement.

ARTICLE 64. — PRISONERS' ACCOUNTS

The Detaining Power shall hold an account for each prisoner of war, showing at least the following ;

(1) *The amounts due to the prisoner or received by him as advances of pay, as working pay or derived from any other source ; the sums in the currency of the Detaining Power which were taken from him ; the sums taken from him and converted at his request into the currency of the said Power.*

(2) *The payments made to the prisoner in cash, or in any other similar form ; the payments made on his behalf and at his request ; the sums transferred under Article 63, third paragraph.*

The 1929 Convention merely referred, in Article 24, to the establishment of an account for each prisoner of war into which money could be deposited ; the present Article makes detailed provision for the setting up of this account.

The information to be shown in each account is grouped into two categories, the first comprising sums credited to the prisoner and the second those which are debited.

1. *Sub-paragraph (1). — Credit*

The amounts credited to the prisoner come under three headings : (1) advances of pay and working pay ; (2) sums in the currency of the Detaining Power which were taken from him ; (3) sums in other currency taken from him and converted at his request into the currency of the Detaining Power.

A special entry must be made for advances of pay and working pay, showing on the one hand the total amount due and on the other hand the amount actually paid. These entries must be separate from those concerning other items under sub-paragraphs (1) and (2), so that at any time one may check the way in which the Detaining Power has fulfilled its obligations, and thus avoid the numerous disputes which arose on this subject after the Second World War.

Article 18, paragraph 4, and Article 59, paragraph 1, refer to the impounding by the Detaining Power of sums of money in the possession of prisoners of war at the time of capture. If any sums withdrawn subsequently are derived from licit sources (presents, or tips from an employer), they must duly be entered, as indicated in the first sentence (" or derived from any other source ").

Sums which were in the possession of the prisoner in another currency may, at his request, be converted into the currency of the Detaining Power in accordance with Article 18, paragraph 2, and Article 59, paragraph 2.

Article 18, paragraph 5, which states the procedure for withdrawing articles of value, specifies that in such a case the procedure laid down for sums of money impounded shall also apply. If the value of the articles is expressed in terms of the currency of the Detaining Power, the corresponding amount will therefore be entered on the credit side of the account.

On the other hand, there is no express reference to the entering of sums in foreign currency. There is no doubt, however, that this is authorized, since the words " at least " in the first sentence of the paragraph indicate clearly that the three categories mentioned in sub-paragraph (1) constitute only a minimum requirement.

2. *Sub-paragraph (2). — Debit*

This sub-paragraph also refers to three items : sums withdrawn in cash, payments and transfers.

All payments made to the prisoner " in cash, or in any other similar form " must be entered. The term " similar form " denotes vouchers or " camp money " for purchases in the canteen.

Article 63, paragraph 2, permits prisoners of war to have payments made abroad, subject to the regulations in force and on condition that payment is made by the Detaining Power ; the third paragraph of the same Article provides a special procedure for transferring funds. Transactions of these two kinds must be entered on the debit side of the prisoner's account.

If these provisions are respected in full, the statement of account will at all times give a clear picture of the prisoner's financial situation.

ARTICLE 65. — MANAGEMENT OF PRISONERS' ACCOUNTS

Every item entered in the account of a prisoner of war shall be countersigned or initialled by him, or by the prisoners' representative acting on his behalf.

Prisoners of war shall at all times be afforded reasonable facilities for consulting and obtaining copies of their accounts, which may likewise be inspected by the representatives of the Protecting Powers at the time of visits to the camp.

When prisoners of war are transferred from one camp to another, their personal accounts will follow them. In case of transfer from one Detaining Power to another, the monies which are their property and are not in the currency of the Detaining Power will follow them. They shall be given certificates for any other monies standing to the credit of their accounts.

The Parties to the conflict concerned may agree to notify to each other at specific intervals through the Protecting Power, the amount of the accounts of the prisoners of war.

PARAGRAPH 1. — COUNTERSIGNING

The countersignature which the present paragraph requires will constitute proof of validity of the entries made. It should, however, be pointed out that the account is not the only documentary proof relating to sums impounded from prisoners of war : in accordance with Article 18, paragraph 4, prisoners of war are given a receipt for the sums of money which they hand over. As there is, however, no provision stating that any subsequent withdrawals must be recorded on the receipt, the latter can serve as proof only of the initial deposit [1].

PARAGRAPH 2. — CONSULTATION AND INSPECTION

Copies of accounts will constitute valid proof only if they are certified in the same way as specified for the account itself.

[1] It would be advisable to record withdrawals on the back of the receipt, for checking purposes.

The Protecting Power will first check that the account is kept carefully up to date, in accordance with the requirements of Article 64. At the same time, it will be able to check payment of advances of pay and working pay.

PARAGRAPH 3. — FORWARDING OF ACCOUNTS IN CASE OF TRANSFER OF PRISONERS OF WAR

Chapter VIII, Article 46 *et seq.*, contains provisions relating to the transfer of prisoners of war from one place of internment to another in the country of detention.

In this case, the Detaining Power must forward the personal accounts of the prisoners concerned. This requirement corresponds to the other rules in the present chapter which specify, *inter alia*, that the prisoner may, in certain conditions, draw on the credit balance of his account (Article 63) and may consult his account. If the account contains only sums in the currency of the Detaining Power, as referred to in Article 64, the transfer will be effected by a written notification or by forwarding the relevant records.

If, on the other hand, the account contains sums in another currency, such sums must also be transferred.

The question is slightly more complicated when prisoners of war are transferred to another Detaining Power. In accordance with Article 12, paragraph 2, they may only be transferred to a Power which shows its " willingness and ability " to apply the Convention. This Power therefore also undertakes the responsibility of keeping prisoners' accounts. In such a case, however, the Convention makes no provision for the transfer of funds in the currency of the Detaining Power, and this is moreover understandable because of exchange restrictions, to which reference has already been made. It is therefore specified that the prisoners concerned must be given certificates for such monies standing to their credit.

PARAGRAPH 4. — NOTIFICATION OF AMOUNT OF ACCOUNTS

There are several reasons for including this paragraph, which provides that the Parties concerned may notify to each other, during the conflict, the amount of the accounts of the prisoners of war in their hands.

In the first place, it enables each Power to see how the adverse Party is fulfilling its obligations. On the basis of the information received, it may propose concluding a special agreement with the adverse Party in order to make any modifications that may seem advisable to the amount of advances of pay (Article 60, paragraph 2). In the light of circumstances, it may be necessary to conclude a series of agreements during the hostilities.

It will be to the advantage of the Power on which prisoners depend to receive statements of account for any prisoners who die or are repatriated before the end of the hostilities, and the amount of these accounts must obviously be notified after the end of the conflict, so that the Governments can make settlement [1].

ARTICLE 66. — WINDING UP OF ACCOUNTS

On the termination of captivity, through the release of a prisoner of war or his repatriation, the Detaining Power shall give him a statement, signed by an authorized officer of that Power, showing the credit balance then due to him. The Detaining Power shall also send through the Protecting Power to the Government upon which the prisoner of war depends, lists giving all appropriate particulars of all prisoners of war whose captivity has been terminated by repatriation, release, escape, death or any other means, and showing the amount of their credit balances. Such lists shall be certified on each sheet by an authorized representative of the Detaining Power.

Any of the above provisions of this Article may be varied by mutual agreement between any two Parties to the conflict.

The Power on which the prisoner of war depends shall be responsible for settling with him any credit balance due to him from the Detaining Power on the termination of his captivity.

Articles 6, 24 and 34 of the 1929 Convention gave released prisoners of war the right to obtain restitution of property taken from them at the time of capture, and the payment of the credit balances of their accounts accumulated during captivity, particularly as a result of the retention of part of their pay or wages.

[1] See *Report on the Work of the Conference of Government Experts*, p. 163.

At the end of the Second World War, the laws and regulations enacted by most States in respect of export and import of foreign currency made it very difficult to comply with these obligations.

Furthermore, the States concerned could settle such matters by special agreements as provided in Article 83 of the Convention ; most of the Powers concerned resorted to this procedure after the end of the Second World War, as it was often impossible to comply with the rules of the Convention. In some cases, the necessary vouchers either had not been issued, did not correspond to the sums claimed, or had been lost [1]. Other prisoners, whose country had been occupied and the Government overthrown during the hostilities, were unable to obtain their credit balances because there was no possibility of reimbursement to the Detaining Power by the Power on which they depended. Yet the 1929 Convention, in Article 24, paragraph 2, and Article 34, paragraph 5, established the right of prisoners of war to receive their credit balances upon the termination of captivity. After lengthy discussion, the 1949 Diplomatic Conference therefore substituted a new rule for the 1929 provision, which made the Detaining Power responsible for paying the credit balance due to prisoners of war [2].

PARAGRAPH 1. — PROCEDURE

1. *First sentence. — Issue of a statement to the prisoner of war*

Instead of receiving a cash payment, prisoners of war are to be given a credit voucher.

The Convention does not specify what form this voucher should take and merely states that it must be signed by an " authorized " officer, that is to say an officer belonging to the administration of the camp in which the prisoner concerned was interned. This " authority " must be attested by an official seal or stamp confirming the officer's status, so that in case of dispute the necessary verifications may be made.

The reason for issuing a credit voucher is obvious : it is in order to enable prisoners of war to prove, to an authority other than the former Detaining Power, their entitlement after repatriation. The

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[1] For further details, see *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pp. 291-293.

[2] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 568 ; see also *Report on the Work of the Conference of Government Experts*, pp. 162-163.

sums due to prisoners of war may be from a number of sources, although they are all deposited with the Detaining Power. The Power " on which the prisoner of war depends " is responsible for paying him the total amount of his credit balance ; this phrase, which appears in the second sentence, may give rise to certain difficulties of interpretation.

It is important to establish the nature of the various amounts which may be credited to prisoners' accounts. In particular, one should make a distinction between amounts due by the Detaining Power and sums due by the Power in whose armed forces the prisoner of war has fought.

A. *Amounts due by the Detaining Power.* — In the first place, such amounts consist of working pay, together with sums in the currency of the Detaining Power which were withdrawn from prisoners of war at the time of capture, sums subsequently converted into that currency at the prisoner's request, and sums transferred to prisoners in accordance with Article 63 but which were not handed to them because of the limitations specified in Article 58, or which have been neither spent nor transferred. This heading also includes any supplementary pay which may have been sent by the Power on which prisoners depend and which has not been paid to them in cash [1].

B. *Amounts due by the Power on which prisoners of war depend.* — The amounts due by the Power on which the prisoners of war depend consist of any advances of pay which have not actually been received by the prisoners concerned.

The settlement of credit balances therefore concerns both Powers and at the 1949 Diplomatic Conference it was proposed that they should be held jointly responsible for equitable payment [2]. Article 66, as finally adopted, specifies, however, that the entire credit balance shall be paid to prisoners of war by the Power on which they depend [3].

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[1] The account does not include sums of money in a currency other than that of the Detaining Power or articles of value which, pursuant to Article 18, were withdrawn against a receipt and must be returned in their initial shape to the prisoners of war at the end of their captivity.

[2] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 568.

[3] The novel feature of this procedure is that the credit voucher issued by the debtor (the Detaining Power) entitles the prisoner of war to recover the amount due from a third party (the Power on which the prisoner of war depends). In certain domestic legislation, this system is known as " porte-fort " and the payee may claim damages if the third party fails to fulfil the obligation. (In the case of Switzerland, see *Code des Obligations*, Article 111.)

An important question now arises for the prisoner on whom the Convention imposes this procedure. What guarantee has he that the credit balance due to him will in fact be paid ? There will be no problem for prisoners of a given nationality, since the established appeals procedures are open to them ; the Second World War showed, however, that as a result of political upheavals, there may be a very large number of stateless persons among prisoners or former prisoners of war. They are deprived of any chance of appealing, and the procedure established by the Convention in the present Article in effect leads to an unjust situation, particularly as regards amounts due by the former Detaining Power, since it leaves in the possession of the latter Power, and in a completely illegal way, sums of money belonging to prisoners of war [1].

It would therefore be helpful if, in the absence of a Protecting Power, since stateless persons are involved, the International Committee of the Red Cross were to use its good offices in order to ensure that prisoners of war recover what is due to them from the former Detaining Power. The Convention does not make provision for an intervention of this kind, but it is fully consistent with the intention clearly demonstrated by the authors of the Convention, that prisoners should not suffer injustice but that, on the contrary, their property should be safeguarded.

The question of advances of pay is slightly different, since these sums are owed not by the former Detaining Power but by the Power in whose service the former prisoners of war fought. This matter will be referred to in connection with Article 67.

2. *Second sentence. — Lists*

This provision should be read in conjunction with Article 122, paragraph 3, which states that similar information must be given to the Information Bureau of the Detaining Power for forwarding to the Powers concerned through the intermediary of the Protecting Powers, and likewise of the Central Agency. The only difference is that the present provision states that the lists must indicate the amount of the credit balances of prisoners of war, while Article 122 does not contain that requirement. Because these two provisions are closely linked, in case of release, repatriation, escape or death the notification to be made

[1] The expression " Power on which a prisoner of war depends " gave rise to some difficulty and discussion at the 1949 Diplomatic Conference. See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 549.

pursuant to Article 122 should always include a statement of the credit balances of the prisoners concerned.

3. *Third sentence. — Certification*

This provision, requiring certification of the lists " by an authorized representative of the Detaining Power " should be compared with the first sentence of the paragraph, which stipulates that the statement given to a prisoner of war must be signed by an authorized officer [1]. The reason for this emphasis is that the signing officer must have the *authority* to give an undertaking on behalf of his country. It is a matter of administrative competence.

The amounts recorded on the lists and on the individual statements must naturally correspond. In principle, they should be drawn up simultaneously and bear the same signature.

PARAGRAPH 2. — RESERVATION : SPECIAL AGREEMENTS

For practical reasons, the Powers concerned may be obliged to resort to procedures other than those specified in paragraph 1. The Detaining Power may not always be able to issue a statement to each prisoner of war at the end of captivity. These are merely implementing procedures, however, and the present provision does not permit the Detaining Power to deviate from the spirit of the rule by means of a special agreement, that is to say to deprive a prisoner of war of his right to reimbursement. The present exception refers only to paragraph 1 and not to paragraph 3 which, although placed at the end of the Article, sets forth its main principle, and that principle is sacrosanct [2].

PARAGRAPH 3. — RESPONSIBILITY

The scope of this principle has already been mentioned in connection with the preceding paragraphs, and requires no further comment.

One problem which arises in relation to this system of settlement is that of the rate of exchange. The amounts entered to the credit of

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[1] The French text refers to " un officier *compétent* " in the first sentence, and to " un représentant *autorisé* " in the third sentence.

[2] In this connection, it is appropriate to refer to Article 7, which forbids prisoners of war to renounce in part or in entirety the rights secured to them by the Convention.

a prisoner of war are expressed in terms of the Detaining Power's currency, and must be recorded thus in the individual statement given to the prisoner as well as in the lists transmitted to the Power concerned. It is obvious that the rate of exchange must be fair, so that prisoners are not the losers in a transaction of currency conversion.

ARTICLE 67. — ADJUSTMENTS BETWEEN PARTIES TO THE CONFLICT

Advances of pay, issued to prisoners of war in conformity with Article 60, shall be considered as made on behalf of the Power on which they depend. Such advances of pay, as well as all payments made by the said Power under Article 63, third paragraph, and Article 68, shall form the subject of arrangements between the Powers concerned, at the close of hostilities.

This Article enables the Powers concerned to make arrangements between themselves regarding three kinds of payment :

1. *Adjustment for advances of pay*

According to the 1929 Convention, all advances made to prisoners of war by way of pay had to be reimbursed, at the end of hostilities, by the Power in whose service the prisoners had been.

During the Second World War, however, certain Powers interpreted this provision as if the fulfilment of the obligation was dependent on reimbursement at a later date. Payments were consequently suspended in the case of prisoners whose country of origin had suffered such political upheavals that there could be no certainty of reimbursement.

We do not propose to examine the 1929 text in detail here, or to give any opinion on the legal arguments adduced by certain States to justify such discriminatory treatment of prisoners of war. In our view, however, such discrimination is contrary to Article 4, paragraph 2, of the 1929 Convention.

The problem is still more important, however, in relation to the new Convention, since the latter makes provision for advances of pay not merely for officers, as was already the case in the 1929 Convention, but for all prisoners of war in accordance with Article 60. Two provisions have to be considered : in the first place, Article 60, which contains a categorical obligation for the Detaining Power to give

advances of pay in accordance with a fixed scale (subject only to the reservation contained in paragraph 2 as we have already seen) ; and, secondly, the present provision, which states that such advances of pay " shall be considered as made on behalf of the Power on which they (the prisoners of war) depend ".

The text says " shall be considered " and not " shall be made " on behalf of that Power, and the shade of meaning is not unimportant : " shall be considered " implies that they shall be " recognized " or " acknowledged " as being made on behalf of the Power on which the prisoners of war depend. There is therefore no need for a special agreement to be concluded before the Detaining Power, fulfilling its obligation pursuant to Article 60, that is to say giving advances of pay according to the fixed scale, can legitimately claim that it is acting as the representative of the Powers on which the prisoners depend, which implies that arrangements must be concluded between the Powers concerned at the end of hostilities.

It will, however, be difficult to conclude such arrangements if prisoners of war have become stateless persons at the close of hostilities.

Would there be any justification under Article 67 for the Detaining Power to suspend advances of pay to prisoners of war when, in the opinion of that Power, there is no longer the necessary assurance that reimbursement will be made at a later date ? In our opinion, the answer must be in the negative.

In the first place, it would be premature in the course of hostilities to make any assumption regarding the political situation likely to prevail at the end of the war. More important still, the two questions must be kept completely separate. Every prisoner of war is fully entitled to advances of pay throughout the period of captivity. The Detaining Power is entitled to compensation at the close of hostilities for the payments which it has made. The appropriate procedure for implementing Article 67 can only become clearly apparent at the end of the conflict. For the Detaining Power to take any other attitude would be contrary to the letter and the spirit of the Convention and especially to Article 16, which permits no discrimination in the treatment of prisoners of war [1].

[1] For purposes of adjustment, account must obviously be taken only of sums actually paid and not those which have been entered in a prisoner's account but to which he has never had access.

2. *Adjustment for payments made by notification* (Article 63)

This refers to payments made in the country of origin of a prisoner of war, and which are debited to the prisoner's account with the Detaining Power. Adjustment will normally be effected automatically by the relevant entries. This will be the case wherever payment is made on the basis of advances of pay, since the pay is due by the Power on which the prisoner depends. If, on the contrary, payment is made on the basis of amounts due to the prisoner by the Detaining Power (i.e. working pay, or sums impounded at the time of capture), an arrangement must be made subsequently since in fact the amounts concerned have been paid out by the Power on which the prisoner depends.

3. *Compensation for accidents at work* (Article 68)

The only obligation incumbent on the Detaining Power under Article 68 in regard to a prisoner of war who suffers an accident while at work is to provide him with a certificate enabling him to submit his claim to the Power on which he depends. This procedure was evolved in order to ensure that the prisoner of war would continue to receive an indemnity after the end of captivity, that is to say as long as the disability persisted. The Detaining Power is nevertheless responsible towards the Power on which the prisoner depends, and this is precisely why the present provision states that arrangements must be made at the close of hostilities.

This procedure, which assures prisoners of war of an equitable indemnity, would, however, have unjust effects in the case of prisoners who have no means of recourse at the national level after the end of their captivity. Such a result would again be a flagrant contradiction of the spirit of the Convention.

In our opinion, a prisoner of war in this situation would have the right to make a claim directly against the Detaining Power. This opinion is based on Article 51, paragraph 2, which states: " The Detaining Power, in utilizing the labour of prisoners of war, shall ensure that in areas in which prisoners are employed, the national legislation concerning the protection of labour, and, more particularly, the regulations for the safety of workers, are duly applied ".

If there is no possibility of applying Article 68, the prisoners of war concerned must therefore be able to make a claim directly against the Detaining Power on the basis of the above-mentioned regulations, in the same way as workers who are nationals of that State.

ARTICLE 68. — CLAIMS FOR COMPENSATION

Any claim by a prisoner of war for compensation in respect of any injury or other disability arising out of work shall be referred to the Power on which he depends, through the Protecting Power. In accordance with Article 54, the Detaining Power will, in all cases, provide the prisoner of war concerned with a statement showing the nature of the injury or disability, the circumstances in which it arose and particulars of medical or hospital treatment given for it. This statement will be signed by a responsible officer of the Detaining Power and the medical particulars certified by a medical officer.

Any claim from a prisoner of war for compensation in respect of personal effects, monies or valuables impounded by the Detaining Power under Article 18 and not forthcoming on his repatriation, or in respect of loss alleged to be due to the fault of the Detaining Power or any of its servants, shall likewise be referred to the Power on which he depends. Nevertheless, any such personal effects required for use by the prisoners of war whilst in captivity shall be replaced at the expense of the Detaining Power. The Detaining Power will, in all cases, provide the prisoner of war with a statement, signed by a responsible officer, showing all available information regarding the reasons why such effects, monies or valuables have not been restored to him. A copy of this statement will be forwarded to the Power on which he depends through the Central Agency for Prisoners of War provided for in Article 123.

The introduction to this Article was proposed in an amendment submitted by the United Kingdom Delegation to the 1949 Diplomatic Conference [1].

The Article is actually related to certain other provisions of the Convention. The first paragraph concerns compensation for occupational accidents (which are covered by Article 54), and the second relates to compensation in respect of personal property impounded at the time of capture (Article 18, paragraphs 5 and 6) and not restored at the close of hostilities.

PARAGRAPH 1. — COMPENSATION FOR ACCIDENTS AT WORK

As already pointed out in connection with Article 54, the new Convention completely changed the 1929 procedure regarding compensation for occupational accidents. With the idea that, in the event

[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 386.

of disability resulting from an accident at work, prisoners of war should be safeguarded indefinitely and not merely for the period of captivity, the new Convention states that compensation is to be paid by the Power on which prisoners of war depend, on the basis of a certificate issued to the victim by the Detaining Power.

1. *First sentence. — Referral of claims*

It is stated that any claim by a prisoner of war for compensation in respect of an accident at work must be referred to the Power on which he depends through the Protecting Power. It might have been preferable to use the following wording : " Any application for compensation... in respect of disability resulting from an accident or illness sustained or contracted in consequence of work... ". Be this as it may, the provision refers to the handling of claims submitted by prisoners of war because of disability. Any such claim may be addressed directly to the Protecting Power, whether or not through the intermediary of the prisoners' representative. If it is submitted in the first instance to the Detaining Power, the latter is obliged to forward it to the Protecting Power.

2. *Second sentence. — Contents of the certificate*

Article 54, paragraph 2, requires the Detaining Power to deliver a certificate to any prisoner of war who suffers an occupational accident, but does not specify the form in which it should be drawn up. It is merely stated that it must be a " medical " certificate enabling prisoners of war to " submit their claims ".

In the commentary on Article 54, paragraph 2, an extract has been included from Recommendation No. 97 of the International Labour Organisation, which lists certain data to be included in notifications of occupational diseases [1]. In the present text, the Convention refers only to three items :

(a) the nature of the injury or disability ;

(b) the circumstances in which it arose ;

(c) particulars of medical or hospital treatment given for it.

This list is not exhaustive but constitutes a minimum requirement.

[1] See above p. 286, note 1.

This information may be compared with that to be transmitted by the Information Bureau in accordance with Article 122, which states that information regarding the state of health of sick or wounded prisoners of war, as well as information concerning admissions to hospital and deaths, must be supplied regularly to the Power on which the prisoners depend.

In describing the circumstances in which the accident occurred, the responsible authorities will follow the normal procedure in their country (statement by witnesses, accurate information as to the place, date, time, etc.)

The Convention does not, however, refer specifically to payment of compensation when the accident results not in total or partial disability, but in death. In such a case, the procedure set forth in the Convention is obviously inapplicable, since it states that the person concerned is to be provided with a certificate. This certificate must nevertheless be forwarded to the victim's beneficiaries, that is to say to his family, so that they may submit a claim to the Power on which he depended. The certificate may be transmitted together with the death certificate provided for in Article 120, paragraph 2. It should be prepared in duplicate and may be forwarded either through the intermediary of the Protecting Power for transmission to the Power on which the prisoner depended, or through the intermediary of the Central Agency provided for in Article 123, for transmission to the victim's family. If there is only one copy, it should preferably be transmitted through the intermediary of the Central Agency.

3. *Third sentence. — Signature of the certificate*

This provision, which states that the certificate must be signed by two persons, requires little comment. The signature of a " responsible officer of the Detaining Power " is required for the description of the circumstances in which the accident occurred. It may be the camp commander or his deputy, or, where applicable, the officer of military justice who conducted the enquiry. The word " responsible " implies that the person signing is authorized to do so on behalf of the Detaining Power. The prisoners' representative should check that all the necessary formalities are carried out to the letter by the Detaining Power.

PARAGRAPH 2. — OTHER CLAIMS FOR COMPENSATION

This paragraph refers to various personal losses which may be incurred by a prisoner of war during captivity.

1. *First sentence. — Referral to the Power on which prisoners of war depend*

If personal effects or monies impounded under Article 18 are not returned at the end of captivity, the prisoner of war concerned still retains the receipt issued to him which constitutes the necessary basis for a claim for restitution or damages.

In fact, however, at the end of captivity a prisoner of war will have no opportunity to make a claim against the Detaining Power. The Convention therefore makes the Power on which he depends responsible for compensating him. All claims must therefore be referred to the latter Power through the intermediary of the Protecting Power.

This procedure is also applicable in respect of any " loss alleged to be due to the fault of the Detaining Power or any of its servants ". Here the problem is more complicated since there is no recognition of indebtedness by the Detaining Power and the mere submission of a complaint is no substitute. The text entitles the prisoner to allege that the Detaining Power is responsible for the loss of the article claimed ; in common law, however, the onus of proof of guilt is on the injured party ; how can proof be furnished ? The penultimate sentence of the present paragraph provides at least a partial answer to this question, as we shall see. This is important, for once the victim has received compensation from the Power on which he depends, arrangements must be made between the two Powers concerned, under Article 67.

2. *Second sentence. — Personal effects*

In connection with Article 18, paragraph 1, a list has already been given of articles which may be considered as " personal effects " of a prisoner of war, that is to say effects which may not be considered as booty. The Detaining Power must replace at its expense certain personal effects for whose loss it is responsible if they are required for use by the prisoner during captivity ; this obligation results from the provisions concerning clothing (Article 27). The article replaced becomes the personal property of the prisoner and may not be taken away from him at a later date. If no replacement is made, the procedure stated in the first sentence will apply.

3. *Third sentence. — Statement by the Detaining Power*

In the case of personal effects not withdrawn at the time of capture and subsequently lost due to the fault of the Detaining Power, the

latter must give the prisoner of war concerned a statement showing all available information regarding the reasons why such effects have not been restored to him. This constitutes a recognition of indebtedness which will enable the prisoner of war to obtain either restitution or damages at a later stage.

4. *Fourth sentence. — Duplicate copy*

As an additional safeguard for the prisoner of war, a copy of the statement must be forwarded to the Power on which he depends through the intermediary of the Central Agency established under Article 123.

SECTION V

RELATIONS OF PRISONERS OF WAR WITH THE EXTERIOR

ARTICLE 69. — NOTIFICATION OF MEASURES TAKEN

Immediately upon prisoners of war falling into its power, the Detaining Power shall inform them and the Powers on which they depend, through the Protecting Power, of the measures taken to carry out the provisions of the present Section. They shall likewise inform the parties concerned of any subsequent modifications of such measures.

This provision is a more detailed version of Article 35 of the 1929 Convention [1]. It ensures that not only prisoners of war but also their next of kin and relief agencies will be informed of the facilities available.

A. *Time of notification.* — The Convention states that notification must be made by the Detaining Power " immediately upon prisoners of war falling into its power " ; the 1929 text merely referred to " the commencement of hostilities ".

The notification must therefore be made to prisoners whenever new ones are captured by the Detaining Power and whenever the measures adopted are modified in any way. It will be sufficient to notify the Power on which prisoners of war depend once, unless there are any subsequent modifications.

B. *Recipients and form of the notification.* — Prisoners of war will usually be informed by notices posted in camps and labour detachments, so that they may at all times refer to the text. Notices will, of course, be in a language which all the prisoners can understand.

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[1] See *Report on the Work of the Conference of Government Experts*, pp. 181-182.

The Powers on which prisoners of war depend will be informed through the intermediary of the Protecting Power. The Power concerned will then be responsible for taking appropriate steps to inform relief agencies and prisoners' next of kin of the measures taken by the Detaining Power.

ARTICLE 70. — CAPTURE CARD

Immediately upon capture, or not more than one week after arrival at a camp, even if it is a transit camp, likewise in case of sickness or transfer to hospital or another camp, every prisoner of war shall be enabled to write direct to his family, on the one hand, and to the Central Prisoners of War Agency provided for in Article 123, on the other hand, a card similar, if possible, to the model annexed to the present Convention, informing his relatives of his capture, address and state of health. The said cards shall be forwarded as rapidly as possible and may not be delayed in any manner.

General

Article 36, paragraph 2 of the 1929 Convention[1] stated that not later than one week after his arrival in camp and similarly in case of illness, each prisoner must be enabled to inform his family.

That provision was generally respected during the Second World War. The International Committee of the Red Cross noticed, however, that the Information Bureaux of Detaining Powers invariably required some time to notify captures and transfers ; it therefore suggested to the Detaining Powers the despatch to the Central Prisoners of War Agency of printed cards, called " capture cards ", in order to expedite receipt by the Agency and subsequently by their families of essential information concerning prisoners of war. This procedure, which was adopted by most of the belligerents, also enabled families who had been driven from their homes by the conflict and had not received the card sent by the prisoner to obtain the necessary information from the Central Prisoners of War Agency.

This arrangement proved its worth, and the 1949 Diplomatic Conference made express provision for it in this clause, while maintaining the stipulation concerning the card for the prisoner's family.

[1] See below, p. 718.

The system of capture cards does not in any way diminish the rôle of the Information Bureaux provided for in Article 122.

A. *Preparation of the card.* — Every prisoner of war must be enabled to write the first card immediately upon capture or, at the latest, not more than one week after arrival at a camp. This time-limit was not always respected during the Second World War, but the Conference of Government Experts nevertheless maintained the provision [1].

The introduction of a standard card as provided under the present Convention will enable the Detaining Power to prepare a stock of such cards at the commencement of hostilities, ready for distribution to prisoners of war during the first formalities after capture. These cards, on which the main headings are printed, can be filled in easily and within the required time-limit.

Article 70 is not only applicable when a prisoner of war is definitely installed in a camp, since there is an express reference to transit camps. Once prisoners of war have spent seven consecutive days in a camp of any kind, the time-limit must be considered as having expired. Furthermore, this is a maximum time-limit since the Article states : " not more than one week " and in fact the Detaining Power is required to enable prisoners of war to fill in the cards at the earliest possible moment following capture.

The Detaining Power may subsequently have to enable prisoners of war to complete new cards in certain specified cases : in the event of sickness, transfer to hospital, or transfer to another camp [2].

The expression " in case of sickness " is rather vague ; it is obvious that a special notification is not necessary in every case of sickness, however slight. On the other hand, every prisoner of war must be enabled to fill in a capture card if he is transferred to hospital or to another camp, because there is a change in his postal address and his family and the Central Prisoners of War Agency must therefore be informed [3].

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[1] See *Report on the Work of the Conference of Government Experts*, pp. 184-185.

[2] As has already been seen, Article 36, paragraph 2, of the 1929 Convention stipulated that prisoners of war must be enabled to inform their family in case of sickness ; but this provision does not seem to have been respected during the Second World War. See BRETONNIÈRE, *op. cit.*, p. 230.

[3] When prisoners are transferred to another camp, capture cards will be sent before their departure, since Article 48 states that they must be officially advised of their departure and of their new postal address in time for them to inform their next of kin. If it proved impossible to give them the new postal address before their departure, or if there were any subsequent change in that address, or if the actual transfer were to last a long time, cards should also be sent upon arrival.

B. *Recipients of the card.* — Article 70 provides that a capture card must be sent to the prisoner's family, on the one hand, and to the Central Prisoners of War Agency, on the other hand. Since the Central Agency is not necessarily the most direct means of notification, the Conference of Government Experts recommended that the next of kin should, if possible, be notified directly.

Article 123, paragraph 2, provides that the Central Agency must transmit as rapidly as possible all the information it may obtain through official or private channels to the country of origin of the prisoners of war concerned; this clause applies first of all to the information recorded on capture cards.

C. *Form and content.* — The Conference of Government Experts recommended that a model capture card should be annexed to the Convention, and the Diplomatic Conference agreed.

Annex IV B therefore contains a model capture card comprising a number of headings which can be rapidly filled in concerning the prisoner's identity, address and state of health. The card is addressed to the Central Prisoners of War Agency, International Committee of the Red Cross, Geneva; a similar card may be used for notifying the next of kin [1].

At the 1949 Diplomatic Conference, there was a discussion concerning the advisability of mentioning the nationality of prisoners of war on the capture card. In view of the risk involved for those whose nationality is not that of the army in which they serve, particularly if their country is occupied by the forces of the Detaining Power, it was decided to delete the reference to nationality on the model card and in its place to record the Power on which the prisoner depends [2].

The States party to the Convention are not obliged to use a card identical to the model; it is merely recommended that they should do so, as is clear from the words " if possible ". Although the card may be different in form from that contained in Annex IV B, however, the belligerents have no discretion regarding its contents; the information given on the card must refer to capture, address and state of health, as specified in the present Article. The word " capture " must be taken in a general sense and it naturally covers an indication of the identity of the person captured. It should also be noted that pursuant

[1] For the latter card, the front of the model in Annex IV C.I. (correspondence card) and the reverse side of the capture card might possibly be used.

[2] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 283-284.

to Article 17, prisoners of war are at liberty not to give all the information for which space is provided on the model card; they may, if they wish, merely fill in items 2, 3, 5, 7 and 8. If necessary, capture cards will be prepared in at least two languages: the prisoner's own language and that of the Detaining Power. In any case, they must be in a language which the prisoners of war can understand.

D. *Forwarding.* — Capture cards must be given priority in forwarding. This is emphatically stated in the last sentence of Article 70. One can well understand why the drafters of the Convention included this, since the application of the clause ultimately depends on the rapid forwarding of capture cards to the addressees. The cards should therefore be sent by air mail wherever possible and will be exempt from postal dues, being correspondence despatched by prisoners of war. The information on the cards is of a very summary kind and censorship should therefore be a mere formality. Cards addressed to the Central Agency might even perhaps be forwarded without censorship.

Lastly, it is clear from the wording (" every prisoner of war shall be enabled . . . ") that the prisoner is entirely free to fill in capture cards or not, as he pleases. But the Detaining Power must give him an opportunity to do so, in the conditions specified. If need be, his attention should be drawn to the fact that it is in his own interest to fill in a capture card.

ARTICLE 71. — CORRESPONDENCE

Prisoners of war shall be allowed to send and receive letters and cards. If the Detaining Power deems it necessary to limit the number of letters and cards sent by each prisoner of war, the said number shall not be less than two letters and four cards monthly, exclusive of the capture cards provided for in Article 70, and conforming as closely as possible to the models annexed to the present Convention. Further limitations may be imposed only if the Protecting Power is satisfied that it would be in the interests of the prisoners of war concerned to do so owing to difficulties of translation caused by the Detaining Power's inability to find sufficient qualified linguists to carry out the necessary censorship. If limitations must be placed on the correspondence addressed to prisoners of war, they may be ordered only by the Power on which the prisoners depend, possibly at the request of the Detaining Power. Such letters and cards must be conveyed by the most rapid method at the disposal of the Detaining Power; they may not be delayed or retained for disciplinary reasons.

Prisoners of war who have been without news for a long period, or who are unable to receive news from their next of kin or to give them news by the ordinary postal route, as well as those who are at a great distance from their homes, shall be permitted to send telegrams, the fees being charged against the prisoners of war's accounts with the Detaining Power or paid in the currency at their disposal. They shall likewise benefit by this measure in cases of urgency.

As a general rule, the correspondence of prisoners of war shall be written in their native language. The Parties to the conflict may allow correspondence in other languages.

Sacks containing prisoner-of-war mail must be securely sealed and labelled so as clearly to indicate their contents, and must be addressed to offices of destination.

The correspondence of prisoners of war was the subject of Article 36, paragraphs 1 and 3, and Article 38, paragraph 3, of the 1929 Convention; it was also referred to in Article 16 of the Hague Regulations[1].

At the beginning of the Second World War, the belligerents showed a marked tendency not to limit the number of letters and cards exchanged between prisoners of war and their next of kin. The great increase in the number of prisoners of war, due to the extension and rapidity of operations, soon led to restrictions since the postal and censorship services were overwhelmed. Most of the Detaining Powers therefore limited very strictly the number of letters and cards that each prisoner of war was allowed to send or to receive ; other Powers imposed similar restrictions for next of kin. The situation soon eased, however, and by the end of 1940 the International Committee noted that most of the countries concerned, having no adequate means of control, had ceased to place any limit on the number of letters and cards which prisoners of war might receive, and had cut down the monthly outgoing mail to a minimum of two letters and four cards. Those figures remained practically unchanged until the end of the conflict[2].

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[1] For Articles 36 and 38 of the 1929 Convention, see below, pp. 718-719.

[2] With regard to the forwarding of correspondence of prisoners of war during the Second World War, see *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. II, pp. 56-63. See also *ibid.*, Vol. I, pp. 347-351.

PARAGRAPH 1. — LIMITATION AND FORWARDING

1. *First sentence. — Permission to correspond*

This sentence states a basic principle of the Convention. It recognizes the right of prisoners of war to maintain relations with the exterior to a certain extent.

In principle, prisoners of war are entitled to send and receive an unlimited number of letters and cards which may be sent to any destination or may come from any part of the world, without any distinction of a national kind.

That is the principle, but one can easily understand that its full application must inevitably be restricted, whether because of transport difficulties or because of the military security of the Detaining Power. It is nevertheless very important that the principle should have been stated in this way—it was not included in the 1929 text—since henceforth the only restrictions which may be placed on correspondence of prisoners are those specifically permitted under the Convention.

2. *Second and third sentences. — Limitations on correspondence sent by prisoners of war*

The Detaining Power may limit correspondence sent by prisoners of war to a minimum figure which was fixed after long discussion at the Conference of Government Experts and later at the 1949 Diplomatic Conference. Restrictions may become necessary because of transport problems, which always cause difficulties for a country at war, and above all because of the requirements of censorship (Article 76). If the volume of mail became too great, it might be held up indefinitely and it is therefore in the interest of the prisoners themselves to limit the number of letters and cards which they may send [1].

The number of letters and cards sent by prisoners of war will only be limited if the Detaining Power " deems it necessary " and reference has already been made to the considerations which may lead to restriction [2]. Moreover, the figures given in the present provision are

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[1] As has already been seen, the minimum of two letters and four cards per month, which is specified in the present Convention, was adopted by the belligerents during the Second World War. See *Report on the Work of the Conference of Government Experts*, pp. 182-184.

[2] This provision is clearly based on the experience of the Second World War, when, because of the great number of prisoners of war, the censorship services were overwhelmed by the volume of correspondence.

a minimum which may only be reduced as an exceptional measure in accordance with the third sentence of this paragraph. It should be pointed out, however, that while it may be difficult to find sufficient translators to carry out censorship in a general conflict such as the Second World War, the situation is different when the conflict is of limited scope and the number of prisoners relatively small.

Model cards and letters are given in Annex IV and require no comment, except that they seem practical and likely to be satisfactory for prisoners of war. It is therefore to be hoped that the Detaining Powers will adopt them, as recommended by the present provision.

The capture cards provided for in Article 70 receive special treatment. The only information they contain is very summary and concerns the identity and state of health of prisoners of war. They must not therefore be considered as part of prisoners' ordinary correspondence.

3. *Fourth sentence. — Limitations on correspondence addressed to prisoners of war*

As a general rule, the Detaining Power must not restrict the amount of correspondence addressed to prisoners of war.

The considerations which may lead to limitations on correspondence sent by prisoners of war in the interest of the latter may also, however, make it advisable to restrict the amount of correspondence which they receive. In that case, the decision to withhold mail cannot and must not be taken by the Detaining Power ; it is for the Power on which prisoners of war depend to decide to reduce the amount despatched.

A suggestion to this effect may, however, be made to the Power on which prisoners of war depend by the Detaining Power and also—though this is not actually specified in the Convention—by any other supervisory body, such as the Protecting Power or the International Committee of the Red Cross, or by the prisoners' representatives [1].

[1] During the Second World War, some Detaining Powers supplied prisoners of war with correspondence forms containing a reply sheet, and only communications written on these reply sheets were accepted on arrival. Although this system was not consistent with the 1929 Convention, which made no provision for limitations on correspondence addressed to prisoners of war, it actually led to an improvement in the correspondence service for prisoners of war. See BRETONNIÈRE, *op. cit.*. pp. 227-229. In future, any such system would require prior approval by the Power on which prisoners of war depend.

4. *Fifth sentence. — Forwarding, and disciplinary sanctions*

The 1929 Convention provided that prisoners' mail was to be sent " by the shortest route " ; the authors of the present Convention were right in substituting for this expression " by the most rapid method ", which implies that it should be sent by air mail. Correspondence will normally be forwarded through the postal services, and the Central Agency will play only an auxiliary rôle. The belligerent States are not likely to be able to organize an air mail service for the correspondence of prisoners of war, but what they can at least do is to place the necessary means and facilities at the disposal of a neutral body, such as the International Committee of the Red Cross. The present provision must not, however, be interpreted as a requirement that the correspondence of prisoners of war must be sent exclusively by air mail, since it will not always be possible to allocate aircraft for this purpose [1].

The present text also provides that the correspondence of prisoners of war may not be delayed or retained for disciplinary reasons ; similarly, individual or collective limitations on correspondence may not be imposed as punishment, since they are not included in the list given in Article 89 [2].

The position of prisoners serving a judicial sentence seems different. They are certainly entitled " to receive and despatch correspondence " (Article 108, paragraph 3). It is in the spirit of the Article, however, that judicial sentences should be served under the same conditions as in the case of nationals of the Detaining Power, provided that certain essential guarantees are ensured, such as the right to send and receive correspondence. One might therefore conclude that the correspondence of such prisoners of war will be subject to the rules applicable in the establishment in which their sentence is to be served, especially as regards the number of messages. If, however, the censors discover correspondence harmful to the security of the Detaining Power, there would be no justification for imposing a general prohibi-

[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 284.

[2] Article 98, paragraph 5, states that prisoners of war awarded disciplinary punishment " shall have permission to read and write, likewise to send and receive letters ". Although only letters are mentioned in this clause, one must recognize that a prisoner awarded a disciplinary sentence remains entitled to all the benefits of the Prisoners of War Convention, as far as is compatible with detention. His correspondence must therefore not be more restricted than that of other prisoners, either in quantity or in form (letter, card, telegram).

tion on correspondence by way of punishment [1]. Prohibition of correspondence is therefore only possible in accordance with Article 76, paragraph 3, below, " for practical or military reasons ", and even then it must be " only temporary and its duration shall be as short as possible ".

PARAGRAPH 2. — TELEGRAMS

Article 38, paragraph 3, of the 1929 Convention contained a similar provision, more briefly worded, but it received only limited application during the Second World War. The International Committee of the Red Cross nevertheless made unremitting efforts in the Far East, in liaison with the Japanese Government, to enable prisoners of war to exchange telegrams with their families [2]; the result was fairly satisfactory, and the Central Agency received 61,000 telegraphic messages from relatives and sent them on to the Japanese official Bureau [3]. During the First World War, the use of the telegraph was generally forbidden for security reasons [4].

The text as it now stands was approved by the 1949 Diplomatic Conference after several amendments [5]. It authorizes the use of telegrams :

(a) when prisoners of war have been without news from their relatives for a long period [6] ;

(b) when they are at a great distance from their homes ;

(c) when they are unable to receive news from their next of kin or to give them news by the ordinary postal route [7].

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[1] During the First World War, correspondence was frequently prohibited, as a disciplinary sanction ; see SCHEIDL, *op. cit.*, pp. 406-408. This was also the case during the Second World War, although it was in violation of Article 36 of the 1929 Convention. See BRETONNIÈRE, *op. cit.*, pp. 229-230.

[2] Here the English text, which refers to prisoners of war who are at a great distance *from their homes*, is less favourable than the French : " à une grande distance *des leurs* ".

[3] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. II, pp. 61-62.

[4] See SCHEIDL, op. cit., pp. 415-416.

[5] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 334 ; Vol. III, pp. 76-77.

[6] During the Second World War, the criterion adopted was three months.

[7] I.e. in the case of prisoners held by a Power which is surrounded by enemy countries.

Such telegrams are not exempt from charges, under Article 74, paragraph 2; but paragraph 5 of that Article requests the High Contracting Parties to endeavour to reduce the rates charged for telegrams sent or received by prisoners of war. This is the only provision which refers to the use of telegraphic services by prisoners of war, and it was widely applied by almost all the belligerents during the Second World War.

In itself, it is a good thing to restrict the use of telegrams to emergency cases, since the telegraphic services would be unable to cope with a heavy flow; but it is unfortunately difficult to set standards for assessing the degree of urgency.

It was suggested at the 1949 Diplomatic Conference that, in order to reduce the cost of sending telegrams, an annex should be added to the Convention, giving specimen telegraph forms using code-words [1].

PARAGRAPH 3. — LANGUAGES

This provision is the same as that contained in Article 36, paragraph 3, of the 1929 Convention.

If the right to correspond, as recognized by the present Article, is not to be completely illusory, prisoners of war and their correspondents must obviously be permitted to use a language familiar to them.

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[1] During the Second World War, at the suggestion of the Holy See, a system of telegraphic messages in simplified corde-words was successfully instituted between Italy and North Africa. It is not suitable, however, for serious cases where a prisoner of war has to telegraph concerning private or family affairs; the 1949 Diplomatic Conference therefore did not refer to it in the Article, but adopted the following resolution:

Resolution No. 9: " Whereas Article 71 of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949, provides that prisoners of war who have been without news for a long period, or who are unable to receive news from their next of kin or to give them news by the ordinary postal route, as well as those who are at a great distance from their home, shall be permitted to send telegrams, the fees being charged against the prisoners of war's accounts with the Detaining Power or paid in the currency at their disposal, and that prisoners of war shall likewise benefit by these facilities in cases of urgency; and

whereas to reduce the cost, often prohibitive, of such telegrams or cables, it appears necessary that some method of grouping messages should be introduced whereby a series of short specimen messages concerning personal health, health of relatives at home, schooling, finance, etc. could be drawn up and numbered, for use by prisoners of war in the aforesaid circumstances,

the Conference, therefore, requests the International Committee of the Red Cross to prepare a series of specimen messages covering these requirements and to submit them to the High Contracting Parties for their approval ".

See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 335; Vol. II-B, pp. 513-514.

Some account must also be taken, however, of the security of the Detaining Power and of the work involved for the censorship provided for in Article 76. During the Second World War, difficulties occurred particularly in the case of correspondence of prisoners of war in the Far East [1]. The correspondence of prisoners of war will usually be in their native language, but they may have occasion to correspond with persons who do not know it ; in that case, they may use another language, provided the Parties to the conflict so permit. Permission may be granted at the request of prisoners of war concerned, and the prisoners' representatives (Articles 79-81) seem best placed to submit such requests to the authorities of the Detaining Power, on the one hand, and the Protecting Power, on the other hand. In any event, the Parties to the conflict cannot oblige prisoners of war to use for their correspondence any language other than their mother tongue.

PARAGRAPH 4. — SACKS OF MAIL

This paragraph, which states that prisoner-of-war mail must be placed in sacks securely sealed and labelled, met with some opposition at the Diplomatic Conference, on the ground that it might cause delay in forwarding.

One delegation pointed out, however, that it had two advantages and was likely, on the contrary, to facilitate the speedy forwarding of prisoners' mail : if the bags are sealed, they will probably not be opened for censorship in transit countries ; again, if they are labelled, such countries will probably hasten their despatch, knowing that they contain prisoner-of-war mail [2].

The text was therefore retained in the imperative form in which it stands.

ARTICLE 72. — RELIEF SHIPMENTS : I. GENERAL PRINCIPLES

Prisoners of war shall be allowed to receive by post or by any other means individual parcels or collective shipments containing, in particular, foodstuffs, clothing, medical supplies and articles of a religious, educational or recreational character which may meet their needs, including

[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 284. See also *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pp. 452-454.

[2] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 334.

books, devotional articles, scientific equipment, examination papers, musical instruments, sports outfits and materials allowing prisoners of war to pursue their studies or their cultural activities.

Such shipments shall in no way free the Detaining Power from the obligations imposed upon it by virtue of the present Convention.

The only limits which may be placed on these shipments shall be those proposed by the Protecting Power in the interest of the prisoners themselves, or by the International Committee of the Red Cross or any other organization giving assistance to the prisoners, in respect of their own shipments only, on account of exceptional strain on transport or communications.

The conditions for the sending of individual parcels and collective relief shall, if necessary, be the subject of special agreements between the Powers concerned, which may in no case delay the receipt by the prisoners of relief supplies. Books may not be included in parcels of clothing and foodstuffs. Medical supplies shall, as a rule, be sent in collective parcels.

General Remarks

Provision was made in Article 16 of the 1907 Hague Regulations and Article 37 of the 1929 Convention for the sending of parcels and relief shipments to prisoners of war.

During the Second World War, relief action in behalf of prisoners of war developed considerably [1].

The 1929 Convention permitted parcels to be addressed to individual prisoners of war, but serious difficulties arose when they were distributed in the camps : some prisoners considered that they were being unfairly treated ; censorship was sometimes slow, and distribution was delayed when prisoners were assigned to labour detachments or transferred from one camp to another ; moreover, the civilian population was subject to strict rationing and there was sometimes discontent that prisoners should enjoy considerable material advantages through receiving parcels.

For these reasons, and despite the provisions of Article 37 of the 1929 Convention, the Detaining Powers were obliged to restrict the number of individual parcels each man was allowed to receive or which

[1] In this connection, see especially *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. III, p. 201 ff. ; see also with special regard to the Far East, *ibid.*, Vol. I, pp. 455-463.

their families were allowed to send. The Powers of origin sometimes adopted similar measures. A great many prisoners of war were consequently never able to receive parcels from home.

The Conference of Government Experts nevertheless proposed that under the revised Convention prisoners of war should still be permitted to receive individual parcels, and that Detaining Powers should not, on their own initiative, prohibit or restrict the issue of individual parcels; if it became necessary to institute such restrictions, they should be the subject of special agreements between the parties concerned [1].

The text of the present Article was finally drafted in this sense at the 1949 Diplomatic Conference [2].

The provisions of Article 72 and the subsequent Articles do not exhaust the subject, however.

In the first place, they relate only to material relief, even if, as in the case of books, it is the instrument of moral relief. Direct moral assistance for prisoners of war is dealt with in Articles 34-38 (religious, intellectual and physical activities) and to a certain extent in Article 125 (relief societies). Furthermore, the sending of money (which also falls within the category of material relief) is regulated by the section devoted to the financial resources of prisoners of war (Article 63, paragraph 1).

Secondly, Articles 72 and 73 deal primarily with the question of relief from the point of view of those who receive it, that is to say the prisoners of war; the rôle of the donors and of the organizations authorized to distribute parcels directly to prisoners of war is dealt with in Article 125 (relief societies). The main purpose of Articles 72 and 73 is to reaffirm, with such additions and details as experience has proved necessary, the right of each prisoner of war to receive relief supplies. It is a fundamental right, like the right to correspond—one of the inalienable rights established by the Prisoners of War Convention.

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[1] See *Report on the Work of the Conference of Government Experts*, pp. 185-186.

[2] It consists of Articles 61 and 63 of the draft submitted to the Stockholm Conference (Article 39 of the 1929 Convention, relating especially to books), in which it was decided to include all the principles pertaining to relief shipments, whether collective or individual. See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 368, 286-287; Vol. III, pp. 76-77. Annexes Nos. 135 and 136.

PARAGRAPH 1. — PERMISSION TO RECEIVE RELIEF SHIPMENTS ; FORM AND CONTENT

Relief shipments may be either " individual parcels or collective shipments " [1].

1. *Individual relief*

Individual relief consists of parcels sent by a donor to a prisoner of war, the latter being designated by name.

This form of relief is undoubtedly the most attractive one for the donor in the first place, who knows which person receives the parcels, and in the second place for the prisoner of war, who thus maintains a direct relationship with his friends and family, in the same way as he is able to do through correspondence. Leaving aside the question of the material value of relief, there is no doubt that individual packages or parcels from home have a more beneficial effect on morale than parcels received from an anonymous donor.

The individual package system is, however, only suitable for a limited relief scheme, and it proved totally inadequate during the Second World War. Many prisoners of war were unable to receive individual relief, for various reasons : their families were short of funds, there were no communications between their country of origin and the Detaining Power, parcels were wrongly or inadequately addressed, others were improperly packed and their contents consequently damaged during transport, etc. Relief action undertaken on this basis was therefore not completely successful.

The reasons mentioned above are, of course, not sufficient to justify prohibiting any direct relationship between a prisoner of war and his family or friends in regard to relief supplies, and the authors of the Convention rightly retained the principle expressed in Article 37 of the 1929 Convention ; but the need to make provision for collective relief shipments had become fully apparent.

2. *Collective relief*

Collective relief is sent to prisoners of war either in standard anonymous parcels, or in the form of bulk shipments. Provision is

[1] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. III, pp. 201-280 and 281-287. See also, with special reference to the Far East, *ibid.*, Vol. I, pp. 455-463.

made for the receipt and distribution of collective relief in Article 73 and in the Regulations concerning collective relief (Annex III).

During the Second World War, collective relief supplies forwarded by the International Committee of the Red Cross were addressed to a prisoner of a given nationality who enjoyed the confidence of his fellow-prisoners (generally the prisoners' representative) ; he then stored the supplies and distributed them according to need or the instructions received. In most cases, shipments could be sent only in in the name of a national Red Cross Society recognized by the adverse Party, but they might consist of gifts from a great variety of sources.

Collective shipments were the most effective means of helping prisoners of war and avoided the drawbacks of the individual relief system mentioned above. In all European countries, the food situation became so serious in the course of the Second World War that the additional supplies received in relief shipments were in many cases indispensable. This system afforded a higher degree of safety than individual parcels, and losses were usually very small. The prisoners' representatives in the camps were able to build up stocks so as to make the best use of the supplies received. Collective relief soon proved preferable to the individual relief system and it made a great contribution towards the feeding of prisoners of war [1].

3. *Transport*

Individual or collective relief supplies may be sent " by post or by any other means ". Forwarding by post is only suitable for individual packages, weighing not more than 5 kgs. As an exceptional measure, the maximum weight permitted is 10 kgs. in the case of parcels whose contents cannot be split up or which are addressed to a camp or to prisoners' representatives for distribution to prisoners of war [2]. Provided that postal channels remain open, they may and should be used. This method of forwarding is only suitable for a limited relief scheme based on individual parcels, however, since collective shipments would have to be packed in a great number of small parcels, and many disadvantages would be entailed.

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[1] For more detailed information concerning collective relief action during the Second World War, see *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. III, pp. 204 ff.

[2] See below, p. 363, Note 1 – Article 37, paragraph 5 of the Universal Postal, Convention.

Collective relief will therefore be forwarded in most cases by the means of transport generally used for conveying bulky goods (rail, road, ship, etc.).

Should military operations prevent the conveyance of shipments by this means, special means of transport may be organized, in accordance with Article 75.

4. *Contents*

The 1929 Convention appeared to restrict the contents of parcels to certain articles, such as books, foodstuffs or clothing. Experience showed the need to permit a greater variety of articles to be sent to prisoners of war, and Article 72 therefore mentions medical supplies and makes a general reference to articles of a religious, educational or recreational character. The latter phrase was logically considered as including also individual or collective shipments of books, and the reference to books which had been included in the 1929 text (Article 39), as well as in the Stockholm draft, was therefore omitted.

Article 72 goes even further. It is clear from the term " in particular " which precedes the list of permitted articles that the list is not exhaustive, and that in principle parcels may contain other articles which may be required. For reasons of security or because of checking difficulties, however, the Detaining Power might possibly not approve of the inclusion of certain articles not on that list ; it therefore seems preferable that in practice the Power on which prisoners of war depend should come to an agreement on the matter with the Detaining Power [1].

A. *Foodstuffs.* — Food may be sent either in individual parcels, whether or not addressed to a particular prisoner of war, or in bulk shipments ; in principle, the donors are free to select the goods they wish to send. It should be borne in mind, however, that certain foodstuffs, such as coffee, encourage black marketing.

B. *Clothing.* — Clothing may be sent either in individual parcels, whether or not addressed to a particular prisoner of war—and containing for instance a complete outfit for a prisoner of war—or in the form of boxes or bales for general issue.

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[1] Detaining Powers often publish a list of articles which it is forbidden to send to prisoners of war. Moreover, account has been taken of considerations of control and security in regard to certain articles which are specifically authorized; reference will be made to this below in connection with the sending of books and medical supplies.

C. *Medical supplies.* — From the beginning of the Second World War, parcels of medical supplies addressed by name were always sent to the chief medical officer of a camp or hospital or, if there was none, to a head nurse, welfare officer or a representative of the local Red Cross. The question is now settled by paragraph 4 of the present Article, which states that, as a rule, medical supplies are to be sent in collective parcels.

This solution was adopted in the interest of the prisoners of war, who should not have access to medical supplies except under medical supervision.

D. *Articles of a religious, educational or recreational character.* — The intention is to enable prisoners of war to continue their studies or to engage in artistic pursuits. By way of indication, express reference is made to devotional articles, scientific equipment, examination papers, musical instruments, and sports outfits.

This form of relief is particularly important for prisoners detained for a long time ; it can help them to maintain their professional skills.

The donor should obtain detailed information concerning the real needs of the prisoners to whom the goods are to be sent, for requirements in intellectual and occupational matters are much more individual than those in other fields [1].

Paragraph 2. — Obligations of the Detaining Power

This paragraph expressly states that relief shipments addressed to prisoners of war in no way free the Detaining Power from its obligations. The obligations in question are the following :

Pursuant to Article 15, the Detaining Power must provide free of charge for the maintenance of prisoners of war and for the medical attention required by their state of health. This general obligation is supplemented by specific provisions concerning food (Article 26), clothing (Article 27), the supply of ordinary articles in daily use (Article 28, canteens), medical attention (Article 30), devotional articles, which the belligerents generally supplied during the Second World War together with the premises required by Article 34, para-

[1] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, p. 276 ff., for details of the work done in this field by the International Committee of the Red Cross and other humanitarian organizations during the Second World War.

graph 2, and lastly intellectual, educational and recreational pursuits, sports and games, which are the subject of Article 38, and which the Detaining Power must encourage and facilitate, in particular by providing prisoners of war with the necessary equipment. In short, the supplies and facilities which the Detaining Power is obliged to provide must be sufficient to enable prisoners of war to live a healthy and decent life. Relief supplies are merely complementary.

PARAGRAPH 3. — RESTRICTIONS

In principle, the Detaining Power should encourage the sending of relief supplies to prisoners of war in its hands, not, as has just been pointed out, because such shipments relieve the Detaining Power of any of its obligations in regard to the maintenance of prisoners of war, but for material as well as psychological reasons, with a view to reciprocal action. If the material conditions in which prisoners of war live are improved, order and discipline will be strengthened in the camps. Furthermore, if the Detaining Power grants certain facilities to the prisoners of war in its hands, members of its own armed forces who have fallen into enemy hands will benefit by similar facilities.

Despite these considerations, during the Second World War certain Detaining Powers, while not actually opposing relief shipments addressed to prisoners of war, nevertheless showed a tendency to restrict such shipments, either for reasons of public policy, or because of purely material considerations.

Reference has already been made to the difficulties which may arise in regard to the local population when relief shipments are issued to prisoners of war, particularly when the civilian population is undergoing great hardship. If prisoners of war furthermore take advantage of the situation to indulge in black market activities, the Detaining Power is undoubtedly justified in putting a stop to such practices by imposing appropriate restrictions on relief shipments.

With regard to purely material problems, difficulties are mostly likely to arise when large numbers of parcels are addressed to individual prisoners of war, causing serious delays in distribution, and perishable goods may consequently be wasted. The main problem is that of adequate transport and suitable warehousing facilities.

During the Second World War, Detaining Powers dealt with this problem in several ways. Under one such system, the only individual parcels accepted were those bearing special labels which were issued by the Detaining Power to prisoners of war and then sent by the latter

to donors [1]. In practice this system led to unjust discrimination in the sending of relief parcels and it was eventually abandoned.

In the light of the experience gained, the authors of the Convention considered that it should include regulations concerning relief shipments.

The Detaining Power may not take the initiative in limiting relief shipments; restrictions may be proposed only by the Protecting Power or by a charitable organization. In practice, the Detaining Power would probably approach one of those bodies in order to point out that, in its opinion, it was necessary to limit relief shipments. Moreover, the Convention authorizes the Protecting Power or the charitable organizations concerned to make definite proposals, that is to say to determine the nature and scope of the restrictions.

What would be the rôle of the Protecting Power and the relief organizations respectively ? The text itself points out two essential differences. In the first place, the organization which sends or forwards relief may propose restrictions only in respect of its own shipments; it would obviously be illogical or even dangerous to enable it to limit relief shipments which were not its concern. On the other hand, it is natural that the Protecting Power, which is normally kept informed, should also be able to propose restrictions even if it is not actually concerned with the forwarding of shipments.

Paragraph 4. — Sending of relief

This paragraph refers only to the conditions for the sending of relief supplies. The special agreements referred to must therefore neither provide for nor result in restrictions on the distribution. The present paragraph makes this clear: any restriction on the issue of relief supplies is governed solely by paragraph 3 of the present Article.

In principle, the Detaining Power is entitled to check all individual parcels or collective consignments before they are delivered to prisoners of war. Checking will take all the longer if the packages vary greatly in weight, size, composition and packing. Thus the donors themselves during the Second World War came round to the idea of making up standard parcels. In the light of that experience, it was therefore felt that it would be preferable to settle the conditions governing the sending of relief by special agreements between the Powers concerned, mainly in order to speed up checking.

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[1] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. III, pp. 281-283.

The present paragraph goes even further by including specific regulations on two points. Firstly, parcels of clothing and foodstuffs must not contain books. Secondly, medical supplies must, as a rule, be sent in collective parcels ; the phrase " as a rule " was deliberately inserted in order not to prevent the inclusion in a family parcel of a medicament specially required by a prisoner which might not be included in collective medical relief.

ARTICLE 73. — RELIEF SHIPMENTS : II. COLLECTIVE RELIEF

In the absence of special agreements between the Powers concerned on the conditions for the receipt and distribution of collective relief shipments, the rules and regulations concerning collective shipments, which are annexed to the present Convention, shall be applied.

The special agreements referred to above shall in no case restrict the right of prisoners' representatives to take possession of collective relief shipments intended for prisoners of war, to proceed to their distribution or to dispose of them in the interest of the prisoners.

Nor shall such agreements restrict the right of representatives of the Protecting Power, the International Committee of the Red Cross or any other organization giving assistance to prisoners of war and responsible for the forwarding of collective shipments, to supervise their distribution to the recipients.

General Remarks

Because of the great volume of collective relief sent during the Second World War, a series of regulations grew up outside the 1929 Convention proper and it was necessary to embody them in the new Convention.

It was therefore decided to set forth the relevant principles in Regulations annexed to the Convention ; the Regulations are by way of example and may be adapted to circumstances.

Paragraph 1. — Application of the annexed Regulations

The distribution of collective relief must be so organized as to provide all possible guarantees to the donors. The present provision contains only the essential principles of such arrangements, and the

technical clauses are to be found in the annexed Regulations (Annex III). On the other hand, the present Article expressly states that the Powers concerned, that is to say the Detaining Power and the Power sending relief supplies, may agree on other regulations. In the absence of any agreement, which will probably most often be the case, the provisions of the annexed Regulations must be applied, at the same time and in the same way as the provisions of the Convention proper.

Moreover, the annexed Regulations go beyond the question of receipt and distribution of relief supplies. As will be seen later, Articles 8 and 9 of the Regulations contain very important rules.

There is, however, one important matter which is not referred to in the Regulations but on which a few words should be said—that of receipts.

Under the 1929 Convention, parcels were to be delivered to the recipients against a receipt, and the receipt seemed to be an essential condition for delivery. There is no such reference in the new Convention. The reason for this change is that the receipt required by Article 37 of the 1929 Convention referred only to postal parcels, while the new Convention states that relief supplies may be sent " by post or by any other means ". The Detaining Power is nevertheless under an obligation, as in the case of prisoner-of-war mail, to see to it that relief supplies are delivered to the appropriate person, that is to say to the prisoners' representative in the case of collective shipments, and to each prisoner concerned in the case of individual parcels ; this obligation does not depend on the issue of a receipt. It is conceivable, however, that the Detaining Power may for practical reasons ask the recipients for a written receipt, as is usually done by the postal services in certain countries.

In actual fact, the question of receipts is mainly of interest to the donors and is part of the general problem of checking that shipments duly arrive at their destination. This is probably why it is referred to in the last paragraph of the Article relating directly to relief societies (Article 125). Lastly, apart from receipts, the donors and the Powers whose citizens they are can obtain additional guarantees either through the Protecting Powers or through the International Committee of the Red Cross.

Paragraph 2. — Rôle of prisoners' representatives

In view of the value and volume of collective shipments, certain precautions must be taken in connection with their receipt and

distribution. The experience of the Second World War confirmed that the best method was to make the prisoners' representative responsible for these operations. Because of his nationality and his position, he is best able to carry out this work in the interest of all concerned. He is therefore authorized to take possession of collective relief shipments, to proceed to their distribution, or to dispose of them in the interest of the prisoners. These prerogatives are covered in a more detailed way by the annexed Regulations, to which reference will be made later [1].

This right in no way implies, however, that the prisoners' representative acquires personally any right of ownership over the relief. The relief supplies remain the community property of the prisoners of war for whom they are intended and, where divisible (food, clothing [2]), they become the property of the prisoners of war themselves after distribution. The prisoners' representative is merely responsible for administering the supplies in the interest of the prisoners of war.

Paragraph 3. — Supervision by the Protecting Power and humanitarian organizations

However fair-minded prisoners' representatives have generally proved to be, it is not inconceivable that because of personal weakness or under pressure from the Detaining Power, one or other of them might act in a manner contrary to the intentions of the donors and the interests of his fellow-prisoners. It was therefore considered necessary to provide for supervision by the Protecting Power [3], the International Committee of the Red Cross, or any other organization giving assistance to prisoners of war [4].

The Convention does not specify the form or scope of such supervision. In most instances, the officials responsible for it will be able to fulfil their duty by obtaining the necessary information from the prisoners' representatives and the detaining authorities. Within

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[1] See below, p. 664 ff.

[2] Blankets may still be considered as community property, even after distribution to individual prisoners of war.

[3] Powers which set up a blockade have in the past usually considered such supervision as a *sine qua non* for lifting the blockade to allow the passage of relief supplies for prisoners of war.

[4] With regard to the term " any other organization giving assistance to prisoners of war ", reference should be made to Articles 9 and 125 of the Convention.

the limits of Article 125, they may also be present when collective relief supplies are distributed, and may consult the prisoners in order to verify that the distribution is fair.

The method referred to for distributing collective relief applies mainly to the case of prisoners of war who are attached to an established camp, with a prisoners' representative, and receive periodic visits from the Protecting Power or the International Committee of the Red Cross. It was necessary, however, to ensure that a Detaining Power would not withhold collective relief from prisoners of war who were not so placed, and in particular during evacuation from the place of capture to an internment camp ; it was also necessary to enable the organizations responsible for the forwarding of shipments to distribute supplies, if need be, without the participation of a prisoners' representative [1].

ARTICLE 74. — EXEMPTION FROM POSTAL AND TRANSPORT CHARGES

All relief shipments for prisoners of war shall be exempt from import, customs and other dues.

Correspondence, relief shipments and authorized remittances of money addressed to prisoners of war or despatched by them through the post office, either direct or through the Information Bureaux provided for in Article 122 and the Central Prisoners of War Agency provided for in Article 123, shall be exempt from any postal dues, both in the countries of origin and destination, and in intermediate countries.

If relief shipments intended for prisoners of war cannot be sent through the post office by reason of weight or for any other cause, the cost of transportation shall be borne by the Detaining Power in all the territories under its control. The other Powers party to the Convention shall bear the cost of transport in their respective territories.

In the absence of special agreements between the Parties concerned, the costs connected with transport of such shipments, other than costs covered by the above exemption, shall be charged to the senders.

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[1] As an example, one may recall the distribution of collective relief supplies at the end of the war to prisoners of war who were travelling on foot ; supplies were distributed to long convoys of prisoners of war on the road, individually and directly.

The High Contracting Parties shall endeavour to reduce, so far as possible, the rates charged for telegrams sent by prisoners of war, or addressed to them.

The present Article sets forth a principle which was universally recognized and respected during the Second World War—that of exemption from customs duties and carriage charges for correspondence and relief addressed to prisoners of war.

This principle had already been stated in Article 16 of the Regulations annexed to the Fourth Hague Convention of 1907, and again in almost identical terms in Article 38, paragraphs 1 and 2, of the 1929 Convention.

PARAGRAPH 1. — EXEMPTION FROM CUSTOMS AND OTHER DUES

This provision is clear and comprehensive : it covers all import, customs and other dues, and in particular the many charges which have been instituted for economic reasons since the First World War. Exemption is to be accorded to relief shipments of all kinds, whatever their origin or the nationality of the prisoners of war to whom they are addressed.

PARAGRAPH 2. — EXEMPTION FROM POSTAL CHARGES

The text of the present paragraph is almost identical to Article 38, paragraph 1, of the 1929 Convention. It should also be compared with Article 37 of the Universal Postal Convention, the text of which is given in a footnote below [1]. That Article is to some extent an imple-

[1] *Universal Postal Convention, Article 37* (Record of the Universal Postal Union, Brussels 1952), *Free postage for items relating to prisoners of war and civilian internees.*

" 1. Correspondence, insured letters and boxes, postal parcels and postal money orders addressed to or sent by prisoners of war, either directly or through the Information Bureaux and the Central Prisoners of War Information Agency prescribed in Articles 122 and 123 respectively of the Geneva Convention of 12th August, 1949, relative to the treatment of prisoners of war. are exempted from all postal charges. Belligerents apprehended and interned in a neutral country are classed as prisoners of war properly so called so far as the application of the foregoing provisions is concerned.

. . . . . .

3. The National Information Bureaux and the Central Information Agencies mentioned above also enjoy exemption from postage in respect of correspon-

menting provision for the present paragraph. In fact, the revised Universal Postal Convention was so drafted as to take into account the corresponding provisions of the Geneva Conventions. This will be noted particularly in the case of Article 37, paragraphs 4 and 5, of the Universal Postal Convention, which govern the forms to be filled in and the weight limit for parcels sent free of postage.

At the 1949 Diplomatic Conference, several delegations proposed the inclusion of a reference to the Universal Postal Convention. The proposal was finally rejected [1], however, because special arrangements exist which are correlated with that Convention and apply to parcels and remittances of money, but which have not been adhered to by all the States. In those circumstances, the majority of delegates considered that a reference to the Universal Postal Convention would do more harm than good.

In connection with " authorized remittances of money ", reference should be made to Article 63, paragraph 2, which provides that, subject to financial or monetary restrictions which the Detaining Power regards as essential, prisoners of war may have payments made abroad. Furthermore, the Detaining Power is required to give priority to payments addressed by prisoners of war to their dependants.

PARAGRAPH 3. — RELIEF CONSIGNMENTS NOT SENT THROUGH THE POST OFFICE

From the beginning of the Second World War it became apparent to all the belligerent Governments that Article 38 of the 1929 Convention was inadequate, particularly with regard to private or semi-private

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dence, insured letters and boxes, postal parcels and postal money orders concerning the persons referred to in §§ 1 to 2, which they send or receive, either directly or as intermediaries, under the conditions laid down in those paragraphs.

4. Items benefiting by the freedom from postal charges provided under §§ 1 to 3 and the forms relating to them shall bear the indication " Service des prisonniers de guerre " (Prisoners of War Service) or " Service des internés " (Civilian Internees Service). These indications may be followed by a translation in another language.

5. Parcels are admitted free of postage up to a weight of 5 kgs. The weight limit is increased to 10 kgs. in the case of parcels whose contents cannot be split up and of parcels addressed to a camp or the prisoners' representatives there (" hommes de confiance ") for distribution to the prisoners (a)."

(a) It was agreed at Brussels that the exemption accorded to items for prisoners of war and internees should also apply to items sent C.O.D. (Documents of the Brussels Congress, Vol. II, Fourth Commission, 30th meeting).

[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 285-286 and 369-370.

transport facilities. Special agreements were therefore concluded for this contingency, providing for reimbursement by the States concerned of the amounts due to the railway companies.

Since, moreover, Article 38 contained no provision concerning maritime transport, the International Committee of the Red Cross endeavoured to solve the problems involved through establishing its own fleet of vessels by means of special agreements. Because of the costs and great risks inherent in such a scheme, however, it was not possible to grant complete exemption from charges. It should also be noted that some belligerents granted free carriage by air, on several routes, for prisoner-of-war mail [1].

1. *First sentence. — Transport in the territory of the Detaining Power*

Here the word " territory " should be taken in its widest sense as referring not only to the territory proper of that Power but also to the territories which it represents in international matters (colonies, protectorates, trust territories, etc.) and on behalf of which it gave an undertaking when it became a party to the Convention. Furthermore, the Detaining Power must bear the cost of transport " in all the territories under its control ". This refers to all territories occupied by the Detaining Power and in which it may, as has often been the case, establish and maintain prisoner-of-war camps.

These rules are valid whatever the means of transport used. If goods are normally carried on a certain section of the route by coastal vessels, by road or even by air, then the same means of transport must also be used, free of charge, for consignments addressed to prisoners of war. No longer may any distinction be made between private companies and State-owned enterprises. If exemption from carriage charges is not granted in a country where it should be, the State and not any individual private company must be held responsible. In countries where transport facilities are not State-owned, arrangements must consequently be made between the State and the companies concerned.

2. *Second sentence. — Transport in the territories of the other Powers party to the Convention*

The above comments concerning the first sentence of the present paragraph also apply *mutatis mutandis* to the present provision, which

[1] For further details concerning arrangements for free carriage by rail during the Second World War, see *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. III, pp. 175-177; with regard to maritime transport, see *ibid.*, pp. 157-158.

concerns not only the belligerents but all the States party to the Convention. Exemption from carriage charges must therefore also be accorded to consignments in transit, as in the case of postal items (paragraph 2).

PARAGRAPH 4. — CONSIGNMENTS NOT COVERED BY THE EXEMPTION

Although the exemption granted under the new Convention is much more extensive than that provided under the 1929 text, it does not apply to consignments sent otherwise than through the post office in the following cases :

(a) transport by sea ;

(b) transport in the territory of a Power not party to the Convention ;

(c) import, customs and other dues levied by States not party to the Convention.

Pursuant to the present paragraph, transport and other expenses may be dealt with in such cases by special arrangements between the Powers concerned ; otherwise they will be charged to the sender. However obvious this may seem, disputes which have arisen in the past have shown the need for a specific provision to this effect.

PARAGRAPH 5. — CHARGES FOR TELEGRAMS

Reference has already been made in the commentary on Article 71 to the cases in which prisoners of war may send telegrams.

One of the principal obstacles to the use of telegrams by prisoners of war is undoubtedly the relatively high rates charged for this service. The Convention therefore recommends in the present provision, and again in Article 124, that the rates charged for telegrams sent by prisoners of war, or addressed to them, should be reduced. This is not a mandatory obligation for the Contracting Parties, but merely a recommendation. As has already been pointed out [1], one indirect method of reducing telegraph charges is to use simplified standard messages. The present clause refers, however, to a direct

[1] See above, p. 349, note 1.

reduction of the rates charged for telegrams, whatever the system used [1].

Pursuant to Article 124 of the Convention, the exemptions provided for in the present Article extend also to the national Information Bureaux and the Central Information Agency (Articles 122 and 123).

ARTICLE 75. — SPECIAL MEANS OF TRANSPORT

Should military operations prevent the Powers concerned from fulfilling their obligation to assure the transport of the shipments referred to in Articles 70, 71, 72 and 77, the Protecting Powers concerned, the International Committee of the Red Cross or any other organization duly approved by the Parties to the conflict may undertake to ensure the conveyance of such shipments by suitable means (railway wagons, motor vehicles, vessels or aircraft, etc.). For this purpose, the High Contracting Parties shall endeavour to supply them with such transport and to allow its circulation especially by granting the necessary safe-conducts.

Such transport may also be used to convey :

(a) *correspondence, lists and reports exchanged between the Central Information Agency referred to in Article 123 and the National Bureaux referred to in Article 122 ;*

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[1] This question was the subject of a resolution (Resolution No. 23) adopted at the XVIIIth International Conference of the Red Cross, held at Toronto in 1952. Following that resolution and a recommendation by the International Telecommunication Conference held at Buenos Aires in 1952, the Telegraph and Telephone Conference, meeting at Geneva, agreed in November 1958 that special rates amounting to a reduction of 75 per cent of the ordinary rates should be granted to :

(a) telegrams addressed to prisoners of war, civilian internees or their representatives (prisoners' representatives, internee committees) by recognized relief societies assisting war victims ;

(b) telegrams which prisoners of war and civilian internees are permitted to send or those sent by their representatives (prisoners' representatives, internee committees) in the course of their duties under the Conventions ;

(c) telegrams sent in the course of their duties under the Conventions by the national Information Bureaux or the Central Information Agency for which provision is made in the Geneva Conventions, or by delegations of such Bureaux or Agency, concerning prisoners of war, civilians who are interned or whose liberty is restricted, or the death of military personnel or civilians in the course of hostilities.

In order to be granted these special rates, telegrams must bear the relevant official stamp or signature (camp, camp commander, Bureau, Agency, National Society, delegation).

(b) *correspondence and reports relating to prisoners of war which the Protecting Powers, the International Committee of the Red Cross or any other body assisting the prisoners, exchange either with their own delegates or with the Parties to the conflict.*

These provisions in no way detract from the right of any Party to the conflict to arrange other means of transport, if it should so prefer, nor preclude the granting of safe-conducts, under mutually agreed conditions, to such means of transport.

In the absence of special agreements, the costs occasioned by the use of such means of transport shall be borne proportionally by the Parties to the conflict whose nationals are benefited thereby.

General

During the Second World War, the International Committee of the Red Cross resorted to the use of vessels bearing the red cross emblem which held a special status. This initiative was a new departure, and was not based on any provisions of the Tenth Hague Convention of 1907 for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of July 6, 1906.

These cargo vessels were used solely for the transport of mail and relief for war victims: prisoners of war and civilian internees, and as an exception, civilians in occupied territories. They sailed under the control of the International Committee of the Red Cross in accordance with agreements which it had concluded with the belligerent States concerned [1].

Special mention should be made of this activity. Some of the vessels used were acquired by the " Foundation for the Organization of Red Cross Transports ", while others had a special status but retained the nationality of the neutral country to which they belonged. They all flew the flag of the International Committee of the Red Cross. These vessels sailed mainly on the following routes : Lisbon-Marseilles, North Africa, South America, North America, Aberdeen-Göteborg, Göteborg-Lübeck. One can easily imagine the many technical difficulties involved in organizing in war-time, without any relevant international convention, a fleet which managed to get through all blockades. The present Article 75 provides a legal basis for any such action by the International Committee of the Red Cross in the future.

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[1] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. III, pp. 124-165, and especially pp. 127-158.

During the work of the Commission of Experts convened by the International Committee in 1937 to study the question of revising the Tenth Hague Convention, it was considered that the question of protecting vessels with the red cross emblem on the one hand, and the transport of hospital supplies, on the other hand, should be settled by *ad hoc* agreements between the belligerents.

In the light of experience, the International Committee of the Red Cross proposed at the 1947 Conference of Government Experts that the new Convention should contain a provision concerning transport, with particular reference to the establishment of Red Cross navigation. The following principles were cited : the advisability of having such a service from the humanitarian point of view, its neutral status, and the granting of the necessary immunities, facilities and guarantees for costs to be met.

The Commission of Government Experts did not examine these various points, but merely recognized the desirability of establishing Red Cross navigation and made a proposal on the following points : the belligerents should place at the disposal of the International Committee of the Red Cross or some other humanitarian organization the necessary means of transport (ships or aircraft) ; neutral registration ; the use of the red cross flag ; delivery of the necessary safe-conducts ; apportionment of costs ; determination of the goods which might be conveyed by such means of transport [1].

The proposal was approved and the text was therefore inserted in the draft submitted to the XVIIth International Conference of the Red Cross. Its scope had, however, been extended by a reference to non-maritime transport (railway wagons, motor vehicles, etc.) and the reference to registering had been deleted, as it was applicable only to maritime transport [2].

Despite some objections [3], these proposals were adopted at the 1949 Diplomatic Conference, with the introduction of a new paragraph (paragraph 3), reserving the right of the Parties to arrange other means of transport or to grant safe-conducts only under conditions which could be agreed [4].

The 1949 Convention therefore contains in the present Article a provision which was not included in the 1929 text. Before examining

[1] See *Report on the Work of the Conference of Government Experts*, pp. 189-190.

[2] See *XVIIth International Red Cross Conference, Draft Revised or New Conventions for the Protection of War Victims*, pp. 99-100.

[3] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 287-288 ; Vol. III, p. 78, No. 140.

[4] *Ibid.*, Vol. II-A, p. 370.

the conditions which govern special means of transport, however, it should be pointed out that it is in the first place the Powers concerned which are required by Article 75 to assure the conveyance of relief and other shipments for prisoners of war.

The term " Powers concerned " refers here not only to the Detaining Power and the Power on which prisoners of war depend, but also to the neutral or belligerent Powers through whose territory consignments pass in transit, and the latter Powers may not therefore leave the obligation unfulfilled on the grounds that such consignments are no direct concern of theirs. As will be seen later in connection with special means of transport, Article 75 specifies that the Powers concerned may be released from this obligation only if military operations prevent them from carrying it out.

Certain States sometimes granted priority to relief consignments addressed to prisoners of war ; should this always be done ? The Convention specifies, in Article 71, paragraph 1, last sentence, that priority must be given to the correspondence of prisoners of war, but it makes no such stipulation for relief shipments. It may be inferred, however, from the provisions of the Convention, that relief supplies must always be transported under satisfactory conditions. This conclusion derives in the first place from the fact that the Powers concerned are expressly required to " assure " the transport of relief shipments ; it derives also from Article 76, concerning the examination of consignments, which shows the importance attached by the Convention to ensuring that such consignments are delivered to the addressees before their contents can deteriorate.

The Powers concerned are only released from the obligation to assure the transport of shipments addressed to prisoners of war if military operations prevent them from doing so. In that case, however, they must allow a charitable organization to ensure the conveyance of the shipments in their stead.

The purpose of Article 75 is to establish rules governing the intervention of a charitable organization in these circumstances.

PARAGRAPH 1. — CONDITIONS FOR APPLICATION AND FUNDAMENTAL PRINCIPLES

1. *First sentence. — Conditions for application*

The conditions necessary for the establishment of special means of transport are fulfilled when " military operations prevent the Powers concerned " from assuring the transport of relief shipments.

The term " military operations " must be understood in a very broad sense. It refers not merely to the movement of armies but rather to the military situation resulting from that movement and even to the circumstances of war. If as a result of those circumstances a neutral country were no longer able to replace its rolling,-stock and were consequently prevented from assuring the transport of shipments addressed to prisoners of war, such a situation would exist.

The relationship between military operations and the impossibility of forwarding relief may be direct (for instance, if a belligerent Power is surrounded by adversaries), or it may be indirect (a Power may no longer be able to make the required means of transport available for conveying relief shipments because the former have been destroyed by enemy bombardment).

Last but not least, the difficulty need not be absolute. The present Article becomes applicable whenever, as a result of the war, it is no longer possible to forward relief supplies under normal conditions.

Which organizations are authorized to intervene in order to ensure the conveyance of relief shipments ? The text is drafted in such a way as to permit action by all those who may be able to assist ; in addition to the Protecting Powers concerned and the International Committee of the Red Cross, it refers to " any other organization ". This last term might in the first place apply to " any other organization assisting prisoners of war " ; in the Convention this covers essentially relief societies, whether national or international [1]. If need be, however, it might also apply to an organization whose normal activities do not include assistance to prisoners of war, such as a State agency or even a purely commercial private firm.

The Powers concerned are afforded all the safeguards which they are entitled to expect, since they are to permit action by an organization which may perhaps not be of a national character, in a field which is normally theirs alone and is in the vicinity or even in the theatre of military operations. It may be assumed that the Protecting Powers or the International Committee of the Red Cross generally enjoy the confidence of the Powers concerned. On the other hand, the present paragraph provides that any other organization must be " duly approved " by the Powers concerned. Such approval may be implicit if at the outbreak of hostilities a particular society has been granted general authorization to operate in the territory of a particular Power ; in individual cases, however, it may also be given to an organization set up in order to provide special means of transport.

[1] See the commentary on Article 125.

2. *Second sentence. — Facilities*

The Powers party to the Convention must endeavour to facilitate the task of any organization which, with the approval of the belligerents directly concerned, undertakes to ensure the conveyance of shipments addressed to prisoners of war. It should be noted that such an attitude is required not only of the Powers directly interested in the work of the organization in question, but also of all the States party to the Convention, since in the final analysis the work accomplished by the organization is in the general interest. At the same time, however, the word " endeavour " shows that each of them is required to conform to this attitude to the extent that circumstances and its own resources enable it to do so.

In this connection, a distinction may be made between the two facilities mentioned. The organization in question may ask the High Contracting Parties to " endeavour to supply them with such transport ", but the chances of a favourable response will obviously vary greatly depending on whether or not the State concerned has extensive resources, is a Party to the conflict or is directly affected by the hostilities. On the other hand, the question of allowing travel and granting safe-conducts for special means of transport would probably only give rise to technical or administrative difficulties which can be settled in the normal way. At most, it is conceivable that military necessity might oblige a belligerent to refuse permission of this kind, provided that the refusal is temporary and for the shortest time possible.

Lastly, it should be noted that the Convention does not tackle the very important question of the protection of special transport against the effects of war. It mentions no general obligation to protect and respect special means of transport and one may only infer that such an obligation exists from the fact that the Powers concerned are required to allow special transport. This is a matter which will be settled by special agreements. Such agreements might contain specific provisions concerning the conditions to be fulfilled by such transport, the routes to be followed, and the signs to be displayed for identification purposes. The experience gained during the Second World War may be helpful in this connection.

In particular, it should be noted that, with the consent of the Powers concerned, the special means of transport organized by the International Committee of the Red Cross during the Second World War were placed under the red cross emblem and therefore enjoyed the protection which that emblem afforded. Article 44 of the First

Convention of 1949 provides that the red cross emblem may be used by international Red Cross organizations, and the International Committee could therefore mark with that emblem any special transport which it might be called upon to establish.

PARAGRAPH 2. — ARTICLES WHICH MAY BE CONVEYED BY SPECIAL TRANSPORT

First and foremost, Article 75 was drawn up in order to ensure the conveyance of relief supplies, for which purpose special transport will generally be used. As may be seen from the enumeration in the first sentence of the Article, however, and the additional list in paragraph 2, other items may also be conveyed by this means. Two principles may be inferred from these provisions :

(a) special transport may be used for all articles which concern prisoners of war directly or indirectly. It is therefore available for the correspondence of official institutions concerning prisoners of war, and also for that of private organizations or relief societies assisting prisoners of war.

(b) Special transport must be used for conveying articles concerning prisoners of war, regardless of the origin of such articles. If a certain relief organization undertakes to ensure conveyance over a given route by special means of transport and succeeds in doing so, it may not, in principle, reserve those facilities solely for relief shipments sent by societies under its control or with which it is affiliated ; it must also accept shipments sent by any other organization which gives regular asisstance to prisoners of war. According to the spirit of the Convention, it would merely be supplementing, on certain routes, the postal, rail or maritime services which must be assured as far as possible, even in wartime.

PARAGRAPH 3. — RESERVATION : FREEDOM OF THE PARTIES TO MAKE OTHER ARRANGEMENTS

As has been seen, a Power which is prevented from assuring the transport of shipments must agree to action being taken in order to ensure conveyance by means of special transport. It goes without saying that a Power which can no longer count on its usual means of

transport may itself take the initiative of calling on a special organization, or of requesting the national Red Cross Society to undertake the task of forwarding relief shipments—as has already occurred in the past—or it may even ask a foreign organization to do so.

Paragraph 3 of Article 75 was included in order to safeguard this freedom. One may wonder, however, whether the provision is really necessary. Even if the Powers concerned themselves take the initiative of establishing special transport, they are only fulfilling their basic obligation to assure the transport of relief shipments, and there is therefore no need for outside intervention. In no event may this provision be invoked by a Power which is prevented from assuring the transport of shipments in order to avoid accepting the offers made by a serious organization.

Paragraph 4. — Apportionment of expenses

This paragraph deals with the expenditure involved in the use of special transport, but not the expenditure incurred in setting up the special transport system. On this latter point the Convention says nothing and it is therefore to be supposed that such expenses will be covered by agreement between the body which takes the initiative in the matter and the Powers concerned. In this connection, one should remember that certain facilities must be accorded and in particular the Powers concerned must endeavour to " supply " such an organization with transport, that is to say, must enable it to obtain transport free of charge.

As for running costs, the rule is simple. They will be apportioned between the Powers whose nationals have the benefit of special transport. The expenses will be apportioned by the organization which sets up the transport system.

The Convention provides an exception, however, to the rule of proportional payment : the matter may be dealt with by special agreements. A belligerent, through lack of financial means, might not favour the use or establishment of special transport, while the adverse Party is ready to take over the expenditure completely. In such a case, it would be regrettable if the rule referred to above were so absolute as to prevent the organization of special means of transport under slightly different conditions.

ARTICLE 76. — CENSORSHIP AND EXAMINATION

The censoring of correspondence addressed to prisoners of war or despatched by them shall be done as quickly as possible. Mail shall be censored only by the despatching State and the receiving State, and once only by each.

The examination of consignments intended for prisoners of war shall not be carried out under conditions that will expose the goods contained in them to deterioration ; except in the case of written or printed matter, it shall be done in the presence of the addressee, or of a fellow-prisoner duly delegated by him. The delivery to prisoners of individual or collective consignments shall not be delayed under the pretext of difficulties of censorship.

Any prohibition of correspondence ordered by Parties to the conflict, either for military or political reasons, shall be only temporary and its duration shall be as short as possible.

PARAGRAPH 1. — CENSORSHIP OF CORRESPONDENCE

1. *First sentence. — Time required*

Here the text of the new Convention is similar to the first sentence of the corresponding provision in the 1929 Convention (Article 40). The Detaining Power must therefore see to it that censoring is done as quickly as possible.

The period of time required will depend in the first place on the quantity of correspondence to be censored and secondly on the number of censors available to the Detaining Power. Problems may arise in the case of languages which are little known in the country of detention and for which it will sometimes be difficult to find sufficient translators. If need be, the Protecting Power may be asked to appoint extra censors [1].

Some authors have considered that delays caused by censorship should not exceed two weeks [2], but the drafters of the Convention gave no ruling on the matter. In the event that the Protecting Power is unable to appoint extra censors, it must determine whether there

[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 288.

[2] See BRETONNIÈRE, *op. cit.*, p. 244.

is need for a reduction in the volume of correspondence sent by prisoners of war.

With regard to correspondence received by prisoners of war, reference should be made to the commentary on Article 71. The present provision requires the Detaining Power to reduce delays caused by censorship, and this obligation necessarily implies that the volume of correspondence must not be excessive. As has already been pointed out, in such a case any restrictions must be initiated by the Power of origin, but a suggestion to that effect might be made by the Detaining Power (Article 71, paragraph 1, fourth sentence).

2. *Second sentence. — Multiple censorship*

The second sentence of the present paragraph was inserted at the request of the International Committee of the Red Cross, which had received innumerable complaints during the Second World War concerning delays caused, in particular, by multiple censorship in a single country and examination in countries of transit [1]. The purpose of the present provision is to eliminate such sources of delay. Article 71, paragraph 4, which states that sacks containing prisoner-of-war mail must be securely sealed and labelled, confirms the rule that no censorship should be done in countries of transit.

PARAGRAPH 2. — EXAMINATION OF CONSIGNMENTS

Paragraph 1 above relates only to correspondence of prisoners of war ; the present paragraph is much broader in scope. The word " consignments " covers anything addressed to prisoners of war, whether foodstuffs, clothing, sporting goods, games, books or correspondence. It was therefore possible to delete the provision contained in Article 39, paragraph 1, of the 1929 Convention, which referred especially to the censorship of books addressed to prisoners of war.

With regard to foodstuffs, one may mention that sometimes examination has been done in such a way that the goods became completely unusable [2]. The present text, which corresponds to

[1] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, p. 351.

[2] See BRETONNIÈRE, *op. cit.*, p. 243.

Article 40, paragraph 2, of the 1929 Convention, expressly forbids such practices. It should be pointed out, however, that although the examination of parcels and packages must be carried out in the presence of the addressee or of a fellow-prisoner duly delegated by him in order to preclude any possibility of theft, the same does not apply to correspondence and books [1].

As in the first paragraph, it is specified here that delivery must not be delayed under the pretext of difficulties of censorship ; the conditions are usually different, however. Except in the case of books, examination requires no linguistic ability and all delay can therefore be avoided. This is particularly important in the case of parcels containing perishable goods. Furthermore, in accordance with Article 73, paragraph 2, the prisoners' representative is responsible for distributing collective shipments. He may not be deprived of that responsibility on the grounds that the consignment has not been examined. The examination must be carried out upon receipt, either before or during warehousing, so that the prisoners' representative is free to distribute the relief supplies as and when needed by the prisoners of war.

PARAGRAPH 3. — PROHIBITION OF CORRESPONDENCE

This clause, which permits the Detaining Power to prohibit all correspondence, was already contained in Article 40, paragraph 3, of the 1929 Convention. Although it was but seldom invoked during the Second World War [2], it was nevertheless retained in order to take account of imperative military considerations which might oblige the Detaining Power to apply it. Prohibition of correspondence is only permissible, however, if, as stated in the provision, it is an exceptional measure of short duration. It should be regarded more as the equivalent, with regard to prisoners of war, of a general measure imposed on the whole population because of military operations.

It is not possible here to indicate the " military or political reasons " which may lead the Detaining Power to take restrictive measures. This is a matter of internal security of the State but it must be emphasized that such reasons may be invoked only as an exceptional measure. On no other grounds may restrictive measures be imposed.

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[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 370.

[2] See BRETONNIÈRE, *op. cit.*, p. 244.

ARTICLE 77. — PREPARATION, EXECUTION AND TRANSMISSION OF LEGAL DOCUMENTS

The Detaining Powers shall provide all facilities for the transmission, through the Protecting Power or the Central Prisoners of War Agency provided for in Article 123, of instruments, papers or documents intended for prisoners of war or despatched by them, especially powers of attorney and wills.

In all cases they shall facilitate the preparation and execution of such documents on behalf of prisoners of war ; in particular, they shall allow them to consult a lawyer and shall take what measures are necessary for the authentication of their signatures.

A similar provision was included in the 1929 Convention (Article 41) and during the Second World War veritable legal departments were organized in many camps under the direction of the prisoners' representative. The drafters of the new Convention therefore took as a basis for the new Article the principles stated in 1929, and added certain details [1].

Article 14, paragraph 3, reserves the full civil capacity of prisoners of war and states that the Detaining Power may not restrict the exercise, either within or without its own territory, of the rights such capacity confers, except in so far as captivity requires. In practice, it is principally in his country of origin or of domicile—that is to say in the country where he has his family and his interests or professional relationships—that a prisoner may need to execute important legal documents.

In general, of course, as has already been emphasized in connection with Article 14, this will refer merely to measures of conservation, since prisoners of war may not, for instance, carry on any real business activity.

Article 14 nevertheless implies that the Power of origin must adopt a procedure enabling prisoners of war to execute legal documents with all necessary safeguards and without undue complications. However simple the procedure may be, it will still be necessary for the Detaining Power to grant prisoners of war the requisite facilities for the preparation, execution and transmission of documents.

[1] See below, p. 723.

PARAGRAPH 1. — TRANSMISSION OF DOCUMENTS [1]

The Convention states that " all facilities " must be granted to prisoners of war for the transmission of documents; nevertheless, account must also be taken of the special precautions required by the state of war as well as the difficulties of censorship. It may, however, be essential that there should be no undue delay in the transmission of documents [2]. In the light of the experience of the Second World War, the Conference of Government Experts proposed that the Protecting Power or the Central Prisoners of War Agency should act as an intermediary. This provision should therefore be read in conjunction with Article 81, paragraph 4.

One further question arises in connection with the transmission of legal documents, that of secrecy, particularly in the case of wills, for any premature disclosure of contents may cause serious difficulties and frequently the person concerned would rather abandon the idea of making a will than run such a risk. It is therefore advisable that legal documents should be sent in sealed envelopes, after being censored not by a layman but by an expert (a registrar or notary) who would himself be sworn to professional secrecy.

PARAGRAPH 2. — PREPARATION AND EXECUTION OF DOCUMENTS

The conditions necessary for the drawing up of legal documents intended for prisoners of war or executed by them depend on national legislation [3].

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[1] See Ferdinand CHARON, *op. cit.*, p. 89.

[2] Thus CHARON (*ibid.*, pp. 89-99) notes, that pursuant to Article 41 of the 1929 Convention, services were set up in camps for French prisoners of war for transmitting and sending documents. The prisoners, families, and members of the legal profession concerned transmitted the documents either to the Embassy of the prisoners of war or to the French Red Cross, or alternatively sent them directly to the International Committee of the Red Cross in Geneva. The documents passed through so many hands, however, that much delay in transmission ensued and there was a great risk of loss or damage.

[3] At the 1949 Diplomatic Conference an amendment was submitted proposing that this procedure should be governed by private international law, in accordance with the rule *locus regit actum* ; this proposal was rejected, however. See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 288. It will also be noted that under the new Convention (Article 120, paragraph 1), even wills are governed by national legislation ; hitherto, they were drawn up under the same conditions as for the armed forces of the Detaining Power (1929 Convention, Article 76).

In practice, during the Second World War, the belligerents often adopted a special procedure for prisoners of war. This was all the more necessary because legal transactions which normally require the presence of the person concerned had to be executed by representation, particularly in the case of marriage by proxy which was permitted by certain Powers [1]. Such a procedure could not be envisaged unless certain minimum formalities were carried out in order to afford the necessary safeguards. Furthermore, prisoners of war were not usually familiar with special legislation enacted in war-time. Therefore, in addition to the provision concerning the legalization of signatures which was already included in the 1929 text (Article 41, paragraph 2), the new Convention expressly grants prisoners of war the right to consult a lawyer.

A sufficiently wide interpretation should be given to this provision: the lawyer could be another prisoner of war, or a barrister or solicitor who is a national of the Detaining Power. If the prisoner of war requesting the consultation belongs to a labour detachment whereas the person he wishes to consult is in the main camp, he will be given permission to go there. It will also be possible for him to consult a lawyer who is a national of the Detaining Power, particularly if he wishes to draw up a will [2].

[1] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pp. 294-295.

[2] See below, the commentary on Article 120.

SECTION VI

RELATIONS BETWEEN PRISONERS OF WAR AND THE AUTHORITIES

Chapter I

Complaints of Prisoners of War respecting the Conditions of Captivity

ARTICLE 78. — COMPLAINTS AND REQUESTS

Prisoners of war shall have the right to make known to the military authorities in whose power they are, their requests regarding the conditions of captivity to which they are subjected.

They shall also have the unrestricted right to apply to the representatives of the Protecting Powers either through their prisoners' representative or, if they consider it necessary, direct, in order to draw their attention to any points on which they may have complaints to make regarding their conditions of captivity.

These requests and complaints shall not be limited nor considered to be a part of the correspondence quota referred to in Article 71. They must be transmitted immediately. Even if they are recognized to be unfounded, they may not give rise to any punishment.

Prisoners' representatives may send periodic reports on the situation in the camps and the needs of the prisoners of war to the representatives of the Protecting Powers.

HISTORICAL BACKGROUND AND GENERAL REMARKS

A. *Before the 1929 Convention.* — The present chapter refers to one of the fundamental rights which the Convention provides for prisoners of war : the right of each of them to make comments on the conditions of captivity. This is a corollary of the right to information :

each prisoner must be acquainted with the rules applicable to captivity and he is also entitled to complain if he considers that those rules are not observed.

This right was not included in the Hague Regulations and it was during the 1914-1918 war that the custom was established [1]. The international rules which are now applicable are based on the principles set forth in the agreement concluded between Germany and France on March 15, 1918. That agreement provided that, through welfare committees, prisoners might put their complaints and petitions before the camp commanders who could attach their comments before transmitting them to the Protecting Power. There were, however, important limitations: the welfare committees were entitled to withhold any complaints which they considered to be without foundation or of no interest, and the military authorities had the right to withhold any complaints which they considered unacceptable in form or obviously without foundation. These restrictions left the way open for abuse, and in fact during the First World War the majority of written complaints submitted by prisoners of war never reached their destination.

B. *From the system established by the 1929 Convention to the present system.* — On the strength of those principles, the authors of the 1929 Convention established, in Article 42, a system which with certain modifications and improvements provided a basis for the 1949 text. The system comprises:

(a) the right to make requests to the military authorities;

(b) the right to complain to the representatives of the Protecting Powers;

(c) the stipulation that such complaints and requests should be transmitted immediately and should never, in any circumstances, give rise to any punishment.

Like the 1929 Convention, the present text also refers to the right to request and complain in three special cases: when prisoners are employed on prohibited work (Article 50, paragraph 3), confined as a disciplinary punishment (Article 98, paragraph 1), or sentenced to a penalty depriving them of their liberty (Article 108, paragraph 3).

[1] SCHEIDL refers to a treaty between Great Britain, France and Germany in 1906 (*op. cit.*, p. 423, cf. German White Paper of January 31, 1917). Under this agreement the three Powers recognized that thenceforth all written requests addressed by prisoners of war to the representatives of the Power looking after their interests should be transmitted to the delegates of the Protecting Powers, together with the comments of the military authorities by way of additional information, explanation or denial.

PARAGRAPH 1. — REQUESTS

The difference between " requests ", to which the present paragraph refers, and " complaints ", which are the subject of the following paragraph, corresponds in a way to a spontaneous appeal, on the one hand, and to a contentious appeal, on the other, to the Detaining Power through the intermediary of the Protecting Power. This distinction corresponds to that made in the agreement between France and Germany of March 1918 and calls for a few comments.

The right to complain is customary in all armed forces and it implies that the person availing himself of it can accuse his superior of failing to carry out certain duties. If the drafters of the Convention had taken as a model the procedure applied on the national level, prisoners of war would have been enabled to make direct accusations against the agents of the Detaining Power, and in particular against camp commanders. Such a procedure would, however, not have taken into account the nature of the relationship between prisoners of war and the Detaining Power which results from the state of belligerence.

It therefore seemed more logical and more appropriate to provide for the right to complain to be exercised in two stages. First of all the prisoner of war approaches the military authorities in whose power he is. This right applies to all requests, whatever their gravity ; it exists at all times and in all places and may be exercised verbally or in writing, either direct or through the intermediary of the prisoners' representative, in regard to all the representatives of the Detaining Power at every level of responsibility, from a sentry to the camp commander. This right must obviously be exercised in a manner compatible with the normal requirements of discipline and camp administration and may not be used for purposes other than those arising under the Convention. If need be, the camp commander will issue regulations concerning the exercise of this right.

The expression " military authorities " enables prisoners of war to address requests to authorities superior to the camp authorities. Although the present paragraph expressly authorizes prisoners of war to " make known " requests, implying that the Detaining Power is obliged to take cognizance of such requests, it is unlikely that they would be transmitted without endorsement by the camp commander. For the camp commander is immediately responsible for the application of the Convention (Article 39), and prisoners of war should normally address their requests to him or his deputy. He will de-

termine the form in which requests should be made (in writing, for instance), provided that it is easily accessible to prisoners of war.

PARAGRAPH 2. — COMPLAINTS ADDRESSED TO THE PROTECTING POWER

This paragraph permits a prisoner of war to persist if his request is rejected or if he receives no reply. He may then make a complaint through the intermediary of the Protecting Power. The rôle of the latter is not merely to transmit the complaint to the Power of origin of the prisoner of war concerned ; on the contrary, it is fully in accordance with the spirit of the Convention for the Protecting Power to transmit it to the Detaining Power and if the complaint seems justified, to insist that action be taken on it. The prisoner of war will thus have the support of a Power which can negotiate on an equal footing with the Detaining Power. This is of great importance.

A. *Contents of complaints addressed to the Protecting Powers.* — The word " unrestricted " did not appear in the 1929 text and was the subject of much discussion at the Conference of Government Experts [1], in connection with the Detaining Power's duty to forward complaints.

The problem is to reconcile the Detaining Power's own security requirements with the need to ensure that the right of complaint can be effectively exercised. For reasons of security, the Detaining Power must obviously make sure that prisoners of war do not use it as a means of communication with the outside world. The Conference of Government Experts therefore rejected the suggestion that the words " without amendment " should be added to the obligation to transmit complaints.

Such an addition would have resulted in doing away with censorship, and the Detaining Power could not agree to that. The authors of the Convention considered, however, that matters concerning only the " conditions of captivity " could be mentioned without restriction, and the wording adopted seemed best suited to take into account both the interests of the prisoners of war and the Detaining Power's own security requirements.

[1] See *Report on the Work of the Conference of Government Experts*, pp. 195-197.

B. *Intermediary of the prisoners' representative.* — A flood of more or less well founded complaints might result from the fact that prisoners of war can make complaints without incurring punishment. The intervention of the prisoner's representative is likely to place any such appeals on a more serious footing, and complaints bearing his endorsement will carry more weight and be considered more rapidly [1]. It will probably prevent the development of what has in the past been called a " complaints complex ".

Under the present paragraph, a prisoner of war nevertheless retains the right to apply direct to the representatives of the Protecting Power instead of through the intermediary of the prisoners' representative. The latter is elected by the majority and does not necessarily enjoy the confidence of the minority who must therefore be able to submit complaints without passing through him, especially since the complaints in question may precisely be directed against the prisoner's representative [2].

C. *Intermediary of the Protecting Power.* — The part played by the Protecting Power has already been emphasized, and this procedure was generally applied during the Second World War. The International Committee of the Red Cross, however, also received a great many verbal or written communications which were actually complaints about the conditions of captivity. Most of these complaints were from prisoners of war who had not or no longer had a Protecting Power [3]. In each case, the International Committee of the Red Cross sought the most appropriate means in its power to set the matter right.

Paragraph 3. — Transmission. Impunity

Although the 1929 Convention made no express stipulation in the matter, the belligerents generally did not consider complaints and requests as part of the correspondence quota allowed to each prisoner of war.

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[1] See *Report on the Work of the Conference of Government Experts*, p. 196.

[2] Furthermore, it should be noted that some prisoners of war, for instance those under arrest, are physically unable to use the intermediary of the prisoners' representative and must nevertheless be able to avail themselves of the right of complaint.

[3] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pp. 341-342.

That interpretation was fully consistent with the spirit of Article 42 of the 1929 text, which was obviously intended to establish the right of complaint and request without limitation. The authors of the present Article nevertheless felt that in order to avoid all ambiguity it was preferable to specify the absence of any limitation.

On the other hand, a more important question, which has given rise to some difficulties, is that of delays in transmitting complaints and requests to the authorities qualified to deal with them. If complaints are not transmitted promptly they obviously lose most if not all of their value. Since every complaint is based on an actual situation, it must be examined as rapidly as possible and, if it is disputed, sufficiently soon to enable any necessary verification to be made. Complaints should therefore be transmitted urgently, that is to say without delay and with priority. The text uses the word "immediately" which is sufficiently clear.

Lastly, the present paragraph establishes the impunity of prisoners of war in regard to any unfounded complaints or requests. Here the Convention departs from the regulations applied in national armed forces, which usually punish any excessive use of the right of complaint as being an attack on authority and an act of indiscipline.

Here again the principle of the full liberty of prisoners of war prevails. It is to be hoped that prisoners of war will realize that in their own interest they should make judicious use of the right of complaint and request, and refrain from making complaints which they know to be groundless so that those which are justified can receive the attention they deserve.

Paragraph 4. — Periodic reports

This provision affords useful documentation to the Protecting Powers and also constitutes an important safeguard for prisoners of war, since if there is any delay in transmitting a report which is expected on a given date, the Protecting Power can make enquiries.

The system of periodic reports developed during the Second World War, most of them being addressed to the relief organizations and in particular the International Committee of the Red Cross. Although the Protecting Power, which is in the first place responsible for the protection of prisoners of war, has usually been designated as the central agency for receiving reports, the information which they contain will often concern the relief organizations. The Protecting Power must therefore transmit as rapidly as possible any information of interest to the relief organizations concerned.

Chapter II

Prisoners' Representatives

General Remarks and Historical Survey

A. *Before the 1929 Convention.* — During the 1870 war between France and Prussia, the International Relief Committee for Prisoners of War (Green Cross), which had been established under the auspices of the International Committee of the Red Cross, opened an Information Bureau at Basle. It had already suggested to the military authorities of the two belligerent countries that a " person of trust " should be appointed in each prisoner-of-war camp to be responsible for distributing relief supplies.

The custom of appointing such persons of trust took definite shape during the First World War. Early in the conflict, with the approval of the camp commanders, mutual aid societies had been formed in some German camps for French prisoners of war, in behalf of prisoners who received no parcels. The French Red Cross proposed that this should become a general measure, and in July 1915 the German Government authorized the establishment of mutual aid societies and relief funds in all the camps. At the same time, the International Committee wrote to many camp commanders, suggesting that " men of confidence " should be chosen from amongst the prisoners to receive and distribute relief. This soon became a practice in most of the camps and was confirmed by the bilateral agreements concluded between the belligerents in 1917 and 1918, which provided for the appointment of a relief committee in each camp or labour detachment comprising more than a hundred men of the same nationality ; the committee was to be chosen freely by the prisoners, and furthermore in each detachment of more than ten men a freely elected " man of confidence " was to be appointed to maintain liaison with the relief committee of the main camp [1].

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[1] Franco-German Agreement of March 15, 1918. Article 50 provided that in all camps or labour detachments comprising more than a hundred men, prisoners of war were entitled to appoint relief committees, such appointments being subject to approval by the camp commander. It was the duty of these committees to receive and distribute collective relief shipments.

B. *The 1929 Convention.* — Article 43 of the 1929 Convention codified the duties of the prisoners' representative in regard to relief supplies and also assigned him an important task of a general nature, that of representing prisoners of war before the military authorities and the Protecting Powers. The States agreed that there should be an intermediary between their own representatives and prisoners of war ; such a person would have the confidence of both parties and relations between them would thereby be facilitated. This also made it possible for prisoners of war to participate to some extent in the application of the rules governing their status.

C. *The 1949 Convention.* — The rôle of prisoners' representatives developed immensely during the Second World War, and in almost all prisoner-of-war camps, important responsibilities were entrusted to them. The existence of prisoners' representatives no longer depends on the question of relief but is based on the three following principles :

1. in all places where there are prisoners of war, the prisoners shall freely elect representatives who must be approved by the Detaining Power ;
2. these representatives must co-operate with the Detaining Power with a view to improving the lot of the prisoners ;
3. prisoners' representatives must be accorded all necessary prerogatives for carrying out their tasks : time, material facilities, and freedom of action.

ARTICLE 79. — ELECTION

In all places where there are prisoners of war, except in those where there are officers, the prisoners shall freely elect by secret ballot, every six months, and also in case of vacancies, prisoners' representatives entrusted with representing them before the military authorities, the Protecting Powers, the International Committee of the Red Cross and any other organization which may assist them. These prisoners' representatives shall be eligible for re-election.

In camps for officers and persons of equivalent status or in mixed camps, the senior officer among the prisoners of war shall be recognized as the camp prisoners' representative. In camps for officers, he shall be assisted by one or more advisers chosen by the officers ; in mixed camps, his assistants shall be chosen from among the prisoners of war who are not officers and shall be elected by them.

Officer prisoners of war of the same nationality shall be stationed in labour camps for prisoners of war, for the purpose of carrying out the camp administration duties for which the prisoners of war are responsible. These officers may be elected as prisoners' representatives under the first paragraph of this Article. In such a case the assistants to the prisoners' representatives shall be chosen from among those prisoners of war who are not officers.

Every representative elected must be approved by the Detaining Power before he has the right to commence his duties. Where the Detaining Power refuses to approve a prisoner of war elected by his fellow prisoners of war, it must inform the Protecting Power of the reason for such refusal.

In all cases the prisoners' representative must have the same nationality, language and customs as the prisoners of war whom he represents. Thus, prisoners of war distributed in different sections of a camp, according to their nationality, language or customs, shall have for each section their own prisoner's representative, in accordance with the foregoing paragraphs.

PARAGRAPH 1. — GENERAL PRINCIPLE

A. *Nature of the obligation.* — Under Article 43, paragraph 1, of the 1929 Convention prisoners of war were allowed to appoint representatives, and the Detaining Power was merely required to permit such appointments to be made. The present text is more specific and implies that prisoners of war must hold such elections in order not to lose some of the advantages and safeguards which the Convention affords.

B. *Conditions for elections.* — The 1929 Convention left it to prisoners of war to decide on the election procedure. In fact, during the Second World War, prisoners' representatives were frequently elected not by the whole camp community but by a small number of prisoners with considerable influence, such as chaplains and interpreters [1]. The new Convention specifies that elections must be held by secret ballot and this involves some organization. In camps consisting of several thousands of prisoners of war, especially, balloting may be preceded by a veritable electoral campaign, and this cannot take place without some help from the Detaining Power. The latter must, however, see

[1] See BRETONNIÈRE, *op. cit.*, pp. 252-259.

that no pressure is brought to bear on prisoners of war, and the requirement that the prisoners' representative elected must be approved by the Detaining Power is no justification for that Power to use its influence before the election by restricting the choice of the prisoners.

C. *Time and place of elections.* — The Convention does not specify the stage at which prisoners' representatives may be elected, but in line with the other rights established by the Convention the right to elect prisoners' representatives should obviously obtain from the beginning of captivity. In view of the general wording of the phrase "in all places where there are prisoners of war", there is no need to wait until they are actually in a camp. If circumstances permit, prisoners of war will be able to appoint a prisoners' representative in transit camps. The general wording of the provision therefore enables prisoners' representatives to be elected not only in the main camps which are usually situated on the outskirts of built-up areas, but also in labour detachments.

In 1929 consideration was given to the advisability of specifying a minimum number of prisoners (10, 50 or 100) for the election of a prisoners' representative. The present text leaves no room for doubt : wherever there are prisoners of war, and regardless of their number, there must be prisoners' representatives able to carry out their duties.

D. *Duty of representation.* — In electing prisoners' representatives " entrusted with representing them ", prisoners of war appoint their spokesman before the authorities and agencies listed. This is confirmed by Article 126, which states that delegates of the Protecting Powers and of the International Committee of the Red Cross have the right to interview prisoners' representatives without witnesses.

The prisoners' representative also represents his fellow-prisoners before " any other organization which may assist them ". This function is somewhat restricted by the fact that, pursuant to Article 125, paragraph 2, the Detaining Power may limit the number of societies and organizations whose delegates are allowed to carry out their activities in its territory.

Does the fact that the prisoners' representative acts as an official intermediary deprive prisoners of war of the right to enter into direct contact with the organizations assisting them or the military authorities? As has been seen in connection with Article 78, prisoners of war may address complaints directly to the Protecting Power without

going through the prisoners' representative ; they may also present themselves directly for examination by the Mixed Medical Commissions (Article 113, paragraph 2) ; lastly, under Article 9 of the Regulations concerning collective relief (Annex III), collective relief may be distributed without the participation of the prisoners' representative. It is clear from these provisions that the answer to the question is in the negative.

Although the prisoners' representative has no monopoly over relations with the outside world, as a general rule the authorities and organizations referred to above should nevertheless abstain from dealing directly with prisoners of war on matters which are clearly his concern, such as administrative questions ; once his competence has been established, it should be respected. For their part, these authorities and organizations may consider that in dealing with the prisoners' representative on matters of this kind, they are dealing with the camp community and cannot therefore be held responsible if some of the prisoners are not satisfied with the regulations and arrangements accepted by their representative. During the Second World War, prisoners' representatives kept in close and constant touch with the International Committee of the Red Cross, in addition to routine co-operation concerned with the distribution of relief. They wrote on behalf of prisoners of war to ask for family news or a copy of an official document, to forward a will or a commercial document, a certificate of marriage by proxy, etc. During camp visits, personal contacts were established by the representatives of relief organizations with the prisoners' representatives.

It is the duty of the prisoners' representative in a labour detachment to represent his fellow-prisoners before the non-commissioned officer in charge of the detachment, while the prisoners' representative in the main camp represents prisoners of war before the camp commander. If the prisoners' representative in a labour detachment wishes to bring any matter to the attention of the camp commander, he must do so through the intermediary of the prisoners' representative in the main camp, to whom the necessary communication facilities for this purpose are afforded by Article 81, paragraph 4.

It is not conceivable that a prisoners' representative would approach the military authorities to which the camp authorities are subordinate, unless the former take a direct hand in the camp administration. As already pointed out, prisoners' representatives—like individual prisoners of war—may apply to the camp commander's superiors through the complaint procedure, but such action goes beyond the notion of representation as implied here.

PARAGRAPH 2. — APPOINTMENT OF THE PRISONERS' REPRESENTATIVE IN CAMPS FOR OFFICERS AND PERSONS OF EQUIVALENT STATUS OR IN MIXED CAMPS

In camps for officers [1], the prisoners' representative is appointed according to seniority and not by election. The term " the senior officer " (in French, "le plus ancien dans le grade le plus élevé") has sometimes been taken as meaning the oldest officer with the highest rank. If the words are to have a precise meaning, however, as they must have, it should be what the English text says, viz. the senior officer of the highest rank. Age will only be the determining factor where two officers of the same rank were promoted on the same date. It should, however, be noted that the Detaining Power will not easily be able to check dates of promotion [2].

Thus it is clearly established that, like other prisoners of war, officers have a prisoners' representative. Serious difficulties may result, however, from the fact that he is appointed according to rank, particularly if his state of health makes it difficult for him to carry out the wide range of tasks incumbent on the prisoners' representative. The 1949 text therefore provides a possibility which did not exist in Article 43 of the 1929 Convention : the officer who is the prisoners' representative will be " assisted " by one or more advisers chosen by the prisoners themselves. The intention of the authors of this new provision [3] was that such assistants should be able to help the senior officer of the highest rank by expressing the wishes and opinions of all the prisoners.

In mixed camps, these assistants are to be " elected " and one may suppose that the procedure laid down in Article 79, paragraph 1, will also apply to these elections. In camps for officers, advisers will simply be " chosen by the officers " ; it was not thought necessary to impose such a strict procedure on officers.

The Convention does not stipulate the number of assistants in a camp for officers, and it will depend on the size and conditions of the camp. The authors of the provision seem to have had in mind a small number.

Lastly, it should be noted that the notion of " mixed camps " is an innovation as compared with the 1929 text, and this is the only

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[1] See *Revue Internationale de la Croix-Rouge*, 1943, p. 853.

[2] See Article 28 of the First Convention and *Commentary I*, p. 249, Note 3.

[3] See *Report on the Work of the Conference of Government Experts*, pp. 198-199.

reference to it. As may be seen from the record of the discussions at the Diplomatic Conference [1], the expression refers to camps comprising both officers and other ranks.

PARAGRAPH 3. — SPECIAL DUTIES OF OFFICERS IN LABOUR CAMPS

This provision appeared for the first time at the Diplomatic Conference of 1949, and is based on a proposal by the United States Delegation that the duties of the prisoners' representative in camps for other ranks should be entrusted to officers [2]. In that form it was contrary to the general spirit of the present Chapter and in particular conflicted with the idea that prisoners' representatives should be elected. It is therefore not surprising that the Conference did not accept the proposal in its original form ; it nevertheless retained the idea of entrusting administration duties to officers, and this has the advantage of providing officers with an occupation and at the same time ensuring that the camp administration is in the hands of experienced persons.

The term " labour camp " must not be taken in a punitive sense. Since all prisoners of war belonging to the other ranks are normally required to work, these are merely the camps in which they live, as opposed to camps for officers referred to in paragraph 2. The Detaining Power is responsible for the treatment of prisoners of war and also for carrying out the " camp administration duties ". Depending on the customs of each nation, however, the Detaining Power might leave prisoners of war considerable latitude, if they agree, as regards the organization of the camp. The present provision permits these administrative tasks to be carried out by officer prisoners of war whose work will thus complement that done by the representatives of the Detaining Power.

In no case, however, may these administrative tasks include duties expressly laid upon the prisoners' representatives unless the person in question is elected to that post by the prisoners of war.

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[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 289.

[2] *Ibid.*, Vol. III, p. 78, No. 141.

PARAGRAPH 4. — APPROVAL OF THE DETAINING POWER

Provision was already made in the Franco-German Agreement of 1918 and in the 1929 text (Article 43) for the welfare committee representative elected to be approved by the Detaining Power. This clause, while understandable, may restrict the freedom of prisoners of war to choose their representative ; in order to limit arbitrary action by the Detaining Power, the Convention states that if the Detaining Power does not give its approval, it must inform the Protecting Power of the reasons for refusing. If the Protecting Power considers those reasons valid, it can so inform the prisoners of war who can then advisedly elect another candidate.

PARAGRAPH 5. — GUARANTEES OF IMPARTIALITY AND EQUAL TREATMENT

This text was introduced at the 1949 Conference on the basis of the practice followed during the Second World War by certain Detaining Powers which allowed a prisoners' representative to be appointed for each national group. This solution made it much easier to distribute and share out collective shipments, which were generally grouped according to nationality.

The criteria specified in the first sentence are the same as those stated in Article 22, paragraph 3, concerning the assembling of prisoners of war. They are justified not only by practical needs connected with the distribution of relief, but still more by the general task of representation. In order to carry out that task properly, prisoners' representatives must speak the language of the prisoners concerned and be in sufficiently close contact with them to understand them and, if need be, plead on their behalf. Any other solution might result in inequitable treatment which would be contrary to the principle stated in Article 16.

ARTICLE 80. — DUTIES

Prisoners' representatives shall further the physical, spiritual and intellectual well-being of prisoners of war.

In particular, where the prisoners decide to organize among themselves a system of mutual assistance, this organization will be within the

province of the prisoners' representative, in addition to the special duties entrusted to him by other provisions of the present Convention.

Prisoners' representatives shall not be held responsible, simply by reason of their duties, for any offences committed by prisoners of war.

General

The fact that they have been elected and have accepted the mandate offered to them vests prisoners' representatives with general power to represent their fellow-prisoners. This power must, however, be exercised diligently and with certain specific ends in view.

Reference has already been made to some of the tasks which may be incumbent on prisoners' representatives. Their purpose is to contribute towards improving the lot of prisoners of war or ensuring the proper implementation of the Convention.

The question of collective relief is dealt with by other provisions, the purpose of the present Article being to embody in the Convention a general definition of the duties of the prisoners' representatives.

It does not, however, refer to the consequences of any failure by the prisoners' representative to carry out his duties, either through negligence or because he endeavours to use his position for purposes other than those specified. In such a case, however, he would naturally be liable to dismissal, as mentioned in Article 81, paragraph 6.

The wording of the present Article is sufficiently broad in scope to give prisoners' representatives who have the necessary independent spirit every opportunity of acting in behalf of prisoners of war. Thus, the Convention gives legal recognition to the efforts made and the results achieved by prisoners' representatives during the Second World War in all kinds of matters.

Paragraph 1. — General duties

The general duties specified in the present paragraph are related to the maintenance of prisoners of war in good physical and mental health.

The word " further " should be emphasized. It should not be forgotten that the Detaining Power is responsible for providing for the maintenance of prisoners of war and must also encourage intellectual and recreational activities. Furthermore, ministers of religion are responsible for giving religious and moral assistance to prisoners of war, while doctors must attend to their physical well-being. The prisoners' representative does not therefore assume responsibility

in these matters, but will merely lend his assistance to those who bear that responsibility in its entirety. His rôle will consist mainly of seeing that the provisions of the Convention are respected and, if necessary, intervening to ensure respect for them.

His competence is not limited to representing prisoners of war before the authorities and ensuring the proper application of the Convention. He must also take action in certain matters, such as the following: he can establish relations with the Protecting Powers, the International Committee of the Red Cross and relief societies; set up a legal advice service, transmit legal documents (Article 77), indicate the appropriate procedure for making a will, and forward complaints, requests or periodic reports to the Protecting Power. He will see to it that prisoners under detention actually enjoy all the safeguards to which they are entitled (Articles 89 and 108); if necessary, he will propose the repatriation or admission to hospital of fellow-prisoners (Articles 109, 110, 114 and 115); he will participate in the enquiry instituted by the Detaining Power following the death or serious injury of a prisoner of war in special circumstances (Article 121), etc.

The Convention emphasizes the facilities and prerogatives which must be accorded to the prisoners' representative in the exercise of his duties. It should be noted that action by the prisoners' representative is also limited by certain principles for which the Convention requires respect by him as well as by the Detaining Power, such as non-discrimination and equal treatment, which is a fundamental principle of the Geneva Conventions and of the Red Cross and a basic condition of comradeship among prisoners of war [1].

The prisoners' representative must also bear in mind certain principles such as respect for the person, freedom of religion, respect for individual preferences, particularly in connection with any recreational or educational pursuits which he may organize; lastly, he must give due respect to rank and age and take them into account in organizing work for prisoners of war in their own interest.

Paragraph 2. — Special duties

This paragraph refers to the special duties entrusted to the prisoners' representatives by other provisions of the Convention. The clause in the 1929 Convention concerning systems of mutual assistance

[1] Article 2 of the Regulations concerning collective relief specifies that distribution by the prisoners' representatives of relief supplies must always be carried out equitably.

(Article 43, paragraph 3) was retained because of the great importance of such activities during the Second World War. The 1929 Convention mentioned only two other special duties : the examination of postal parcels (Article 40) and participation in nominating prisoners of war to be presented to the Mixed Medical Commissions (Article 70).

In the light of the experience of the Second World War, the authors of the new Conventions inserted many more references to special duties, and these may be briefly referred to. The rôle of prisoners' representatives falls under three main headings : relief activities, relations with prisoners of war and the authorities, verification that the guarantees provided under the Convention are being respected.

Relief activities

Art. 48, para. 3 :	Measures to ensure the transport of prisoners' community property and their luggage.
Art. 73, para. 2 :	The right to take possession of collective relief shipments, proceed to their distribution or dispose of them in the interest of the prisoners.
Art. 125, para. 4 :	Forwarding of signed receipts to the relief society or organization making the shipment.
Annex III :	Regulations concerning collective relief for prisoners of war ; distribution.

Relations with prisoners of war and the authorities

Art. 57, para. 2 :	Right to remain in communication with prisoners of war who work for private employers.
Art. 78, para. 2 and 4 :	Transmission of complaints to the Protecting Powers. Sending of periodic reports to the Protecting Powers.
Art. 126, para. 1 :	Interview with delegates of the Protecting Powers.

Verification and guarantees

Art. 28, para. 2 :	Collaboration in the management of the canteen and the special fund.

Art. 41, para. 2 :	Transmission of copies of regulations, orders, notices and publications for communication to prisoners of war.
Art. 65, para. 1 :	Verification of prisoners' accounts ; counter-signature of every entry made in a prisoner's account.
Art. 96, para. 4 :	Announcement of the punishment awarded to a prisoner of war.
Art. 98, para. 5 :	Taking over of parcels and remittances of money addressed to prisoners of war undergoing confinement.
Art. 104, para. 3 :	Notification of judicial proceedings instituted against prisoners of war.
Art. 107, para. 1 :	Notification of judgments and sentences.
Art. 113, para. 2 and 3 :	Presentation of prisoners of war for examination by Mixed Medical Commissions.
Annex V :	Model Regulations concerning payments sent by prisoners to their own country (Article 63). Authentication of notification of payment.

Article 62, paragraph 3, concerns the prisoners' representative himself.

This summary shows the importance of the rôle of prisoners' representatives under the new Convention. Account must also be taken of the right of initiative referred to above ; because of this the present provision contains no enumeration of Articles, since it might have given a restrictive interpretation of the duties of the prisoners' representative [1].

Paragraph 3. — Non-responsibility of prisoners' representatives for offences committed by prisoners of war

Because of the importance of their duties, prisoners' representatives will naturally have considerable authority over their fellow-prisoners. The Detaining Power might be tempted to turn this autho-

[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 289 and 364.

rity to its own advantage by considering prisoners' representatives to some extent as representatives of the military hierarchy and, as such, responsible for the actions and attitude of prisoners of war. The temptation to do so is increased by the fact that the prisoners' representatives organize the distribution of collective shipments, and therefore have at their disposal a means of considerable pressure. It would be an easy solution for the detaining authorities to hold prisoners' representatives responsible, merely by virtue of their duties, for offences committed by prisoners of war. In order to safeguard the freedom of action of the prisoners' representative and preserve the respect due to that office, the 1949 Conference therefore added this new paragraph [1].

ARTICLE 81. — PREROGATIVES

Prisoners' representatives shall not be required to perform any other work, if the accomplishment of their duties is thereby made more difficult.

Prisoners' representatives may appoint from amongst the prisoners such assistants as they may require. All material facilities shall be granted them, particularly a certain freedom of movement necessary for the accomplishment of their duties (inspections of labour detachments, receipt of supplies, etc.).

Prisoners' representatives shall be permitted to visit premises where prisoners of war are detained, and every prisoner of war shall have the right to consult freely his prisoners' representative.

All facilities shall likewise be accorded to the prisoners' representatives for communication by post and telegraph with the detaining authorities, the Protecting Powers, the International Committee of the Red Cross and their delegates, the Mixed Medical Commissions and with the bodies which give assistance to prisoners of war. Prisoners' representatives of labour detachments shall enjoy the same facilities for communication with the prisoners' representatives of the principal camp. Such communications shall not be restricted, nor considered as forming part of the quota mentioned in Article 71.

Prisoners' representatives who are transferred shall be allowed a reasonable time to acquaint their successors with current affairs.

In case of dismissal, the reasons therefor shall be communicated to the Protecting Power.

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[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 289 and 364.

General

Prisoners' representatives cannot carry out their duties if they are subject to the same régime as their fellow-prisoners, and certain prerogatives were already granted to them under the 1929 Convention. Those prerogatives related to three main points: exemption from work, correspondence facilities and safeguards against sudden transfer.

The present Convention confirms the existing prerogatives and adds new ones: the right to appoint assistants from amongst the prisoners, and some freedom of movement.

On the other hand, there is no mention of prerogatives of a personal kind or of the right of prisoners' representatives to have more comfortable living conditions than other prisoners. Would such prerogatives be incompatible with the status of a prisoners' representative ? In our view, account should be taken only of the interest of the prisoners and the task to be done. The prisoners' representative must enjoy as much independence and intellectual freedom as is necessary for the efficient performance of his duties, and within the limits of discipline and expediency he will be the best judge of the most favourable working conditions for himself and his assistants.

Paragraph 1. — Exemption from work

Under Article 44, paragraph 1, of the 1929 Convention, the time which prisoners' representatives devoted to that work had to be counted as part of the compulsory period of labour. That provision was mainly designed to ensure that prisoners' representatives received pay.

The latter point is not disputed; prisoners' representatives perform work from which the Detaining Power benefits, and they must therefore be remunerated. This question is not dealt with in the present paragraph, however, but in Article 62, paragraph 3.

Exemption from all other labour will be automatic " if the accomplishment of their duties is thereby made more difficult ". This wording is sufficiently flexible to meet all contingencies ; the prisoners' representative in a small labour detachment will probably need to devote only part of his time to duties in behalf of his fellow-prisoners.

The word " work " here must be taken as indicating any occupation which might prevent the prisoners' representative from ordering his own time and carrying out his duties. It refers not only to work which

the prisoners are required to do under Articles 49 to 57, but also to administration duties carried out in labour detachments by officers in accordance with Article 79, paragraph 3 [1].

PARAGRAPH 2. — ASSISTANTS AND FACILITIES

1. *First sentence. — Assistants*

In order to carry out their many duties, prisoners' representatives in large camps must be able to appoint assistants ; the Convention recognizes this right explicitly and unreservedly. This prerogative must not be questioned or the competence of prisoners' representatives would be illusory. The approval of the Detaining Power is therefore not formally required. If that Power were to object, the prisoners' representative should obviously endeavour to settle the matter in the best interests of his duties and the well-being of the prisoners. He alone is responsible, however, for selecting his assistants and determining their number.

The terminology of the Convention is not very strict in this connection : Article 62, paragraph 3, speaks of " advisers " and " assistants ", while Article 3 of the Regulations concerning collective relief mentions only " assistants ". They will be interpreters, legal advisers, secretaries, assistants competent in matters of storage and handling, all of whom, like the prisoners' representative himself, will be exempted from any other work to the extent that the accomplishment of their duties would " thereby be made more difficult ".

In appointing assistants, the prisoners' representative exercises a right, but he also takes on a duty towards the Detaining Power on the one hand and the prisoners of war on the other hand. He is therefore entitled to grant his assistants exemption from all other work to the extent that their special duties require. This interpretation is confirmed by Article 62, paragraph 3, which provides that the working pay of the advisers and assistants of the prisoners' representative will be paid out of the fund maintained by canteen profits, as will his own.

2. *Second sentence. — Facilities and freedom of movement*

A. *Facilities.* — The Regulations concerning collective relief refer to the facilities necessary for verifying the distribution of relief. It

[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 373.

must therefore be possible to draw up questionnaires and to arrange for verification in an appropriate manner. Although the Convention does not expressly say so, the same will apply to all the other activities of the prisoners' representative and appropriate means must be available for him to carry out his tasks. It is not possible to list them, because they may be many and varied, and also because of the means which may actually be made available to him according to circumstances. By way of indication, however, mention may be made of the following facilities : transport, office space, premises for religious services, libraries, reading rooms, space for sports and games, equipment necessary for publishing a camp newspaper, the requisite security for depositing sums of money belonging to a mutual assistance or other fund, etc.

B. *Freedom of movement.* — The expression used is somewhat ambiguous. The fact that it is expressly mentioned shows that the authors of the Convention were well aware of the importance of the matter, and yet they did not think fit to grant "complete freedom", but only " a certain freedom " [1]. This freedom must be granted whenever " necessary ". Two cases are expressly mentioned : inspection of labour detachments and receipt of relief supplies. On the latter point, Article 3 of the Regulations concerning relief supplies specifies that " prisoners' representatives or their assistants shall be authorized to go to the points of arrival of relief supplies near their camps ".

It should be noted that Article 3, paragraph 2 *(a)*, states that the Detaining Power must place at the disposal of members of the medical personnel and chaplains the necessary means of transport for them to visit periodically prisoners of war situated in working detachments or in hospitals outside the camp. To the extent that the prisoners' representative is called upon to perform similar missions, he should also have the necessary transport facilities.

PARAGRAPH 3. — INSPECTION OF PREMISES ; CONSULTATIONS

The prisoners' representative has the right to visit premises where prisoners of war are detained ; this will enable him to intercede with the detaining authorities or the Protecting Powers in order to obtain any necessary improvements. For although the provision does not

[1] During the Second World War, prisoners' representatives were released on parole by some Detaining Powers in order to enable them to travel from one camp to another.

actually say so, it implies a sort of right of inspection granted to the prisoners' representative and recognized by the Detaining Power. The latter will therefore endeavour as far as possible to give effect to the suggestions and comments made by the prisoners' representative. Here the French text, which speaks of " locaux où sont *internés* ", is more restrictive than the English text in which the word " detained " may be understood as referring to all prisoners of war, even those undergoing detention. The premises which may be visited will include the kitchen, infirmary and other annexes.

The right of a prisoner of war freely to consult his prisoners' representative is of the highest importance ; in this way the prisoners' representative will be able to give assistance not only to his fellow-prisoners in the camp but also to those who are isolated because they work outside the camp. He will inform prisoners of their rights and duties, and will receive their complaints and requests, for transmission to the camp authorities ; he must try at all times to know the state of mind of those who place their confidence in him. This is the best way for him to avoid any injustice, misunderstanding and, above all, nervous tension which may sometimes lead even to open rebellion.

Do prisoners of war have an absolute right to converse at any time or place with their prisoners' representative as part of the latter's duties ? One is tempted to give an affirmative reply to this question, and this would mean that prisoners' representatives would have the right to visit prisoners of war sentenced to disciplinary punishment or to a judicial penalty. Here, however, a few remarks are called for and account must be taken of the spirit in which the measures of sanction were taken : the prisoners' representative may visit prisoners of war undergoing detention, but this right to visit must be justified by other provisions of the Convention. Article 98, paragraph 1, states that a prisoner of war undergoing punishment shall continue to enjoy the benefits of the provisions of the Convention " except in so far as these are necessarily rendered inapplicable by the mere fact that he is confined ".

In accordance with paragraph 5 of the same Article, parcels and remittances of money are to be entrusted to the prisoners' representative until the completion of the punishment. There is therefore nothing here to justify a visit by the prisoners' representative. With regard to prisoners sentenced to a judicial penalty, Article 108, paragraph 3, entitles them to receive at least one relief parcel monthly. In both these cases, the right of consultation provided in paragraph 3 remains valid, especially when action is required concerning the prisoner's family or his interests, that is to say when the prisoners'

representative is called upon to act as a *representative*. The question will not arise in the case of disciplinary punishment, since it is of short duration, but it may well arise when sentence is awarded by a judicial court, and the military authorities must respond favourably to any request by the prisoners' representative based on these considerations.

PARAGRAPH 4. — CORRESPONDENCE FACILITIES

The large quantity of relief consignments sent to prisoner-of-war camps during the Second World War led to a considerable volume of correspondence between prisoners' representatives, who are responsible for administering such shipments, and the various international organizations concerned.

The first of these " facilities " is that, like the ordinary correspondence of prisoners of war, correspondence should be post-free but to a greater extent ; as stated expressly in the last sentence of this paragraph, such correspondence must not be restricted. This is an important privilege, in view of the fact that communication channels are often overloaded in time of war. It also means that such correspondence will not be delayed. The facilities to be granted do not, however, include freedom from censorship, but correspondence may not be withheld. If circumstances so demand, a special censorship service must therefore be instituted or, at least, the correspondence of prisoners' representatives must be given priority. The Detaining Power must also permit communications to be written in a language other than the mother tongue of the prisoner concerned (Article 71, paragraph 3). If need be, the camp authorities must provide the necessary stationery supplies.

PARAGRAPH 5. — TRANSFERS

Article 44, paragraph 3, of the 1929 Convention provided that in case of transfer, the " time necessary " should be allowed for acquainting the new prisoners' representative with the current business. That provision apparently did not always suffice to ensure the normal transmission of powers : during the Second World War, some camp commanders even went so far as to grant the prisoners' representative only one hour for handing over authority. Although

various proposals were made, it was decided not to fix any definite period (one week, for instance [1]), since any decision would have been arbitrary. The word " reasonable " has been added to the previous text, and it should induce camp commanders to take into account the extensive duties and ever-increasing number of tasks of a prisoners' representative.

PARAGRAPH 6. — DISMISSAL

As has been seen, every prisoners' representative elected by prisoners of war must be approved by the Detaining Power (Article 79, paragraphs 1 and 4). If it does not approve, the Detaining Power is entitled to dismiss the person elected. Can the prisoners of war themselves dismiss a representative elected by them ? Article 79, paragraph 1, enables them to show disapproval by not re-electing the prisoners' representative, since elections must be held every six months. The Convention provides no procedure, however, for a case where prisoners of war have grounds to demand that their representative should resign immediately ; it makes provision only for dismissal of a prisoners' representative by the Detaining Power. One solution would be for the prisoners of war to submit a request to the military authorities for recognition to be withdrawn from the prisoners' representative. If the Detaining Power is satisfied that that is the wish of the majority of prisoners, it may arrange for fresh elections to be held, and the results thereof will justify or not, as the case may be, the request made by the prisoners of war.

The Detaining Power may at any time withdraw its approval and request prisoners of war to hold new elections. It must advise the Protecting Power of the actual reasons for its decision and may not merely state that there is no longer mutual confidence between the prisoners' representative and its own representatives. The obligation laid on the Detaining Power is not merely to report by way of information ; it implies that the Protecting Power verifies the decisions taken by the Detaining Power, and the latter must therefore provide a full explanation of its action.

[1] See *Report on the Work of the Conference of Government Experts*, p. 201.

Chapter III

Penal and Disciplinary Sanctions

I. General Provisions

ARTICLE 82. — APPLICABLE LEGISLATION

A prisoner of war shall be subject to the laws, regulations and orders in force in the armed forces of the Detaining Power; the Detaining Power shall be justified in taking judicial or disciplinary measures in respect of any offence committed by a prisoner of war against such laws, regulations and orders. However, no proceedings or punishments contrary to the provisions of this Chapter shall be allowed.

If any law, regulation or order of the Detaining Power shall declare acts committed by a prisoner of war to be punishable, whereas the same acts would not be punishable if committed by a member of the forces of the Detaining Power, such acts shall entail disciplinary punishment only.

Paragraph 1. — General

1. *First sentence. — Principle of assimilation*

Prisoners of war are retained for military reasons and they remain military personnel. The authors of the Hague Regulations therefore deemed it natural and sufficient to make them subject to the same penal and disciplinary legislation as members of the armed forces of the Detaining Power, and liable to the same punishment for similar actions, except as otherwise provided by the special regulations applicable to escape.

The experience of the 1914-1918 war showed, however, that abuses might result from any strict assimilation of prisoners of war with the armed forces of the Detaining Power [1], and the authors of

[1] See especially with regard to the First World War, G. Cahen-Salvador, *op. cit.*, p. 80 ff., and, with regard to the Second World War, *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, p. 352 ff.; as regards the Far East, see *ibid.*, p. 439 ff. See also Bretonnière, *op. cit.*, p. 280 ff.

the 1929 Convention endeavoured to lay down certain rules in order to ensure a more precise penal and disciplinary system for prisoners of war.

The penal code applicable to members of the armed forces is designed to maintain strength and unity, and it usually provides for very severe penalties. There is, however, no reason for treating prisoners of war so severely; they remain enemies whose patriotism must be respected, " so that certain acts, which may be offences on the part of military personnel engaged in serving their country, cannot be considered as such when committed by prisoners of war whose only link with the Detaining Power is that they are its captives " [1]. Thus, an attempt to escape, for instance, cannot be considered in the same light as desertion, nor can unrest in a prisoner-of-war camp be assimilated to mutiny in the armed forces. It was suggested that prisoners of war might be subjected to the ordinary penal legislation of the Detaining Power, but serious disadvantages are involved in this solution, since they are military personnel [2]. There can be no question of applying the legislation of the State of origin of the prisoners of war, since there is such diversity between the various national legislations that the same offence would be liable to different punishments; moreover, one could not expect judges to be acquainted with all those various legislations.

The question therefore arose of establishing a penal code specially for prisoners of war and this was considered soon after the end of the First World War. The Xth International Conference of the Red Cross, held at Geneva in 1921, which had already studied the basic provisions for a Convention relative to the treatment of prisoners of war, made the following recommendation : " An international code of disciplinary and penal sanctions applicable to prisoners of war should be included in this Convention ". The problems involved in the establishment of special legislation applicable in war-time were, however, so great that this wish could not be realized [3]. It must be admitted that such a solution would have but little chance of acceptance. Bretonnière points

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[1] A. R. WERNER, *La Croix-Rouge et les Conventions de Genève, Analyse et Synthèse juridiques*, Geneva 1943, p. 317.

[2] In some countries—for instance Great Britain and India—only certain offences of a purely military nature (desertion, mutiny, insubordination, etc.) are punishable under military legislation. For all other offences, members of the armed forces are subject to the ordinary penal legislation.

[3] See *Revue internationale de la Croix-Rouge*, 1923, pp. 770-778. The question recurs at the present time still more acutely because of the development of coalition organizations, which may raise most difficult problems in time of war. (See above, the commentary on Article 12.)

out that it is difficult to expect a State to accept limitations of its sovereignty in war-time, when the penal legislation regarding public order applicable on the territory of each State is generally reinforced[1]. He also remarks that if such a solution were adopted, it is to be feared that a decision by one belligerent not to conform to the rules, for reasons of national security, might automatically lead the other belligerents to adopt the same attitude, perhaps with very grave consequences.

As already noted, the authors of the 1919 Convention therefore supported the principle already stated in the Hague Regulations, subject to certain exceptions favourable to prisoners of war. These exceptions may be divided into four groups : general provisions, penal sanctions, disciplinary sanctions, escape. The Diplomatic Conference established the new system on similar lines [2].

It should also be noted that the principle of assimilation is expressly confirmed in the following provisions : in regard to the determination of penalties, Articles 87, paragraph 1, and 88, paragraphs 2 and 3 ; in regard to the execution of penalties, Article 88, paragraphs 1, 2 and 3 ; in regard to procedure, Article 84. Besides special and general exceptions, mention must also be made of the derogation expressly stated in the second paragraph of the present Article, covering acts which are punishable only when committed by a prisoner of war.

On the other hand, the second portion of the present sentence, which authorizes the Detaining Power to take judicial or disciplinary measures in respect of any offence committed by a prisoner of war against the laws, regulations and orders referred to, is merely a corollary and logical consequence to the first portion. The text was somewhat modified as compared with the corresponding provision in the 1929 Convention which made the application of sanctions subject to an " act of insubordination " on the part of prisoners of war. The Government Experts considered, however, that the term " insubordination " might give the impression that a prisoner of war owed some allegiance to the Detaining Power, which is inadmissible since a prisoner of war, in his capacity as a member of the armed forces, is bound only to his own country [3]. Although the legislation

[1] See BRETONNIÈRE, *op. cit.*, pp. 289-290.

[2] The delegates to the Conference of Government Experts also considered that it would be very difficult to set up a special penal code for prisoners of war, and decided to amplify and make more specific the rules and procedures already laid down in the 1929 text. See *Report on the Work of the Conference of Government Experts*, p. 203.

[3] See *Report on the Work of the Conference of Government Experts*, p. 204.

of the Detaining Power is applicable to him during his captivity, he remains subject to the military law of his State of origin, as a member of its armed forces. He may therefore be made answerable before the courts of his country for his acts, and cannot plead in defence that national legislation is inapplicable because it is suspended by Article 82 [1].

2. *Second sentence. — Limitation of principle*

The text of this sentence is very similar to the corresponding provision in the 1929 Convention (Article 45, paragraph 3) ; it makes a reservation in the case of special provisions of the Convention, based first on humanitarian considerations and secondly, as has already been pointed out, on the fact that a distinction must be made between the status of prisoners of war and that of members of the armed forces. The provisions concerning escape, disciplinary and penal sanctions are commented upon under the corresponding Articles, below.

With regard to exceptions of a general nature, a distinction must be made between those relating to the assessment of punishment (general leniency clause, Article 83 ; leniency based on the argument of non-allegiance, Article 87, paragraph 2), those concerned with the prohibition of cruel or humiliating punishment (Article 87, paragraphs 3 and 4) and lastly those which concern the treatment of prisoners of war after sentence has been served (Article 88, paragraph 4).

PARAGRAPH 2. — DEROGATION (Discriminatory legislation)

This provision, which governs the application to prisoners of war of laws, regulations and orders not applicable to members of the armed forces of the Detaining Power, is entirely new. It is based on the experience of the Second World War, when certain Powers adopted repressive measures in regard to prisoners of war, sometimes entailing very severe penalties, particularly in the case of relations between prisoners of war and the female population [2]. Without depriving the

[1] See *Report on the Work of the Conference of Government Experts*, Report of the legal sub-commission of the Second Commission, in connection with Chapter III, p. 2.

[2] See BRETONNIÈRE, *op. cit.*, pp. 283-284 ; see also *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, p. 356 ; FREY, *op. cit.*, p. 61 ff.

Detaining Power of the right to establish laws, regulations and orders applicable only to prisoners of war, it was therefore necessary to limit that right because of the personal and relatively slight nature of such offences. Those liable to severe punishment were already covered by the laws and penal codes promulgated before the outbreak of hostilities [1].

The best solution was therefore to provide that infringements of laws, regulations or orders specially laid down for prisoners of war should entail disciplinary punishment only, and the present provision was drawn up in that sense.

ARTICLE 83. — CHOICE OF DISCIPLINARY OR JUDICIAL PROCEEDINGS

In deciding whether proceedings in respect of an offence alleged to have been committed by a prisoner of war shall be judicial or disciplinary, the Detaining Power shall ensure that the competent authorities exercise the greatest leniency and adopt, wherever possible, disciplinary rather than judicial measures.

Here there is some divergence between the English and French texts. The literal translation of the French version would be as follows : " In determining whether an offence committed by a prisoner of war must be punished by a judicial or a disciplinary penalty... " (" Lorsqu'il s'agira de savoir si une infraction commise par un prisonnier de guerre doit être punie disciplinairement ou judiciairement... "). The English text speaks of proceedings, whereas the French text speaks of punishment. The latter refers to an offence actually committed by a prisoner of war, while the English text mentions only the allegation of such an offence.

In both cases, however, a special procedure must be followed because the prisoner of war has no bond of allegiance vis-à-vis the Detaining Power and must therefore be treated with leniency when his case is considered.

Whether it is a matter of instituting proceedings or of imposing sanctions, a decision as to whether such proceedings or sanctions should be judicial or disciplinary in nature can be taken only after consideration of the " honourable motives " which prompted the prisoner of war to act in that manner.

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[1] See *Report on the Work of the Conference of Government Experts*, p. 205.

The result will therefore be the same whenever the offence is proved to have been committed. The difference between the two texts concerns only the existence of the offence ; the important thing is that once the fact of the offence is established, disciplinary rather than judicial measures should be adopted because of the leniency which must be exercised. On this point, which is the essential part of the present Article, the two texts are in full agreement.

It had already been stated in Article 52 of the 1929 Convention that the competent authorities should " exercise the greatest leniency " in considering whether facts in connection with escape or attempted escape should be punished by disciplinary or by judicial measures.

The authors of the new Convention retained that provision in Article 93, paragraph 2, but they decided to supplement it and to emphasize its general scope by inserting the present Article at the beginning of the Chapter relative to penal and disciplinary sanctions [1].

The Convention recommends that as regards the choice between penal and disciplinary sanctions, the latter should be adopted in preference " wherever possible ". Because of his special status, and regardless of the two factors already referred to—honourable motives and absence of any duty of allegiance—a prisoner of war is subject more than anyone else to the influences which are generally recognized as extenuating circumstances : extreme distress, great temptation, anger or severe pain. This special situation justifies the " greatest leniency " which the Convention demands, especially since apart from the provisions contained in the present Chapter the prisoner of war is not subject to special legislation, but to " the laws, regulations and orders in force in the armed forces of the Detaining Power " (Article 82, paragraph 1).

ARTICLE 84. — COURTS

A prisoner of war shall be tried only by a military court, unless the existing laws of the Detaining Power expressly permit the civil courts to try a member of the armed forces of the Detaining Power in respect of the particular offence alleged to have been committed by the prisoner of war.

In no circumstances whatever shall a prisoner of war be tried by a court of any kind which does not offer the essential guarantees of inde-

[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 304 and 517-518.

pendence and impartiality as generally recognized, and, in particular, the procedure of which does not afford the accused the rights and means of defence provided for in Article 105.

Paragraph 1. — Competence of military courts

The present paragraph establishes the competence of military courts. It was considered that, despite the advantages which prisoners of war might possibly have derived from appearing before civil courts, since they are generally less severe than military courts, it was preferable to recognize the competence of the latter. In time of war, wide powers are conferred on courts-martial and it is they which consider infringements of the military laws and regulations to which prisoners of war are subject, pursuant to Article 82. It therefore seemed appropriate to make this system the general rule.

An essential reservation is, however, contained in the second part of the present paragraph. In some countries, in particular the United Kingdom, by long-standing custom, civil tribunals alone are competent to deal with certain offences, whether or not committed by members of the armed forces to whom prisoners of war are assimilated.

Paragraph 2. — Essential guarantees

This provision is intended to clarify and reinforce the principle of the normal jurisdiction of military courts as stated in the first paragraph, by indicating the relevant guarantees. It was no easy matter to find a text covering the various guarantees which were thus to be afforded to prisoners of war and in one simple sentence to make a general reference to them.

The first text drafted during the preparatory work merely referred to " the essential guarantees of independence and impartiality generally recognized ", but the wording seemed very difficult to interpret in the absence of any international codification. In order to clarify the text, some delegations proposed the insertion of a specific reference to Article 105. In the case of either a civilian or a military court, the guarantees specified in Article 105 below therefore represent the minimum conditions which must be fulfilled by any court called upon to try prisoners of war.

ARTICLE 85. — OFFENCES COMMITTED BEFORE CAPTURE

Prisoners of war prosecuted under the laws of the Detaining Power for acts committed prior to capture shall retain, even if convicted, the benefits of the present Convention.

HISTORICAL BACKGROUND

The 1929 Convention contained no provision concerning the punishment of crimes or offences committed by prisoners of war prior to their capture. Although Articles 45 to 67 of that Convention do not specifically exclude such acts, it seems probable that the drafters actually had in mind only acts committed during captivity.

At the end of the Second World War, this gap in the text of the 1929 Convention gave rise to much discussion until sentences were passed in most of the Allied countries. Among the prisoners of war who were nationals of the vanquished Powers were many persons who were accused of war crimes, and crimes against peace and humanity. During the ensuing trials, a number of the accused asked to be afforded the guarantees provided by the 1929 Convention in regard to judicial proceedings.

The International Committee of the Red Cross, while refraining from giving any opinion on the exact status of captured military personnel accused of war crimes, requested that the guarantees afforded by Articles 45 to 67 should be applied to them for, in its view, those guarantees constituted only a minimum standard recognized by the majority of civilized nations. In almost every case the courts of the Allied countries rejected the requests of the accused. Thus, the United States Supreme Court rejected a request by General Yamashita of Japan on this point (in a judgment dated February 4, 1946) [1]. Similarly in France, on July 24, 1946, the Supreme Court of Appeal rejected a petition by an accused German [2]. In the Netherlands, in the Rauter case, the Special Court of Appeal gave a finding on January 12, 1949, which also rejected the arguments presented by the accused on this subject [3]. A like finding was given in Italy by the Supreme Court of Appeal in the Wagner case [4].

[1] See *Law Reports of Trials of War Criminals*, Vol. 4, p. 1 ff. One judge gave a dissenting opinion.

[2] *Ibid.*, Vol. 3, pp. 23, 42 and 50.

[3] *Ibid.*, Vol. 14, p. 116.

[4] *Giurisprudenza Completa della Corta Suprema di Cassazione Sez. Penale*, 1950, III, p. 30 (October 28, 1950).

Similar judgments were given in other countries, all based, generally speaking, on the following considerations:

(a) it is a well-established rule of customary law that those who have violated the laws of war may not avail themselves of the protection which they afford. Captured members of enemy armed forces who have committed war crimes cannot therefore claim the status of prisoners of war;

(b) the fact that the 1929 Convention made no mention of this matter shows that there was no intention of modifying the customary rules which already existed.

In one country, however — France — this view was not maintained. On July 26, 1950, the French Supreme Court of Appeal, meeting in plenary session, gave a finding which reversed the jurisprudence previously established by its own Criminal Court. The Supreme Court of Appeal was actually called upon to settle the particular point of the composition of a military court which was to try a war criminal. In its finding, it held that a prisoner of war could only be tried by the same courts and according to the same procedure as members of the armed forces of the Detaining Power, pursuant to Article 63 of the Prisoners of War Convention of July 27, 1929, which applied absolutely, even if the prisoner was answerable for acts committed prior to his captivity. This decision was of little practical effect, however, since by the time it was taken most of the proceedings instituted against prisoners of war accused of war crimes had already been completed.

The International Committee of the Red Cross followed with some concern the course of justice in the various countries where proceedings were instituted against prisoners of war in respect of offences committed prior to their capture. In its opinion, it was dangerous not to afford to the accused the guarantees provided by an international convention which, as has been seen above, do not exceed those accruing from the procedural laws of most States. The International Committee's concern was increased by the fact that, in most countries, proceedings against war criminals were based on special *ad hoc* legislation and not on the regular penal legislation of the countries concerned. Furthermore, it seemed illogical and unjust to prejudge the guilt of the accused, since they were deprived of the protection of the Convention before actually having been found guilty of war crimes. Even assuming that the rule of customary law which was cited actually

exists, it can only be applicable after a court has given its finding. For under modern law, the accused is presumed innocent until his guilt is proved.

When the International Committee of the Red Cross undertook the revision of the 1929 Convention, it therefore gave immediate attention to introducing provisions which would afford certain guarantees to prisoners of war, even when accused of war crimes, and remove all ambiguity which had resulted from the earlier text.

At the Conference of Government Experts, which met at Geneva in 1947, the International Committee proposed that prisoners of war accused of war crimes should continue to receive all the benefits of the Convention until their guilt was definitively proved. This suggestion received only limited support from the Commission of Experts, which merely suggested that prisoners of war should enjoy the benefits of the Convention until a *prima facie* case was made out against them and they were indicted of war crimes. In particular the Anglo-Saxon Powers were opposed to the maintenance of the benefits of the Convention until a court passed sentence.

The International Committee did not, however, share the view expressed by the Commission of Experts, and in the draft revised Convention which it submitted to the XVIIth International Red Cross Conference at Stockholm, it again proposed that prisoners of war should continue to enjoy the benefits of the Convention until such time as they had actually been judged. At Stockholm, the delegations which had formerly opposed the maintenance of the benefits of the Convention until after conviction changed their opinion completely ; they proposed—and the Conference agreed—that prisoners of war should continue to enjoy those benefits even after they had been judged. Article 85 was therefore submitted to the Diplomatic Conference in its present form.

Discussion of the Article at the Diplomatic Conference was protracted and often difficult. Most of the opposition came from the USSR Delegation, which considered that prisoners of war convicted of war crimes or crimes against humanity should be deprived of the benefits of the Convention *after conviction.* In other words, that Delegation wished to revert to the text submitted to the Stockholm Conference. The USSR Delegation considered that there was no reason why prisoners of war convicted of such crimes should not be treated in the same way as persons serving sentence for a criminal offence in the territory of the Detaining Power. Those in favour of the text as it now stands pointed out that the object of the Convention was to afford protection to prisoners of war ; the few humanitarian rules

which it provided for convicted prisoners of war could not in any way jeopardize or hamper the repression of war crimes. This view was finally adopted by the Diplomatic Conference but, as will be seen later, the USSR and several other States entered a reservation in this connection when they ratified the Convention.

During the discussion, several speakers pointed out that in many cases it would be inappropriate and even unjust to try prisoners of war accused of war crimes while hostilities were still in progress. Furthermore, in its report, the Committee which considered this Convention [1] emphasized that national legislation clearly defines that anyone who breaks the law remains, without prejudice to his punishment, under the benefit of such legislation. This reasoning seems fully justified, and one may well wonder on what basis the courts of the Allied countries declared the existence of a rule of customary law according to which a person who violates international law is not eligible for its benefits. For our part, this is merely an affirmation without corroboration. Moreover, as has already been stated, it could only be applied once the person concerned had been convicted.

COMMENTARY ON THE ARTICLE

1. " . . . *prosecuted under the laws of the Detaining Power* . . . "

This clearly refers only to judicial proceedings, and not to disciplinary procedures.

The wording of this provision has given rise to some confusion. Certain authors have attempted to deduce that since violations of the laws and customs of war are offences against international law, they are not covered by the present Article ; they have also pointed out that Article 99 refers expressly to international law, while the present Article mentions only the legislation of the Detaining Power.

The foregoing comments on the historical background of the present Article show that this interpretation is contrary to the intentions of the drafters of the Convention. Moreover, it is contrary to the text of the Article. The term " laws of the Detaining Power " obviously covers not only that Power's ordinary penal legislation, but also the treaties to which it is a party. In many countries legislation must be enacted for the punishment of offences against a treaty. Thus, many States which have ratified the Geneva Conventions of 1949 have

[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 570-571.

promulgated penal legislation for their implementation. In other countries, treaties are part of the national legislation and must be respected, without any special legislation being necessary. This is the case of the United States of America, where according to the Constitution, treaties are part of the law of the land. It is therefore clear that the term " laws of the Detaining Power " must be construed as referring not only to national legislation but also to the provisions of treaties to which the State concerned is a party. Each State will have to determine whether, according to its constitution or basic legislation, special provisions are necessary to introduce treaties into national legislation so that penal proceedings can be instituted when required.

Article 99 states that no prisoner of war may be tried or sentenced for an act which is not forbidden by the law of the Detaining Power or by international law, in force at the time the said act was committed. Here the reference to international law is fully justified ; the intention is to ensure that a Detaining Power cannot, in order to justify a conviction, cite a provision of international law which is disputed, not recognized or even vague. In those countries where international law is automatically part of the national legislation this restriction may be of great importance and it is an appropriate complement to Article 85.

The reference to the laws of the Detaining Power does not seem absolutely necessary in the present Article ; it would have been just as clear if it had merely mentioned prosecution for acts committed prior to capture. The wording—" under the laws of the Detaining Power "—seems, however, to have been chosen deliberately. Reference might have been made to " acts punishable under the laws of the Detaining Power ". In adopting the text as it now stands, the intention seems to have been to refer to the rules which govern penal jurisdiction. In practice, many of the offences or crimes committed by prisoners of war prior to capture will have been committed outside the national territory of the Detaining Power. The legislation of this Power must therefore establish the competence of its courts to institute proceedings in respect of acts committed outside the national territory. This was probably the reason for the phrase " under the laws of the Detaining Power ".

2. " . . . *acts committed prior to capture* . . . "

It is obvious that most of the acts committed prior to capture for which a prisoner of war may be tried are violations of the laws and

customs of war. At the same time, Article 85 does not exclude the possibility of prosecution in respect of other acts. Before attempting to define and classify such acts, it may be noted that international law specifically precludes prosecution in two cases :

(a) Under Article 31 of the Hague Regulations of 1907, a spy who, after rejoining the army to which he belongs, is subsequently captured by the enemy, must be treated as a prisoner of war and incurs no responsibility for his previous acts of espionage. This applies to espionage before the outbreak of hostilities as well as to that committed in the course of the war ;

(b) Under Article 91 of the present Convention, prisoners of war who have succeeded in escaping and who are recaptured are not liable to any punishment in respect of their previous escape.

The acts in respect of which proceedings may be instituted may be classified as follows :

A. *Acts not connected with the state of war.* — Such acts consist of violations of common law, which may have been committed either before or during the war—frequently outside the national territory. Since in every country of the world, competence in penal matters is based on the criterion of territorial jurisdiction, there can only be a prosecution if the penal legislation provides for the punishment of offences committed outside the national frontiers. The penal legislation of many countries provides for the punishment of crimes and offences committed abroad against citizens and their possessions, as well as against the State itself.

As may be seen, the Detaining Power will only have such competence in a very limited number of cases. As an example, one may suppose that A, a national of country X, has killed or wounded, on the territory of that Power, B who is a national of country Y, in whose hands A is a prisoner of war ; furthermore, it would be necessary for A not to have been tried for that crime by country X, since in accordance with Article 86, no prisoner of war may be punished more than once for the same act or on the same charge.

In the case of offences against common law committed in national territory, it would be necessary either for the offender not to have been arrested on national territory or for the State not to have obtained an extradition order.

As may be seen, proceedings in respect of offences against common law are extremely rare. The question is rather more delicate in the

case of offences against the interests of the Detaining Power, such as political offences, offences against the customs or financial regulations, and so forth.

As far as political offences are concerned, there can be no question of trying a prisoner of war for an act or an attitude which is punishable under the laws of the Detaining Power but would not have been a matter for prosecution in his country of origin. Thus, for instance, it is inconceivable that a detaining State under whose laws it is a punishable offence to be a member of the Communist party or of an anti-Communist party, would prosecute a prisoner of war who in his own country is legally a member of the Communist party or of an anti-Communist party.

Breaches of customs and fiscal regulations are normally only punishable in the country against which such offences are directed. Captivity is an accidental circumstance which is completely independent of the wishes of the prisoner of war, and it would therefore seem unjust if a prisoner of war could be tried in such conditions, since it is solely because of the war that he is in the hands of the only State which can punish him.

Lastly, it may be said that, in general, acts not connected with the state of war may give rise to penal proceedings only if they are punishable under the laws of both the Detaining Power and the Power of origin. As a parallel, reference may be made to extradition agreements or to the customary rules concerning extradition. An act in respect of which there could be no extradition should not be punished by the Detaining Power. One may also examine whether prosecution would have been possible in the country of origin. If the answer is in the negative, the prisoner of war should not be tried by the Detaining Power.

B. *Acts connected with the state of war.* — Three categories of acts may be considered :

(a) *Crimes against peace :* In the context of the present Convention, only a war of aggression will be considered. In the draft Code of Offences against the Peace and Security of Mankind, the United Nations International Law Commission has defined this crime in the following terms : " Any act of aggression, including the employment by the authorities of a State of armed force against another State for any purpose other than national or collective self-defence or in pursuance of a decision or recommendation by a competent organ of the United Nations ".

In the commentary accompanying this Article, the Commission stated :

> The offence defined in this paragraph can be committed only by the authorities of a State. A criminal responsibility of private individuals under international law may, however, arise under the provisions of paragraph (12) of the present Article (which refers to conspiracy, incitement, attempts and complicity).[1]

To launch or wage a war of agression is obviously a crime which can be committed only by those who govern, that is to say by persons who directly influence the political direction of a State. It will be recalled that at Nuremberg the International Military Tribunal established as a criterion for the existence of this crime direct participation in a plan established with a view to an aggressive war, and that several of the accused were acquitted on this count because, although they held high office, they had had no influence on the decisions taken.

At the trial of German generals who were members of the Military High Command, the United States Military Tribunal expressed the following view :

> We are of the opinion that, as in ordinary criminal cases, so in the crime denominated aggressive war, the same elements must all be present to constitute criminality. There first must be actual knowledge that an aggressive war is intended and that if launched it will be an aggressive war. But mere knowledge is not sufficient to make participation even by high-ranking military officers in the war criminal. It requires in addition that the possessor of such knowledge, after he acquires it shall be in a position to shape or influence the policy that brings about its initiation or its continuance after initiation, either by furthering, or by hindering or preventing it. If he then does the former, he becomes criminally responsible ; if he does the latter to the extent of his ability, then his action shows the lack of criminal intent with respect to such policy. [2]

History, whether recent or more distant, does not record any case of a State launching an armed conflict with the declared intention of engaging in a war of aggression. On the contrary, the most categorical cases of aggression have been presented by their authors as obvious acts of justice or self-defence. In other words, most of the general public and the armed forces remain totally unaware of the true nature of a war.

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[1] See *Report of the International Law Commission covering the work of its third session*, United Nations, New York, 1951, p. 12.

[2] *Law Reports of Trials of War Criminals*, Vol. XII, p. 68.

Even supposing that the fact of aggression is clearly established, there can therefore be no question of instituting penal proceedings against a large number of prisoners of war or against certain categories of them. If the Detaining Power considered that it had reason to institute such proceedings, that could only be in exceptional cases, against prisoners of war who in their own country had a direct influence on the decisions which led to the launching of the war of aggression.

This is not the appropriate place in which to attempt to define aggression. It may, however, be recalled that for some years past the General Assembly of the United Nations has been endeavouring to arrive at such a definition ; and despite the efforts of two committees, composed of eminent jurists and politicians, it proved impossible to arrive at a formula acceptable even to a simple majority of Member States.

(b) *War crimes.* — The International Law Commission has defined war crimes as : " Acts in violation of the laws or customs of war. " [1]

War crimes may be very varied in nature. *The grave breaches of the Geneva Conventions enumerated in Articles 50/51/130/147 are the best known war crimes,* but other violations of those Conventions or of other international agreements may also constitute war crimes. The following are a few examples : the use of poisoned weapons or prohibited weapons or missiles ; the continuation of fighting after surrender ; the mutilation of bodies ; attacks on places which are not defended and are of no military significance ; abuse of the parliamentary flag or attacks on members of parliament clearly identified as such ; abuse or violation of the protective red cross emblem ; the wearing of civilian clothing by members of the armed forces for purposes of disguise ; the use of specially protected buildings for military purposes ; the poisoning of springs and water courses ; pillage and wanton destruction ; compelling prisoners of war or civilians to do prohibited work ; execution without trial of spies or persons who have committed hostile acts ; violation of an armistice or capitulation agreement, etc.

Violations of the laws and customs of war may vary greatly in importance. Some minor violations are dealt with by administrative measures or are merely punished by disciplinary penalties.

For a long time, it was maintained in various military manuals that all violations of the laws and customs of war could be punished by death. This attitude has fortunately been abandoned. Thus, for

[1] *Report of the International Law Commission covering the work of its third session,* p. 13.

instance, the most recent version of the United States Military Manual, entitled " The Law of Land Warfare " (F.M. 27.10 published in 1956) provides in paragraph 508 that punishment for a violation of the laws of war must be proportionate to the gravity of the offence, and that the death penalty may be imposed for grave offences.

Proceedings in respect of war crimes may not be brought against prisoners of war in conditions and at a time when any normal defence of the prisoners' interests is impossible. As long as hostilities continue, a prisoner of war accused of such offences will usually be unable to adduce the proof or evidence which might absolve him of responsibility or reduce that responsibility. It seems necessary that, except in special cases, prisoners of war accused of war crimes should not be tried until after the end of hostilities, that is to say when communications have been re-established between the belligerent countries and the prisoner is in a position to procure the necessary documents for his defence and to call witnesses.

If prisoners of war were nevertheless tried while hostilities were still in progress, in conditions which would not afford them a proper defence, they would in fact be deprived of the regular trial to which they are entitled under Article 99. A trial conducted in such circumstances could then constitute a grave breach of the Convention, as covered by Article 130.

(c) *Crimes against humanity.* — The International Law Commission gave the following definition : " Inhuman acts by the authorities of a State or by private individuals against any civilian population, such as murder, or extermination, or enslavement, or deportation, or persecutions on political, racial, religious or cultural grounds, when such acts are committed in execution of or in connection with other offences defined in this Article ".

The other offences defined in the Article in question are, in particular, acts of aggression and acts in violation of the laws or customs of war. The case under consideration is therefore that of acts committed in time of war but which are not violations of the laws or customs of war. A possible example would be that of a belligerent which engaged in the persecution of a section of its own population in war-time. Prisoners of war in the hands of the enemy might also be responsible for acts of this kind. It is unlikely, however, that under the penal legislation of the Detaining Powers their courts would be competent to try such acts when committed outside the national territory, neither the victim nor the offender being nationals of the Detaining Power concerned.

3. " . . . *the benefits of the present Convention* . . . "

Prisoners of war prosecuted for acts committed prior to capture must enjoy all the safeguards which the Convention provides : notification of the Protecting Power, assistance by a qualified advocate or counsel, knowledge of the procedure to be followed, the right to call witnesses, the services of an interpreter, etc.

4. " . . . *even if convicted* . . . "

The rules contained in the Convention will apply to prisoners of war sentenced for acts committed prior to capture ; thus for instance if they are sentenced to death, the time-limit specified in Article 101 must be respected ; if they are sentenced to imprisonment, the provisions of Article 108 of the Convention must in particular be observed. They will serve their sentence under the same conditions as nationals of the Detaining Power, but at the same time they will enjoy certain rights under the Convention. They will be able to receive and send correspondence, receive relief parcels, submit complaints, be visited by representatives of the Protecting Power and the International Committee of the Red Cross, etc.

This is where the present Article makes the most important innovation as compared with the corresponding provisions of the 1929 Convention.

5. *Reservations*

Reservations in regard to Article 85 were made by the following States : Albania, Bulgaria, the Byelorussian Soviet Socialist Republic, the People's Republic of China, Czechoslovakia, the German Democratic Republic, Hungary, the Democratic People's Republic of Korea, Poland, Rumania, the Ukrainian Soviet Socialist Republic, the Union of Soviet Socialist Republics and the People's Republic of Vietnam.

The content of these reservations is the same, although they vary slightly in form. The USSR reservation reads as follows :

The Union of Soviet Socialist Republics does not consider itself bound by the obligation, which follows from Article 85, to extend the application of the Convention to prisoners of war who have been convicted under the law of the Detaining Power, in accordance with the principles of the Nuremberg trial, for war crimes and crimes against humanity, it being understood that persons convicted of such crimes must be subject to the conditions obtaining in the country in question for those who undergo their punishment.

The reservation by Poland speaks of " the Nuremberg trials " while the Hungarian reservation refers to " the principles of Nuremberg ". This reservation is rather important and calls for further comment. One may well wonder what is meant by " the principles of the Nuremberg trials ". Reference has already been made to definitions of war crimes and crimes against humanity. Although those definitions were drawn up by the International Law Commission of the United Nations, however, they were not adopted by the General Assembly and are still under consideration. It may also be noted that the crimes to which the reservation refers do not include crimes against peace, although the latter are also covered by the Charter of the Nuremberg Tribunal and by its judgment. Any prisoners of war who were accused and sentenced in respect of crimes against peace—to which reference has been made above—would therefore, even after conviction, remain entitled to all the benefits provided by the Convention.

Some States considered that the text of the USSR reservation did not indicate sufficiently clearly at what point the benefits of the Convention would be withdrawn from convicted prisoners of war; they also wanted to know of which benefits provided by the Convention prisoners of war would be deprived. These States approached the Swiss Federal Council, in its capacity as depositary of the Geneva Conventions, requesting that body to ask the USSR Government for the exact interpretation to be attached to the reservation. In reply, the Swiss Government received from the Ministry of Foreign Affairs of the USSR a note which was communicated to all the States which had signed the Geneva Conventions or were party to them. The English text of the note reads as follows :

As may be seen from the text, the reservation entered by the Soviet Union with regard to Article 85 of the 1949 Geneva Convention relative to the Treatment of Prisoners of War signifies that prisoners of war who, under the law of the USSR, have been convicted of war crimes or crimes against humanity must be subject to the conditions obtaining in the USSR for all other persons undergoing punishment in execution of judgments by the courts. Once the sentence has become legally enforceable, persons in this category consequently do not enjoy the protection which the Convention affords.

With regard to persons sentenced to be deprived of their liberty, the protection afforded by the Convention becomes applicable again only after the sentence has been served; thereafter, the persons concerned are entitled to repatriation in accordance with the conditions set forth in the Convention.

Furthermore, account should be taken of the fact that the conditions applicable to all persons serving sentence under the legislation of the USSR correspond to all the requirements of humanity and hygiene and that corporal punishment is strictly forbidden by law. Moreover, in accordance with the regulations in force, the prison authorities are required to transmit immediately to the competent Soviet authorities, for further investigation, any complaints by convicted persons concerning their conviction and sentence or requests for a review of their case, as well as all other complaints.

Moscow, May 26, 1955.

It is clear from this note that, as stated in the reservation itself, prisoners of war accused of war crimes or crimes against humanity will continue to enjoy the benefits of the Convention until such time as the penalty to which they have been sentenced becomes enforceable, that is to say until all courses of appeal have been exhausted. They will therefore enjoy all the judicial guarantees which the Convention provides during their trial and, in particular, will have the assistance of the Protecting Power. The Convention would once more be applicable to prisoners of war sentenced to confinement as soon as they have served their sentence. This clarification is very useful as the reservation had given rise to some doubt.

The substance of the reservation corresponds to a tendency which became apparent during and after the Second World War and has been mentioned above. That being said, it is certain that the rights granted by the Convention to convicted prisoners of war represent only a minimum standard, and equivalent rights—possibily in a slightly different form—are to be found in the legislation of most civilized countries. The important factor introduced by the Convention is participation by a supervisory body—the Protecting Power. Is it desirable that prisoners of war who have been convicted of war crimes or crimes against humanity should be left without any international supervision once they have finally been found guilty ? The answer to this question is certainly in the negative. During the conflicts which have occurred since the Second World War, there have been a great many accusations of violations of the laws and customs of war ; it is to be feared that accusations of this kind might be brought systematically against a great many members of the armed forces, or at least against certain categories of those forces. Supervision of the treatment of convicted prisoners of war therefore seems necessary, even in the case of war crimes or crimes against humanity, and especially when sentence is pronounced during the hostilities.

JURISPRUDENCE

No judgments have been pronounced in relation to Article 85 since the entry into force of the Convention. During the Korean conflict, when the Convention was in fact only partially applicable, the belligerents did not continue the prosecution of prisoners of war accused of war crimes.

The Italian Supreme Military Tribunal, however, has considered the scope of Article 85, in connection with an appeal by a German who had been convicted of acts committed during the Second World War [1]. In defence, the accused submitted, *inter alia*, that his trial had not been conducted in accordance with the 1949 Convention. Without considering whether or not that Convention could apply to events which occurred before its entry into force, the Tribunal rejected the argument based on Article 85 for the following reasons :

(1) — Violations of the laws and customs of war are offences against international law and not against the legislation of the Detaining Power ;

(2) — It is a rule of customary law that those who have violated the laws of war may not avail themselves of them ;

(3) — The offences alleged to have been committed by the accused are violations of the Fourth Geneva Convention of 1949 relative to the Protection of Civilian Persons. Article 146 of that Convention specifies, however, that the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following of the Third Geneva Convention of 1949. The Tribunal therefore concluded that persons accused of grave breaches of the Fourth Convention do not have the status of prisoners of war.

We have already commented above on the arguments adduced under (1) and (2) by the Italian Supreme Military Tribunal. Its conclusions can only be explained by the fact that it appears to have misunderstood the intentions of the drafters of the Convention and the discussions which took place at the Diplomatic Conference. Such an interpretation of Article 85 is clearly contrary to the facts and, moreover, if it were correct, the reservations entered by the USSR and other States would be incomprehensible.

[1] See KAPPLER, *Rivista di diritto internazionale*, Vol. XXXVI, 1953, p. 193 ff.

With regard to the third argument, here again the Tribunal was apparently not familiar with the reasons for providing safeguards of proper trial and defence for persons accused of grave breaches of the Geneva Conventions. In fact, these safeguards were provided only for the case of accused persons who are not prisoners of war. In most cases, of course, the persons accused will be members of the armed forces who have fallen into the hands of the enemy, but it is also possible that grave breaches may have been committed by civilians or that the members of the armed forces who committed them may have been demobilized and subsequently arrested as civilians. The sole purpose of the common provision included in Articles 49/50/129/146 is to afford to accused persons who are not prisoners of war safeguards similar to those accorded to prisoners. The judgment of the Italian Supreme Military Tribunal cannot therefore be considered as valid jurisprudence. There is no doubt that had the Tribunal been better informed and had at its disposal all the necessary documentation, it would have arrived at very different conclusions. This is also the opinion of Professor Roberto Ago, who is the author of a critical note which appeared with the text of the judgment in the *Rivista di diritto internazionale.*

ARTICLE 86. — " NON BIS IN IDEM "

No prisoner of war may be punished more than once for the same act or on the same charge.

This is merely a repetition of Article 52, paragraph 3, of the 1929 Convention.

It embodies a well-known legal principle and its inclusion was approved " unanimously without comment " in order to prevent any recurrence of certain abuses committed during the Second World War in penal matters [1].

[1] See *Final Record of the Diplomatic Conference of Geneva of 1949,* Vol. II-A, pp. 326 and 501. During the discussion in the Sub-Committee on penal and disciplinary sanctions, the addition of the following paragraph was proposed :

" The punishment inflicted at the first trial shall not be increased as the result of an appeal or a similar procedure."

This proposal was not adopted. See *Final Record,* Vol. II-A, p. 501 ; Vol. III, p. 79.

ARTICLE 87. — PENALTIES

Prisoners of war may not be sentenced by the military authorities and courts of the Detaining Power to any penalties except those provided for in respect of members of the armed forces of the said Power who have committed the same acts.

When fixing the penalty, the courts or authorities of the Detaining Power shall take into consideration, to the widest extent possible, the fact that the accused, not being a national of the Detaining Power, is not bound to it by any duty of allegiance, and that he is in its power as the result of circumstances independent of his own will. The said courts or authorities shall be at liberty to reduce the penalty provided for the violation of which the prisoner of war is accused, and shall therefore not be bound to apply the minimum penalty prescribed.

Collective punishment for individual acts, corporal punishments, imprisonment in premises without daylight and, in general, any form of torture or cruelty, are forbidden.

No prisoner of war may be deprived of his rank by the Detaining Power, or prevented from wearing his badges.

PARAGRAPH 1. — CHOICE OF PENALTIES

This provision is identical to Article 46, paragraph 1, of the 1929 Convention. The experience of the First World War showed that this clarification was necessary in order to protect prisoners of war from arbitrary action and unduly severe penalties [1].

There are, however, two objections to the application of the above principle. In the first place, as has been seen in connection with Article 82, paragraph 2, prisoners may be prosecuted and punished for acts which are not punishable when committed by members of the armed forces of the Detaining Power [2]. Furthermore, certain acts constitute different offences, or offences of varying gravity, according to whether they are committed by military personnel or by prisoners of war. For example, refusal to obey orders may be an act of cowardice for an active member of the armed forces and as such would be

[1] See SCHEIDL, *op. cit.*, p. 437.

[2] The most typical example is that of special regulations prohibiting relations between prisoners of war and the women of the detaining country.

severely punished, but would not be so for a prisoner of war. In other words, the term " same acts " is not absolutely accurate ; not only must the acts be the same, but they must also be of the same significance under the law. Conversely, it must be pointed out that as the status of prisoners of war is not the same as that of members of the armed forces of the Detaining Power, certain offences cannot be committed by prisoners of war [1].

Secondly, the present paragraph as it stands does not suffice to protect prisoners of war against sentences by authorities other than the military authorities and courts, for instance by administrative authorities who might sentence them to internment in a concentration camp. The Government Experts were aware of this danger, and in order to overcome it they proposed that certain minimum rules of procedure should be laid down which the Detaining Power would have to observe. The Conference supported this suggestion [2]. The rules of procedure in question are to be found in Article 84 as well as in Articles 95 and 96 as regards disciplinary sanctions, and in Articles 102 and following with regard to judicial proceedings.

It should also be borne in mind that this assimilation is only applicable subject to the provisions of the present Chapter of the Convention, and in particular paragraph 2 of the present Article, as well as Article 88. The signatories are therefore required to bring their penal legislation and military regulations into conformity with these texts. There can be no question of sentencing a prisoner of war to corporal punishment, confinement in a dark place, or to a disciplinary punishment not permitted under Article 89, even if such punishments may legally be imposed on nationals of the Detaining Power.

PARAGRAPH 2. — REDUCTION AND FIXING OF PENALTY

It is customary in penal, civil or military codes, to leave the judge wide discretion in determining the penalty awarded to each individual case. His rôle is, so to speak, to " particularize " the legal penalty. He must fix the penalty according to the guilt of the offender and in his appraisal must also take into account the latter's motives, previous record and personal circumstances [3].

[1] See FREY, *op. cit.*, p. 56.

[2] See *Report on the Work of the Conference of Government Experts*, p. 207.

[3] See Swiss Military Penal Code, L. II, Provisions regarding disciplinary offences, Article 181, paragraph 2 : " The penalty shall be chosen and assessed in accordance with the guilt of the offender. Account shall be taken of the motives and the character of the offender, of his general conduct during military service, and also of the gravity of the offence from the point of view of the interests of the service ".

The provisions of military penal codes in regard to any reduction of penalties obviously apply to prisoners of war in the same way as to any other person subject to military jurisdiction. The drafters of the Convention nevertheless considered that if, from the penal and judicial point of view, prisoners of war were merely assimilated to members of the armed forces of the Detaining Power, due account would not be taken of two criteria on the basis of which " subjective " guilt can be assessed. They therefore inserted these criteria in paragraph 2, authorizing the judge to reduce the penalty even below the minimum prescribed by law.

1. *First sentence. — Conditions for reduction*

The first sentence of the present paragraph, which is in the imperative form, instructs the military authorities and courts to take into consideration " to the widest extent possible " two special factors :

(a) the absence of any duty of allegiance, since the prisoner is not a " national " of the Detaining Power ;

(b) the fact that the prisoner is in the hands of the Detaining Power as the result of circumstances independent of his own will.

A. *The absence of any duty of allegiance.* — The absence of any duty of allegiance may in the first place mitigate the " guilt with intent " of a prisoner of war who has broken the law of the Detaining Power. Some penal codes nowadays take into account the possibility of a judicial error [1], and the old saying " *error juris nocet* " is destroyed by part of the present-day doctrine, which acknowledges the existence of extenuating circumstances where the offender had reason to believe himself entitled to act as he did [2].

That may be the case where the prisoner of war believed that he should or could act as he did because, in the first place, he owes no allegiance to the Detaining Power, and secondly, he continues—despite the fact that he is in captivity—to owe allegiance to the Power in whose armed forces he served prior to his capture.

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[1] See Swiss Military Penal Code, Article 17 : " Where a person who has committed a crime or offence had reason to believe himself entitled to act as he did, the penalty may be freely reduced by the judge (Article 47). The judge may also exonerate the accused from any penalty ".

[2] See Paul LOGOZ, *Commentaire du Code pénal suisse*, Neuchâtel, Paris, 1939, pp. 77-78 ; FREY, *op. cit.*, p. 56 ; see also SCHEIDL, *op. cit.*, pp. 430-431.

This involves consideration of the motives for the act committed, and the judge must therefore make an appraisal of them. If the motive is " honourable " the existence of extenuating circumstances must be recognized. Similarly, an analogy may be drawn between the feeling of allegiance towards his own country which may have inspired the prisoner to commit the act in question, and provisions of national legislation permitting a reduction of the penalty where the accused acted under the influence of a person to whom he owes obedience and on whom he depends [1].

B. *Compulsion.* — The second factor which the Convention requires the judge to take into account when fixing the penalty is the fact that the accused is in the territory of the Detaining Power as the result of circumstances independent of his own will. This is important because it may have serious consequences on the accused's mental state which may be assimilated to certain extenuating circumstances recognized in penal legislation. Thus, anger or violent pain are recognized in penal law as extenuating circumstances when they are the result of unfair provocation or an undeserved insult [1]. Similarly, after prolonged captivity a prisoner of war may be in a state of " deep distress ", both moral and physical [2].

2. *Second sentence. — Fixing of the penalty*

The provision that the authorities of the Detaining Power " shall be at liberty " to reduce the penalty provided under its national legislation refers to disciplinary as well as penal sanctions, and requires the signatory States to bring their legislation on this point into conformity with the Convention [3].

Paragraph 3. — Prohibition of collective and corporal punishments

Collective punishment was first prohibited by the 1929 Convention [4]; this became necessary because of the serious abuses which

[1] See Swiss Military Penal Code, Article 45.

[2] See Paul Logoz, *op. cit.*, p. 278.

[3] Thus a new Article has been inserted into the Swiss Military Penal Code (Article 215), reading as follows : " In the case of crimes and offences committed by foreigners who have not violated any duty of allegiance towards Switzerland, the judge shall not be bound by the minimum penalties laid down by law "

[4] See *Actes de la Conference de 1929*, p. 488.

occurred during the First World War [1]. Camp commanders are all too frequently tempted to inflict collective punishments, which strike at the innocent, rather than endeavour to discover the guilty persons. Worse still, this type of repression was sometimes motivated by a spirit of vengeance, and during the First World War the belligerents were obliged to conclude special agreements in order to ensure respect for the principles of humanity and justice in this regard [2].

The prohibition of corporal punishment sometimes places prisoners of war in a privileged position as compared with members of the armed forces of the Detaining Power. It has been justified since 1929, however, because of the abuses committed during the First World War [3].

The prohibition of any form of cruelty should be compared with Article 89, paragraph 3, and with the general principle, stated in Article 13, that prisoners of war must at all times be humanely treated. Similarly, the requirement that prisoners of war may not be imprisoned in premises without daylight should be read in conjunction with Articles 97 and 108. The lighting must be sufficient to enable them to read and write without difficulty.

Paragraph 4. — Prohibition of degradation

Article 49, paragraph 1, of the 1929 Convention already forbade the Detaining Power to deprive any prisoner of war of his rank. This provision had become necessary as a result of the experience of the First World War, when on many occasions military tribunals sentenced officer prisoners of war to be deprived of their rank. Scheidl [4] rightly points out that such a decision is without foundation from the legal point of view, since the Detaining Power has absolutely no authority to intervene in a matter which is within the sole competence of the national legislation of the country on which the prisoner depends. Degradation was nevertheless an important matter, since those who were deprived of their rank were also deprived of the prerogatives to which it entitled them.

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[1] See Scheidl, *op. cit.*, pp. 438-439.

[2] *Ibid.*, p. 438.

[3] *Ibid.*, p. 438. Nevertheless, this principle does not always seem to have been observed between 1939 and 1945. See Bretonnière, *op. cit.*, pp. 307-308.

[4] See Scheidl, *op. cit.*, pp. 441-442.

The Conference of Government Experts expanded the 1929 text by inserting a provision that the Detaining Power may not prevent prisoners of war from wearing the badges of their rank ; this may be compared with Article 18, paragraph 3, and Article 40 [1].

ARTICLE 88. — EXECUTION OF PENALTIES

Officers, non-commissioned officers and men who are prisoners of war undergoing a disciplinary or judicial punishment, shall not be subjected to more severe treatment than that applied in respect of the same punishment to members of the armed forces of the Detaining Power of equivalent rank.

A woman prisoner of war shall not be awarded or sentenced to a punishment more severe, or treated whilst undergoing punishment more severely, than a woman member of the armed forces of the Detaining Power dealt with for a similar offence.

In no case may a woman prisoner of war be awarded or sentenced to a punishment more severe, or treated whilst undergoing punishment more severely, than a male member of the armed forces of the Detaining Power dealt with for a similar offence.

Prisoners of war who have served disciplinary or judicial sentences may not be treated differently from other prisoners of war.

PARAGRAPH 1. — ASSIMILATION ACCORDING TO RANK

Since prisoners of war are subject to the same laws as members of the armed forces of the Detaining Power, it was logical to provide that they should serve their sentence in the same conditions. This is stated in the present paragraph, which thus reproduces the idea contained in Article 46, paragraph 1, of the 1929 Convention. Unlike the latter, however, the new text refers not only to disciplinary punishment but also to penal sanctions [2].

Prisoners of war may not be subjected to treatment more severe than that applied to members of the armed forces of the Detaining Power ; nowhere is it stated, however, that they may not enjoy better

[1] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pp. 250-251.

[2] See *Report on the Work of the Conference of Government Experts*, p. 207.

treatment, and that was sometimes the case during the Second World War, particularly as regards non-commissioned officers and men [1].

The application of this provision obviously implies that prisoners of war give the information listed in Article 17, paragraph 1, at the time of capture ; if they do not do so, they are liable to be deprived of the benefits of the present rule, pursuant to paragraph 2 of Article 17.

Paragraph 2. — Women prisoners of war

This provision, which is new, was introduced by the 1949 Diplomatic Conference [2]. As regards the execution of penalties, it corresponds to the rule contained in paragraph 1 of the present Article, except that no mention is made of varying treatment according to rank. Obviously, however, if a distinction of this kind is made in the detaining country among women members of the armed forces, the same rules will be applicable to women prisoners of war pursuant to the general principle of assimilation stated in Article 82, paragraph 1.

Paragraph 3. — Minimum safeguards for women prisoners of war

This is also a new provision, and affords a safeguard which corresponds to the principles of civilized nations.

Paragraph 4. — Treatment after execution of penalty

Once their sentence has been served, prisoners of war must be fully restored to the status which they enjoyed before conviction. In accordance with law and equity, the Detaining Power should take this attitude, but in view of the experience of the First World War [3], a specific provision on the subject was inserted in the 1929 Convention (Article 49, paragraph 1) and is reproduced in the present paragraph.

A reservation must be made, however, in regard to prisoners of war who are recaptured after attempting to escape. In such cases, Article 92, paragraph 3, provides a specific exception to the present Article [4].

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[1] See Bretonnière, *op. cit.*, pp. 306-307.

[2] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 305.

[3] See Scheidl : *op. cit.*, pp. 439-440.

[4] See below, the commentary on Article 92, paragraph 3.

II. Disciplinary Sanctions

ARTICLE 89. — GENERAL OBSERVATIONS: I. FORMS OF PUNISHMENT

The disciplinary punishments applicable to prisoners of war are the following:

(1) *A fine which shall not exceed 50 per cent of the advances of pay and working pay which the prisoner of war would otherwise receive under the provisions of Articles 60 and 62 during a period of not more than thirty days.*

(2) *Discontinuance of privileges granted over and above the treatment provided for by the present Convention.*

(3) *Fatigue duties not exceeding two hours daily.*

(4) *Confinement.*

The punishment referred to under (3) shall not be applied to officers.

In no case shall disciplinary punishments be inhuman, brutal or dangerous to the health of prisoners of war.

General Remarks and Historical Background

1. *Before the 1949 Conference*

Despite the very great divergences which inevitably exist between the systems of disciplinary sanctions of different countries, the first international agreements concerning the treatment of prisoners of war referred to national legislation; the Oxford Manual (Article 62) and the Hague Regulations (Article 8) merely stated that prisoners of war were to be subject to the laws, regulations and orders in force in the armed forces of the Detaining Power.

Such a system obviously presents many disadvantages and is likely to result in different treatment for the same offence, in a world where conceptions were and still are divergent. During the First World War, the punishments imposed were sometimes cruel, amounting to reprisals rather than disciplinary measures.

In the first draft of the 1929 Convention, Article 50 contained a restrictive list of permitted punishments. The provision was not

approved, however, and the only limitation imposed by the 1929 Convention is indirect and is contained in Article 54, which states : " Imprisonment is the most severe disciplinary punishment which may be inflicted on a prisoner of war ". The notion of " imprisonment ", which does not correspond to any particular form of disciplinary punishment provided under the military regulations of the various countries, must simply be taken in its general sense of disciplinary confinement as opposed to judicial confinement [1]. It was sometimes difficult, however, to determine, when punishment was imposed, whether it was more or less severe than imprisonment ; the only safeguard was in fact constituted by the fact that the duration of imprisonment could not exceed thirty days. Article 55 of the 1929 Convention expressly authorized the restrictions in regard to food " permitted in the armed forces of the Detaining Power ", except as a collective measure (Article 11, paragraph 4). Conditions of work were not to be rendered more arduous by disciplinary measures (Article 32, paragraph 2), nor were letters or postcards to be withheld (Article 36, paragraph 1, last sentence). With these reservations, prisoners of war remained subject to the laws, regulations and orders in force in the armed forces of the Detaining Power (Article 45), it being understood, however, that the military authorities were not to inflict on prisoners of war penalties other than those prescribed for the same acts by members of the armed forces of the Detaining Power (Article 46).

2. *Preparatory work for the 1949 Conference*

When the text of a new Convention was being drawn up, the International Committee of the Red Cross proposed that a list of authorized disciplinary penalties should be drawn up. The suggestion was adopted first by the Conference of Government Experts and then by the 1949 Diplomatic Conference [2].

The Conference of Government Experts drafted a text listing six kinds of authorized disciplinary penalties : fines, restriction of supplementary privileges, fatigue duties, extra labour, disciplinary

[1] See *Actes de la Conférence de 1929*, p. 493.

[2] By way of example, the various disciplinary penalties imposed during the Second World War may be recalled : punishment drill, handcuffing and pack-drill as well as other less severe measures such as extra duties in the camps, withholding of the cigarette ration, denial of access to the canteen, confinement to barracks, kitchen duties, etc. Prisoners who did not do the quota of work required suffered pay reductions, had to do extra work or, in serious cases, were obliged to do arduous work for which they received no pay.

drill and confinement. The XVIIth International Red Cross Conference nevertheless decided to delete from this list punishments involving extra labour and disciplinary drill, although all the requisite safeguards were provided, especially as regards duration (a maximum of two hours per day for thirty consecutive days) and the conditions of application (penalties which were brutal, inhuman or injurious to health were forbidden).

The 1949 Conference adopted the text as amended at Stockholm.

PARAGRAPH 1. — APPLICABLE PUNISHMENTS

It is absolutely clear from the wording of the first sentence that the list contained in the present Article is an exclusive one, and no other disciplinary punishments may be applied to prisoners of war.

A. *Fine.* — In accordance with Articles 60 and 62, a prisoner of war will receive a monthly advance of pay equivalent to Sw. fr. 8.— and working pay amounting to at least one quarter of one Swiss franc for a full working day. The total amount received each month by a prisoner of war would therefore be Sw. fr. 14.50 (for twenty-six working days), and the fine may be levied only on 50 per cent of that amount, that is to say, Sw. fr. 7.25 [1].

The fine may be levied on the advance of pay and not the working pay or *vice versa*, and only on the amount corresponding to a period of not more than thirty days. This maximum period is not actually stipulated in the case of punishments listed under paragraphs B, C and D below, yet Article 90 states that the duration of any single punishment may in no case exceed thirty days. This is an oversight in drafting.

B. *Discontinuance of privileges.* — The Detaining Power remains at liberty, if it thinks fit, to treat prisoners of war in a more generous and favourable manner than the minimum standard laid down by the Convention. Those privileges may, however, be withdrawn at any time, particularly as a disciplinary punishment.

This sanction may take several forms (reduced tobacco ration, forbidding of walks outside the camp), but the most typical case is that of food restrictions. Unlike the 1929 Convention (Article 55), the present one does not make express provision for individual food

[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 490 and 503.

restrictions by way of disciplinary punishment. Article 26, which concerns food, specifies that the food rations must be sufficient " to keep prisoners of war in good health and to prevent loss of weight or the development of nutritional deficiencies ". Restrictions may not therefore be imposed by way of disciplinary punishment on the minimum amount of food required for this purpose. On the other hand, whatever is over and above the minimum may be restricted. To deny the Detaining Power this right would virtually discourage it from granting prisoners of war any treatment more favourable than the minimum standard, and that is obviously not the purpose of the Convention. It is therefore most important to determine as precisely as possible in each case the minimum ration on which no restriction may be imposed. Such an assessment, which is an essential preliminary to any disciplinary measure of this kind, can only be made properly by the health service. It may be noted in passing that Article 26, paragraph 6, expressly prohibits " collective disciplinary measures affecting food ". Any such restriction must therefore be on an individual basis.

The same reasoning should be followed wherever disciplinary sanctions imposed in the form of a discontinuance of privileges affect clothing, or intellectual, educational and recreational pursuits, sports and games as referred to in Article 38. The Detaining Power is required to encourage such activities and for their part, prisoners of war must by their attitude and behaviour encourage the Detaining Power to afford them the necessary facilities by not making the task of camp administration unduly difficult.

C. *Fatigue duties.* — Fatigue duties are those which the men in a company usually take turns in performing, generally outside the normal working hours, because they are in the common interest ; they are therefore limited to a maximum of two hours per day. Such duties may not, however, be considered as comprising any work for the benefit of the Detaining Power or which is not connected with the administration of the camp.

D. *Confinement.* — This refers to disciplinary detention as opposed to judicial detention, and a distinction is generally made between open confinement and close arrest. The former takes place during the period outside hours of work—that is to say from the return to camp to reveille—and during the rest of the time the prisoner shares the life of his comrades. Since officers are not required to work, this form of confinement is not applicable to them. Close arrest consists

of uninterrupted detention. A distinction may also be made between room arrest (generally applicable to officers), confinement to barracks and detention in cells.

The Convention also includes various provisions which serve to guarantee the treatment to be accorded to prisoners of war undergoing confinement :

(a) premises : Article 87, paragraph 3, Article 97, Article 25, Article 29 ;

(b) treatment : Article 87, paragraphs 3 and 4, Article 88, paragraphs 1 to 4, Article 98 ;

(c) treatment of women prisoners of war : Article 88, paragraphs 2 and 3, Article 97, paragraph 4 ;

(d) treatment of officers : Article 87, paragraph 4, Article 97, paragraph 3, Article 98, paragraph 2.

These various Articles should be taken in conjunction with the general statement in Article 82 that prisoners of war are to be subject to the laws, regulations and orders in force in the armed forces of the Detaining Power. If the treatment applicable to the armed forces of the Detaining Power is below the minimum standard laid down by the Convention, the latter must prevail.

One may wonder, however—and this was pointed out by several delegations at the Conference of Government Experts—whether certain provisions of the Convention do not render confinement rather ineffective as a penalty [1]. The fact that prisoners of war undergoing confinement may spend two hours out of doors each day and especially that they are allowed to read, in accordance with Article 98, makes this penalty considerably less severe than confinement as applied in most national armed forces.

The question is an important one, for if the penalties provided under the Convention are ineffective, governments might be tempted to resort to coercive measures which are not provided under the Convention and prisoners of war would thus be deprived of the safeguards which the Convention is intended to afford them. Another question which has been raised is whether a Detaining Power whose legislation does not provide for one or more of the disciplinary punishments referred to in the present Article could nevertheless apply them, despite the rule contained in Article 87, paragraph 1. The answer is in the affirmative. Article 89 establishes a disciplinary code in mi-

[1] See *Remarks and Proposals*, p. 58.

niature which in this regard replaces the legislation of the Detaining Power. If further corroboration is required, it will suffice to refer to the second punishment listed (discontinuance of privileges granted over and above the treatment provided for by the Convention) ; obviously, no national disciplinary code would or could make provision for this punishment in the case of its own armed forces.

PARAGRAPH 2. — RESERVATION WITH REGARD TO OFFICERS

Pursuant to Article 44, paragraph 2, fatigue duties in camps for officer prisoners of war are performed by prisoners of war who are members of the other ranks in the same armed forces and who must therefore be assigned in sufficient numbers. Prisoners of war with a status equivalent to that of officers, such as officer cadets, will also be exempt from fatigue duties.

PARAGRAPH 3. — GENERAL SAFEGUARDS

At first sight, the safeguards contained in the present paragraph may appear superfluous since the list of punishments permissible under the present Article is an exclusive one and does not include any measure which is inhuman, brutal, or dangerous to the health of prisoners of war. The paragraph was included because of certain abuses which occurred during the two world wars. It should also be noted that if the permitted punishments are strictly applied, they may in certain cases be unduly harsh. It may be brutal or dangerous to the health of a prisoner of war to oblige him to do two hours of fatigue duties when he is already tired out ; this is also true of detention in cells of a prisoner of war who is sufficiently ill to warrant transfer to the infirmary [1].

Can the four punishments provided for by Article 89 be cumulated ? Can a prisoner of war be punished simultaneously by confinement and a fine ? Certainly not if a single offence is involved, for Article 86 states categorically : " No prisoner of war may be punished more than once for the same act or on the same charge." It should also be noted that certain punishments are, in a way, automatically cumulative in the sense that confinement is automatically accompanied by a discontinuance of privileges, and fatigue duties are normally per-

[1] Article 98, paragraph 4, provides special safeguards in this case.

formed during leisure hours. In certain armed forces, men sentenced to confinement sometimes receive no pay, and this amounts to the imposition of a fine. It can therefore be seen that the application of a single punishment has a cumulative effect, at least in the case of confinement and fatigue duties, which are the most current forms of punishment.

If judgment is given simultaneously on several offences, the Detaining Power can nevertheless inflict a punishment in respect of each offence committed. The only limitations which the Convention lays down are contained in Article 90, paragraph 2, hereunder.

ARTICLE 90. — GENERAL OBSERVATIONS: II. DURATION OF PUNISHMENTS

The duration of any single punishment shall in no case exceed thirty days. Any period of confinement awaiting the hearing of a disciplinary offence or the award of disciplinary punishment shall be deducted from an award pronounced against a prisoner of war.

The maximum of thirty days provided above may not be exceeded, even if the prisoner of war is answerable for several acts at the same time when he is awarded punishment, whether such acts are related or not.

The period between the pronouncing of an award of disciplinary punishment and its execution shall not exceed one month.

When a prisoner of war is awarded a further disciplinary punishment, a period of at least three days shall elapse between the execution of any two of the punishments, if the duration of one of these is ten days or more.

PARAGRAPH 1. — RESTRICTION ON DURATION; DEDUCTION OF PERIOD OF CONFINEMENT AWAITING HEARING

1. *First sentence. — Restriction on duration*

The maximum duration mentioned in this paragraph (thirty days) is in line with the standards adopted in matters of discipline by most national legislations. It was contained in the 1929 Convention (Article 54, paragraph 2)[1], and obviously applies to all the punishments listed in Article 89.

[1] Article 54, paragraph 2: " The duration of any single punishment shall not exceed thirty days ".

2. *Second sentence. — Deduction of period of confinement awaiting hearing*

The problem of the period of confinement awaiting hearing does not often arise in connection with disciplinary matters, as the preliminary investigation is not usually lengthy. In fact, in most cases the accused is confined only after the punishment has been awarded.

The 1929 Convention made only a general reference to this question, in Article 47, paragraph 1, which stated : " The period during which prisoners of war of whatever rank are detained in custody (pending the investigation of such offences) shall be reduced to a strict minimum ". This wording was inadequate and during the Second World War the International Committee frequently had to make strong representations in order to ensure that the time spent in confinement while awaiting hearing was deducted from the punishment awarded [1].

If a prisoner of war is sentenced to a fine or to any penalty other than confinement, and if he has been in detention while awaiting hearing, the period of such detention must be duly taken into account when the punishment is awarded. In accordance with Article 95, paragraph 2, the period spent in confinement while awaiting the disposal of a disciplinary offence may not exceed fourteen days. If, however, the prisoner of war concerned is accused of having committed an offence liable to a judicial penalty, the period of such confinement may be thirty days or even more. If the court finally awards only a disciplinary punishment, the accused must be freed immediately if the period of confinement while awaiting hearing amounted to thirty days or more [2].

PARAGRAPH 2. — PUNISHMENT IN RESPECT OF SEVERAL OFFENCES

This provision reproduces the text of Article 54, paragraph 3, of the 1929 Convention.

What if a prisoner of war commits a further offence between the awarding of punishment and its execution ? If such a case is taken in the context of the present paragraph, the total punishment may not exceed thirty days ; if, on the other hand, paragraph 4 of the present

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[1] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pp. 357 and 362.

[2] In this connection, reference should be made to Article 95 (to Article 103 in the case of judicial proceedings).

Article is applied, the prisoner is liable to a further punishment of a maximum of thirty days' confinement. As has already been pointed out, however, in the case of several offences a prisoner of war may be awarded several punishments, each of thirty days. Because such a case is exceptional, the 1929 Conference did not consider it necessary to make express provision for it. In practice, disciplinary punishment is almost always carried out immediately after being awarded.

If the text is examined carefully, however, the present paragraph does not seem applicable to such a case. The text states : " . . . at the same time when he is awarded punishment " and at that time, the further offence has not yet been committed [1]. The Detaining Power would therefore be entitled to award a further punishment, even if the maximum of thirty days' confinement has already been awarded for previous offences, on condition, as specified in paragraph 4 of the present Article, that a period of at least three days elapses between the execution of each of the punishments.

PARAGRAPH 3. — EXECUTION OF THE PUNISHMENT

This provision was introduced by the Stockholm Conference and was inserted in the present Article by the 1949 Conference [2] in order to emphasize once more that any disciplinary offence must be punished without delay. After one month has elapsed, the punishment is therefore invalidated and the prisoner may not be punished again for the same acts or on the same count.

One may wonder why the Convention makes provision for a maximum period for the execution of a sentence but for no minimum period. The reason is that as a general rule there is no appeals procedure providing for any stay of execution in the case of disciplinary punishments. If the person convicted considers that he is the victim of an error, he may avail himself of the complaints procedure (Article 78), but must begin to serve his sentence.

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[1] This interpretation seems to be confirmed by the statement of Mr. Werner, Rapporteur at the 1929 Conference : " If, for instance, an act was committed on Monday, another one on Tuesday, and the hearing takes place on Wednesday, punishments will not be awarded separately, and there may only be a single penalty which must not exceed thirty days ; the only case in which the possibility of consecutive punishments arises is therefore that in which, before the completion of the first punishment, a prisoner is awarded a further disciplinary punishment, that is to say, if during punishment he behaves very badly and incurs a further penalty ". (*Actes de la Conférence de 1929*, p. 494.)

[2] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 305.

PARAGRAPH 4. — EXECUTION OF TWO CONSECUTIVE SENTENCES

This paragraph corresponds almost exactly to Article 54, paragraph 4, of the 1929 Convention. A period of at least three days must elapse between the execution of any two punishments, and this provision is a corollary to paragraph 2 above, which ensures that a prisoner of war will not be detained for more than thirty days without a break. The present provision covers the case of a punishment awarded either after the first punishment was awarded and before it was executed, or during the execution of the punishment, or, lastly, immediately after execution of the first punishment. It should be noted that this time limit is not applicable only where the total of the punishments is thirty days ; it must be respected even if the duration of confinement under one of the punishments is ten days, regardless of the duration of the other.

ESCAPES

(ARTICLES 91 TO 94)

ARTICLE 91. — ESCAPES : I. SUCCESSFUL ESCAPE

The escape of a prisoner of war shall be deemed to have succeeded when :

(1) *he has joined the armed forces of the Power on which he depends, or those of an allied Power ;*

(2) *he has left the territory under the control of the Detaining Power, or of an ally of the said Power ;*

(3) *he has joined a ship flying the flag of the Power on which he depends, or of an allied Power, in the territorial waters of the Detaining Power, the said ship not being under the control of the last named Power.*

Prisoners of war who have made good their escape in the sense of this Article and who are recaptured, shall not be liable to any punishment in respect of their previous escape.

GENERAL REMARKS

The first paragraph of this Article does not correspond to any provision of the 1929 Convention ; the second paragraph is similar to Article 50 of that Convention [1].

A prisoner of war can legitimately try to escape from his captors. It is even considered by some that prisoners of war have a moral obligation to try to escape, and in most cases such attempts are of course motivated by patriotism. Conversely, in its own interest, the Detaining Power will endeavour to prevent escape whenever possible. This results in the paradox of escape to which A. R. Werner [2] refers : an attempt to escape is considered by the Detaining Power as a breach of discipline and therefore punishable, while the adverse Party considers it as an act which cannot be held to be a crime. Attempted escape is therefore liable only to disciplinary punishment, and not to judicial proceedings.

PARAGRAPH 1. — SUCCESSFUL ESCAPE

1. *Historical background*

The Brussels Declaration did not recognize the need for any definition of successful escape ; although it instituted the privilege of impunity, it merely used the wording " after succeeding in escaping " (Article 28).

The Hague Regulations were more explicit and stated that escape was unsuccessful when the prisoners attempting it were " retaken before being able to rejoin their own army or before leaving the territory occupied by the army which captured them " (Article 8, paragraph 2). The 1929 Conference adopted the same wording, in Article 50, but it obviously did not cover the problem entirely, and taking into account the comments by the International Committee of the Red Cross, the Conference of Government Experts drafted the following text :

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[1] See below, p. 730.

[2] See A. R. WERNER, *op. cit.*, p. 326.

Prisoners of war shall be considered as having successfully escaped :

1. on reaching neutral or non-belligerent territory, or territory not occupied, but under the authority of their own country or of an ally ;

2. on rejoining their own armed forces or those of an allied Power ;

3. on reaching the high seas ;

4. on boarding, in the territorial waters of the Detaining Power, a merchant vessel or warship flying the flag of their home country or of an allied Power, and not under the authority of the Detaining Power.[1]

This text was redrafted at the Stockholm Conference and was adopted in its present form.

As Scheidl has pointed out [2], it is not sufficient for a prisoner attempting to escape to throw off immediate pursuit and hide among the population of the territory ; he must actually succeed in escaping beyond the reach of the Detaining Power.

2. *The criterion of armed forces* (sub-paragraph 1).

" Armed forces " as referred to here are the subject of Article 4 of the present Convention, which defines the conditions in which persons who fall into the hands of the enemy are recognized as being prisoners of war. For the escape to be considered as having succeeded, however, it does not suffice for a prisoner of war to have joined one or more members of the " armed forces " as defined in that Article. A prisoner of war who has joined others who escaped with him cannot claim to have escaped from his enemies ; the armed forces which he has succeeded in joining must also escape the power of the enemy and, if only for a brief period, must be beyond the reach of the opposing forces.

3. *The criterion of territory and sovereignty* (sub-paragraph 2)

The text proposed by the Conference of Government Experts [3] was drafted in a positive form and referred expressly to neutral or

[1] See *Report on the Work of the Conference of Government Experts*, pp. 211-212.

[2] See SCHEIDL, *op. cit.*, p. 449.

[3] See above.

non-belligerent territory, or territory not occupied, but under the authority of their own country, or of an ally of their own country [1].

4. *Conditions relating to escape by sea* (sub-paragraph 3)

The attempt to escape will not be deemed to have succeeded if a prisoner of war takes refuge on a neutral or non-belligerent ship in the territorial waters of the Detaining Power. *A contrario*, it will be deemed to have succeeded if those same ships were actually outside the territorial waters of the Detaining Power.

The text proposed by the Conference of Government Experts provided for refuge on the high seas, but this was not supported by the Stockholm Conference. At the 1949 Diplomatic Conference, one delegation proposed that escape should be deemed to have succeeded when a prisoner of war had " reached the high seas, otherwise than in a vessel under the authority of the Detaining Power or one of its allies ". This suggestion was not accepted, however, and a prisoner of war on the high seas, for instance on a raft, without having been picked up by a ship, cannot be considered to have succeeded in escaping [2].

PARAGRAPH 2. — THE PRIVILEGE OF IMPUNITY

The principle that prisoners of war who have made good their escape and who are recaptured are not liable to punishment in respect of their escape was already set forth in the Brussels Declaration (Article 28), the Hague Regulations (Article 8, paragraph 2) and the 1929 Convention (Article 50).

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[1] In this connection, one may refer to an interesting example. During the Second World War the Germans considered that an escape was successful when prisoners of war had reached neutral territory or territory not occupied by the enemy, for instance, the unoccupied zone of France (BRETONNIÈRE, *op. cit.*, p. 359). Nevertheless, after that zone had been occupied by Germany, escaped prisoners already there were left free. With regard to the obligations of the neutral State on whose territory an escaped prisoner of war has sought refuge, see Paul E. MARTIN, *Note sur les prisonniers de guerre évadés sur le territoire d'une Puissance neutre, Revue internationale de la Croix-Rouge*, January 1944, pp. 62-69.

[2] A prisoner of war who has left the territory of the Detaining Power or the territory occupied by that Power and reached the high seas, cannot be considered as having succeeded in escaping, since the high seas remain permanently open to all nations alike, including the Detaining Power, of course. The same argument applies *a fortiori* in the case of territorial waters. This view is confirmed by SCHEIDL, *op. cit.*, p. 449.

Legally speaking, this rule is based on the fact that once escape has succeeded, the Detaining Power no longer has any authority over the prisoner of war, since that authority is based only on captivity itself. Scheidl goes still further [1] and maintains that once captivity comes to an end for any reason, whether upon escape or release, the Detaining Power forfeits all disciplinary authority in respect of past events ; thus, in his opinion, a prisoner of war who is recaptured cannot be required to serve any penalties which he incurred previously, whatever the cause [2]. Moreover, it should be borne in mind that in accordance with Article 90, paragraph 3, not more than one month may elapse between the pronouncing of an award of disciplinary punishment and its execution, and this constitutes a statute of limitation.

ARTICLE 92. — ESCAPES : II. UNSUCCESSFUL ESCAPE

A prisoner of war who attempts to escape and is recaptured before having made good his escape in the sense of Article 91 shall be liable only to a disciplinary punishment in respect of this act, even if it is a repeated offence.

A prisoner of war who is recaptured shall be handed over without delay to the competent military authority.

Article 88, fourth paragraph, notwithstanding, prisoners of war punished as a result of an unsuccessful escape may be subjected to special surveillance. Such surveillance must not affect the state of their health, must be undergone in a prisoner-of-war camp, and must not entail the suppression of any of the safeguards granted them by the present Convention.

General Remarks

Article 50 of the 1929 Convention provided that prisoners of war who were recaptured before having made good their escape would be liable only to disciplinary punishment [3]. This wording, which was

[1] See Scheidl, *op. cit.*, p. 448.

[2] An exception must, however, be made in the case of offences committed during escape, as will be seen hereunder, and, in accordance with Article 85, of offences against common law committed prior to capture.

[3] See below, p. 730.

taken from the Hague Regulations, was based on the idea that attempts to escape should be considered as a demonstration of patriotism and of the most honourable feelings [1]; any such attempt may possibly be considered as a fresh act of hostility committed by a prisoner of war in his capacity as a member of the enemy armed forces [2], but not as a crime.

In general, and except as indicated hereafter, this provision was respected during the Second World War [3].

PARAGRAPH 1. — ATTEMPTS TO ESCAPE

The corresponding provision in the 1929 Convention referred to " escaped prisoners of war ". The present text wisely refers to " a prisoner of war who attempts to escape " and mentions the possibility of repeated attempts together with a reference to the conditions for successful escape as defined in the preceding Article.

It is easy to determine at what point an attempt to escape ends and becomes a successful escape, but much more difficult to determine when it actually begins. To escape is to elude the custody and authority of the Detaining Power, and an attempt to escape logically begins when any preparatory action is undertaken for that purpose. An attempt to escape may be considered as beginning when prisoners of war acquire tools, maps, or plans, or when they start to dig a tunnel or stock food supplies, etc. There is, however, an obvious difference between such preparations and the actual attempt to escape which is characterized by decisive action. In imposing disciplinary punishment, the Detaining Power must take this distinction into account [4].

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[1] See FREY, *op. cit.*, p. 42.

[2] See A. R. WERNER, *op. cit.*, p. 326.

[3] See BRETONNIÈRE, *op. cit.*, pp. 343-346. The first draft of the 1929 Convention included an Article (Article 52), which made provision for simple escape and collective escape, with a punishment of a maximum of two weeks' confinement for the former and thirty days for the second ; the time required for return to the depôt and any period of confinement awaiting hearing were to be deducted from the punishment awarded. This provision gained considerable support but it was finally rejected by the 1929 Diplomatic Conference.

[4] At the Conference of Government Experts, the International Committee of the Red Cross had proposed that preparations which implied nothing more definite than an inclination to escape should not be liable to punishment.

PARAGRAPH 2. — RECAPTURED PRISONERS OF WAR

What is the meaning of the term " competent military authority " ? An attempt to escape may be punished only by disciplinary measures and this authority is therefore that of the camp from which he escaped or on which his labour detachment depended. It is the authority responsible for the prisoner of war at the time of his escape and which, in any case of disciplinary offence, is qualified to award punishment. The present provision is designed to emphasize that in no case may a prisoner of war remain in the hands of the police.

A prisoner may, however, also be brought to court because of offences committed during escape (Article 93), which may even be more serious than the escape itself. If such offences are committed with the sole intention of facilitating the escape and entail no violence against life or limb, they are liable to disciplinary punishment only (Article 93, paragraph 2) ; the prisoner of war must therefore be handed over immediately to the military authority on which he depended before attempting to escape, and to no one else.

If, on the other hand, he is accused of more serious offences, he will be dealt with in accordance with the legislation in force in the armed forces of the Detaining Power (Article 82, paragraph 1).

The expression " without delay " is imperative, and one may wonder whether the period which elapses between the moment when a prisoner of war is recaptured and that when he is handed over to the " competent military authority " is to be considered as confinement while awaiting hearing. In this connection, it should be noted that the present provision was originally included in Article 95 (confinement while awaiting hearing) and was only embodied in the present Article at a later stage. If the period which elapses between recapture and the handing over of a prisoner of war to the competent authority is not excessively long, it need not be taken into account ; if, however, the handing over is delayed for any reason for which the prisoner himself is not responsible, the period which elapses must be considered as confinement while awaiting hearing.

PARAGRAPH 3. — SPECIAL SURVEILLANCE

The Brussels Declaration, in Article 28, already referred to the possibility of placing prisoners of war who had attempted to escape under stricter surveillance.

Article 48, paragraph 2, of the 1929 Convention was in the main very similar to the present text[1]. In the light of the experience of the Second World War, however, a reference to the health of prisoners of war was inserted, and it was specified that such surveillance must be undergone in a prisoner-of-war camp.

During the First World War, some confusion arose in this connection because of the wording of Article 28 of the Brussels Declaration. That Article stated that prisoners of war were " liable to disciplinary punishment or subject to a stricter surveillance ", without making sufficient distinction between the two. During the Second World War, however, the belligerents recognized that the special regime of surveillance should consist merely of stricter guard[2].

During the preparatory work which preceded the 1949 Conference there was some discussion as to the advisability of specifying the measures permitted by way of special surveillance and of limiting its duration both in the case of a first attempt and for subsequent attempts, but no definite proposal was made. The discipline in some camps was so harsh, however, that the physical and mental health of the prisoners was affected. One must emphasize the principle that stricter surveillance must consist of a strengthening of the guard ; it may never consist of any restriction placed on the rights of prisoners of war.

As regards the safeguards referred to at the end of the present paragraph, special importance will be attached to the opportunity for the Protecting Powers to visit special camps as frequently as other prisoner-of-war camps. In this connection, the word " suppression " is perhaps too categorical and it would have been preferable to forbid not only the suppression of those safeguards but also any reduction in them.

During the Second World War, the system of special surveillance was sometimes applied not only to prisoners of war who had attempted to escape, but also to prisoners of war who were suspected, rightly or wrongly, of intending to make such an attempt. In practice, this amounted to a system of political surveillance applied to certain persons because of their status or duties in their home country. The present paragraph definitely forbids any such measures and limits special surveillance to " prisoners of war punished as a result of an unsuccessful escape ".

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[1] See below, p. 730.

[2] During the Second World War, the belligerents took special measures in regard to various categories of prisoners : " Sonderkompanien, Sonderlager, Sonderabteilungen " in the case of prisoners of war in Germany, and " special camps " in the Anglo-Saxon countries ; the conditions prevailing under these special arrangements frequently did not conform to the requirements of the Convention.

Despite the many protests which arose over abuses committed during the Second World War, this provision is a necessary evil ; had it been deleted, the only result would probably have been that the Detaining Powers would be prompted to take other security measures in regard to prisoners of war who had attempted to escape which would no longer offer any safeguard to those prisoners.

ARTICLE 93. — ESCAPES : III. CONNECTED OFFENCES

Escape or attempt to escape, even if it is a repeated offence, shall not be deemed an aggravating circumstance if the prisoner of war is subjected to trial by judicial proceedings in respect of an offence committed during his escape or attempt to escape.

In conformity with the principle stated in Article 83, offences committed by prisoners of war with the sole intention of facilitating their escape and which do not entail any violence against life or limb, such as offences against public property, theft without intention of self-enrichment, the drawing up or use of false papers, the wearing of civilian clothing, shall occasion disciplinary punishment only.

Prisoners of war who aid or abet an escape or an attempt to escape shall be liable on this count to disciplinary punishment only.

General Remarks

This Article was developed from Article 51 of the 1929 Convention [1].

Escape or attempt to escape is inevitably accompanied by certain acts which constitute breaches of the regulations of captivity, the laws and regulations in force in the armed forces of the Detaining Power, and even of ordinary law.

Although such breaches must obviously not be left unpunished, they should nevertheless be considered in the light of the honourable motive which inspired them.

This was realized in 1929, and Articles 51 and 52 of the 1929 Convention were especially intended to prevent any recurrence of the abuses committed during the First World War [2].

In general, and with only a few isolated exceptions, the 1929 rules were respected during the Second World War [3].

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[1] See below, p. 731.

[2] See Scheidl, *op. cit.*, p. 443.

[3] See Bretonnière, *op. cit.*, pp. 368-372.

PARAGRAPH 1. — ATTEMPT TO ESCAPE NOT AN AGGRAVATING CIRCUMSTANCE

The 1929 Convention referred to " crimes or offences against persons or property ". The new text speaks only of " offence ", and this term covers any breach of military laws and regulations or of ordinary law.

Reference has already been made above to the reasons why the drafters of the Convention specified that prisoners of war who attempt to escape are liable only to a disciplinary punishment. The present provision is based on the same considerations, and some authors have even maintained that the existence of extenuating circumstances should be recognized, except in particularly serious cases involving murder or assault and battery [1].

In practice, an impartial judge is required to take account of all the circumstances relating to the offence, and must not merely abstain from considering escape as an aggravating circumstance ; should he think fit, he will recognize the existence of extenuating circumstances.

PARAGRAPH 2. — OFFENCES LIABLE TO DISCIPLINARY PUNISHMENT ONLY

As the first phrase of this paragraph makes clear, this is simply a special instance of application of the general principle stated in Article 83.

Article 52 of the 1929 Convention [2] recommended that the competent authorities should exercise the greatest leniency in considering whether offences committed during an attempt to escape should be punished by judicial or by disciplinary measures, and the Stockholm Conference approved a similar text. The present wording is more detailed and is an improvement on the preceding versions. Furthermore, the list of offences which it contains is not an exhaustive one ; any offences committed by prisoners of war " with the sole intention of facilitating their escape and which do not entail any violence against life or limb " will occasion disciplinary punishment only [3]. This will apply if forgeries are used (counterfeit money, etc.) or in the

[1] See BRETONNIÈRE, *op. cit.*, p. 367.

[2] See below, p. 731.

[3] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 491-492.

case of any hindrance of traffic, abandonment of military equipment, bribery, etc.

These considerations are based on the notion that offences committed in connection with an attempt to escape are devoid of criminal intent [1].

To what extent can the advantage afforded by the last paragraph of Article 91 be applied to offences committed in connection with escape ? In other words, if a prisoner is recaptured after having successfully escaped on a previous occasion, can he be punished for offences committed in connection with that escape, and if so to what extent ?

A distinction must be made between the offences referred to by paragraph 1 of the present Article, which are brought before the courts, and those to which paragraph 2 refers, which are punishable only by disciplinary measures. It seems reasonable that the advantage accruing from the fact of escape should also apply to offences in the latter category. Otherwise, the application of the last paragraph of Article 91 would be illusory [2].

It has rightly been pointed out that offences against public property may be of considerable scope, and that a prisoner's honourable motive in escaping does not fully justify offences which prejudice the interests of the community and in fact amount to acts of war [3].

Additional difficulties have sometimes arisen from the wearing of civilian clothing ; during the Second World War, some Detaining Powers stated their intention of considering prisoners of war in civilian clothing as spies and no longer as prisoners of war [4]. This matter is settled by the present provision : a prisoner of war retains that legal status until such time as he has made good his escape. It is absolutely forbidden for him to commit any belligerent act, to carry weapons, or to engage in armed resistance, otherwise he will be liable to be treated as a sniper or saboteur.

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[1] See *Report on the Work of the Conference of Government Experts*, p. 214.

[2] SCHEIDL is not of this opinion and considers that such offences, unlike those actually committed during captivity, remain punishable since they cannot be attributed to the fact of captivity, and that the legislation of the Detaining Power should therefore be fully applicable (SCHEIDL, *op. cit.*, p. 450). It should, however, be noted that Scheidl's reasoning is based on Article 51, paragraph 1, of the 1929 Convention, which made no distinction between offences punishable by disciplinary measures and those to which judicial penalties are applicable. (See also FLORY, *op. cit.*, p. 156.)

[3] Reference may also be made to FREY, *op. cit.*, pp. 91-97, for some interesting facts concerning the practices of various belligerent States during the Second World War.

[4] See SCHEIDL, *op. cit.*, pp. 451-452.

PARAGRAPH 3. — ACCOMPLICES

Since a prisoner of war who attempts to escape is liable only to disciplinary punishment, those who aid or abet him must not be treated more severely.

At the 1929 Conference, some delegations maintained that accomplices should be exempt from any punishment, even disciplinary. This proposal was rightly rejected. Furthermore, the punishment of accomplices is consistent with the principles of penal law. Escape is an offence against the Detaining Power. The privilege of impunity which is granted to a prisoner of war who commits this offence is based solely on the fact that captivity is interrupted and this is not so in the case of accomplices.

ARTICLE 94. — ESCAPES: IV. NOTIFICATION OF RECAPTURE

If an escaped prisoner of war is recaptured, the Power on which he depends shall be notified thereof in the manner defined in Article 122, provided notification of his escape has been made.

This provision is new. The principal reason for its insertion was that during the Second World War it frequently happened that prisoners of war who escaped and were reported as missing to the Central Prisoners of War Agency, were recaptured without the Agency being notified; this caused considerable difficulty for the enquiry and checking services at the Central Agency. In the interests of the prisoner of war, each recapture must also be notified to his country of origin.

Article 122, paragraph 5, confirms this principle. The notification must be made by the Detaining Power, through the intermediary of the Information Bureau provided under Article 122.

PROCEDURE

(ARTICLES 95 AND 96)

ARTICLE 95. — PROCEDURE: I. CONFINEMENT AWAITING HEARING

A prisoner of war accused of an offence against discipline shall not be kept in confinement pending the hearing unless a member of the

armed forces of the Detaining Power would be so kept if he were accused of a similar offence, or if it is essential in the interests of camp order and discipline.

Any period spent by a prisoner of war in confinement awaiting the disposal of an offence against discipline shall be reduced to an absolute minimum and shall not exceed fourteen days.

The provisions of Articles 97 and 98 of this Chapter shall apply to prisoners of war who are in confinement awaiting the disposal of offences against discipline.

General Remarks

The corresponding provision in the 1929 Convention was contained in Article 47, paragraph 1 [1].

The offences punishable by disciplinary measures are of a minor character, either because the offence itself is of no great importance, or because there is no criminal intent on the part of the offender. No disciplinary punishment may be awarded without a preliminary investigation (Article 96, paragraph 1), but that investigation will never be as complicated as a judicial enquiry, and in general there is no justification for any great delay between the time when the offence is discovered and the awarding of punishment. It is therefore seldom necessary to confine a prisoner of war awaiting hearing.

This rule is recognized by most national legislations, especially that of the Anglo-Saxon countries on which the present provisions were largely based [2].

Paragraph 1. — Prohibition of confinement awaiting hearing and exceptions thereto

As a general rule, it is forbidden to keep a prisoner of war accused of a disciplinary offence in confinement pending the hearing, and any exception to this rule must be substantiated. This is the novel feature of the principle stated here. The best way of avoiding any recurrence of previous abuse regarding confinement while awaiting hearing [3]

[1] See below, p. 731.

[2] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 505.

[3] See Frey, *op. cit.*, p. 109 ff.; Bretonnière, *op. cit.*, pp. 313-314.

is obviously to forbid it. This prohibition is justified moreover by the considerations already stated, subject to certain specified reservations ; most national legislations do not make provision for confinement while awaiting hearing in disciplinary matters.

With regard to the needs of " the interests of camp order and discipline ", this reference must be interpreted in a restrictive way if the prohibition is to be truly valid, for it presupposes that it is impossible to award punishment immediately, either because special circumstances make the investigation particularly difficult, or because there is no competent authority to conduct the hearing.

PARAGRAPH 2. — MAXIMUM DURATION

The wording of Article 47, paragraph 1, of the 1929 Convention was rather vague and gave rise to much abuse ; the drafters of the new Convention therefore decided to specify that, whatever the circumstances, a prisoner of war accused of a disciplinary offence must be released after fourteen days confinement. This time equals half the maximum sentence of imprisonment applicable. The release obviously does not prejudice the ultimate findings, provided the time spent in confinement awaiting hearing is deducted in accordance with Article 90.

PARAGRAPH 3. — SAFEGUARDS

This provision is also new and is intended to prevent any recurrence of certain abuses committed during the Second World War (detention in special camps to which prisoners' representatives and Protecting Powers had no access, suppression of essential privileges and guarantees, etc.) [1].

ARTICLE 96. — PROCEDURE : II. COMPETENT AUTHORITIES AND RIGHT OF DEFENCE

Acts which constitute offences against discipline shall be investigated immediately.

Without prejudice to the competence of courts and superior military authorities, disciplinary punishment may be ordered only by an officer

[1] See BRETONNIÈRE, *op. cit.*, pp. 313-314 ; *Report on the Work of the Conference of Government Experts*, p. 208.

having disciplinary powers in his capacity as camp commander, or by a responsible officer who replaces him or to whom he has delegated his disciplinary powers.

In no case may such powers be delegated to a prisoner of war or be exercised by a prisoner of war.

Before any disciplinary award is pronounced, the accused shall be given precise information regarding the offences of which he is accused, and given an opportunity of explaining his conduct and of defending himself. He shall be permitted, in particular, to call witnesses and to have recourse, if necessary, to the services of a qualified interpreter. The decision shall be announced to the accused prisoner of war and to the prisoners' representative.

A record of disciplinary punishments shall be maintained by the camp commander and shall be open to inspection by representatives of the Protecting Power.

This provision is based on Article 47, paragraph 1, and Article 59 of the 1929 Convention [1].

As has already been seen, disciplinary power is vested in the system of hierarchy. The authority to give orders is accompanied by the right to sanction any failure to carry out those orders, that is to say by the power of compulsion. But whereas authority may be exercised at various levels of the armed forces of the Detaining Power, and sometimes even by simple soldiers, this is not so as regards the power of compulsion which must be accompanied by adequate safeguards of impartiality. These safeguards consist of a proper determination of the facts, the designation of the competent authority, and the means of defence available to the accused.

PARAGRAPH 1. — PROPER DETERMINATION OF THE FACTS

In order to make a proper determination, it is essential to investigate the facts immediately. The present paragraph therefore merely contains, in another form, the idea which was previously expressed in Article 47, paragraph 1, of the 1929 Convention concerning the immediate preparation of a statement of the facts of the case.

[1] See below, p. 732.

The measures to be taken will include questioning of the accused, hearing of witnesses, on-the-spot investigations, etc., as prescribed by the authority qualified to award punishment. Where appropriate, however, certain preliminary measures may be taken by other persons, particularly in urgent cases and more especially by the person who discovered the offence and reported it.

PARAGRAPH 2. — COMPETENT AUTHORITIES

This paragraph corresponds almost exactly to Article 59 of the 1929 Convention.

In accordance with Article 39 of the present Convention, every prisoner-of-war camp is under the immediate authority of a responsible commissioned officer belonging to the regular armed forces of the Detaining Power. This officer possesses a copy of the Convention and is responsible for its application. He must therefore take all necessary disciplinary measures to achieve this end.

It was, however, pointed out by some delegations to the Conference of Government Experts[1] that in very large camps, delays and complications arose from the necessity of referring every case to the camp commander. They therefore proposed that disciplinary powers could be delegated to the officers in charge of the camp compounds, and this suggestion met with unanimous approval. The delegation of powers authorized in the present paragraph does not, however, absolve the camp commander from his responsibility or his duty of supervision. Since under Article 39 he is responsible for the application of the Convention, he is also responsible for any abuses of which his subordinates might be guilty in exercising disciplinary powers.

The officer to whom disciplinary powers are delegated assumes some of the prerogatives of the camp commander. He must therefore comply with the conditions laid down in Article 39, that is to say he must be a member of the regular armed forces of the Detaining Power [2].

PARAGRAPH 3. — PROHIBITION OF ANY DELEGATION OF DISCIPLINARY POWERS TO PRISONERS OF WAR

It goes without saying that it is not for prisoners of war to pass judgment on the application, whether good or bad, of the regulations

[1] See *Report on the Work of the Conference of Government Experts*, p. 220.
[2] See SCHEIDL, *op. cit.*, pp. 463-464.

laid down by the camp commander for the organization and maintenance of captivity. The question of the exercising of some disciplinary power by prisoners of war has, however, arisen in connection with offences committed by one prisoner against his fellow-prisoners (for instance, theft). During the Second World War, some camp commanders permitted disciplinary powers to be exercised in such cases by the prisoners' representatives or even by a tribunal composed of prisoners of war. This practice is now forbidden.

PARAGRAPH 4. — THE RIGHT OF DEFENCE

The differences between national legislations as regards regulations for disciplinary proceedings are much greater than in the case of the regulations governing judicial proceedings. During the Second World War, the facilities for defence varied greatly, and prisoners of war were sometimes the victims of wholly arbitrary decisions. The Conference of Government Experts therefore decided that it was necessary to specify procedural guarantees in regard to the defence of prisoners of war which were not included in the 1929 text [1].

The first guarantee is that the prisoner must be given " precise information " regarding the charges against him ; the words used indicate clearly that vague and general information is not enough. Moreover, the obligation to carry out an immediate investigation, as specified in paragraph 1, implies questioning the accused, who will thus know precisely the offence with which he is charged.

This information is the essential basis for exercising the right of defence, and express reference was therefore made to it.

The second guarantee is the right of the accused freely to express himself. This provision may be compared with Article 78, which recognizes the right of prisoners of war to submit complaints ; but whereas the right of defence is exercised before sentence is pronounced, the right of complaint becomes applicable only after judgment has been passed, for the purpose of a possible review.

The right of defence includes the hearing of witnesses and recourse to the services of a *qualified* interpreter. Article 105 below, which relates to the rights and means of defence of a prisoner of war in the event of judicial proceedings, provides in paragraph 1 that the accused may be assisted by a *competent* interpreter. The same distinction appears in the French text, and it seems to have been made delibe-

[1] See *Report on the Work of the Conference of Government Experts*, p. 216.

rately by the drafters of the Convention. A competent interpreter is one who is capable of making a correct appraisal; a qualified interpreter is an interpreter whose work is of a high standard. The difference seems slight, although, strictly speaking, " qualified " seems stronger than " competent ". The distinction made in the text of the Convention therefore seems rather illogical, since in disciplinary matters any error by the defence can, at worst, only result in a punishment of thirty days' confinement. In the case of judicial proceedings, on the other hand, the prisoner of war may be liable to the death sentence and every precaution must be taken to ensure his defence in the best possible conditions.

The third guarantee concerns the announcement of the decision to the accused prisoner of war and to the prisoners' representative [1]. Thus the prisoner of war is not only informed of the decision, but can also avail himself of the right of complaint, either directly or through the intermediary of the prisoners' representative (Article 78, paragraph 2), or of the right of appeal if it exists under the legislation of the Detaining Power (Article 82, paragraph 1). The prisoners' representative will be able, if he thinks fit, to approach the military authorities or the Protecting Power direct (Article 79, paragraph 1).

PARAGRAPH 5. — RECORD OF DISCIPLINARY PUNISHMENTS

This provision was not included in the 1929 Convention, but it exists in most national legislations. It allows the higher authorities to check on the way in which the camp commander exercises his disciplinary powers and it is therefore absolutely essential. The Article also states that a check may be made by the Protecting Power.

The establishment and keeping of the record depends on national regulations. It may be assumed, however, that it should mention the exact names of those convicted, the date on which sentence was passed, the nature and duration of the punishment, the place in which it was carried out, the motives for it, as well as the name and signature of the person who awarded the punishment. Furthermore, the record should include a reference to the enquiry file, so that any possible complaints can be checked and investigated.

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[1] The 1949 Diplomatic Conference even considered including the requirement that the decision should be taken in the presence of those concerned. See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 506.

EXECUTION OF PUNISHMENT

(ARTICLES 97 AND 98)

ARTICLE 97. — EXECUTION OF PUNISHMENT : I. PREMISES

Prisoners of war shall not in any case be transferred to penitentiary establishments (prisons, penitentiaries, convict prisons, etc.) to undergo disciplinary punishment therein.

All premises in which disciplinary punishments are undergone shall conform to the sanitary requirements set forth in Article 25. A prisoner of war undergoing punishment shall be enabled to keep himself in a state of cleanliness, in conformity with Article 29.

Officers and persons of equivalent status shall not be lodged in the same quarters as non-commissioned officers or men.

Women prisoners of war undergoing disciplinary punishment shall be confined in separate quarters from male prisoners of war and shall be under the immediate supervision of women.

Although the heading is a general one, the present Article, like Article 98, deals only with punishment by confinement, and not with the other disciplinary penalties listed in Article 89.

With the exception of the last paragraph which is new, this Article embodies the provisions of Article 56, paragraphs 1, 2 and 3, and Article 49, paragraph 2, of the 1929 Convention[1].

PARAGRAPH 1. — PROHIBITION OF ANY TRANSFER TO PENITENTIARY ESTABLISHMENTS

It is indisputable—and the Conference of Government Experts recognized this[2]—that penitentiary establishments very often afford better material conditions than a place of confinement in a camp. In fact, prisoners of war who were not undergoing confinement have sometimes been accommodated in prisons.

The delegates to the Conference nevertheless considered that, whatever the reason, it was an affront to military dignity to assimilate prisoners of war undergoing disciplinary punishment with ordinary criminals.

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[1] See below, pp. 732-733.

[2] See *Report on the Work of the Conference of Government Experts*, pp. 218-219.

The same prohibition is applicable to the case of prisoners of war serving a judicial sentence in a military prison (Article 108, paragraph 1).

Thus, although it is not actually specified that the sentence must be served in a prisoner-of-war camp, this is implicit in the fact that any transfer to a penitentiary establishment is forbidden. There is nothing, however, against transferring an offender from one camp to another, provided that the latter is a regular prisoner-of-war camp, offering all the guarantees laid down by the Convention. This also applies to transfer from a labour camp to the main camp.

PARAGRAPH 2. — PREMISES — SANITARY REQUIREMENTS

The obligation to carry out disciplinary punishments in prisoner-of-war camps almost invariably raises problems for the camp commander which are difficult of solution. The usual method is to set aside a hut or part of a hut for the purpose and to fit out a number of cells there. Too often, during the Second World War, cells designed for one or two prisoners were occupied by four or five at the same time [1].

One solution to which camp commanders might have recourse would be to make more frequent use of the other penalties permissible under Article 89 rather than confinement.

The first drawback of such overcrowding is the danger to health. It is quite clear that in such cases the provisions of Article 25, which are nevertheless referred to expressly here, are not respected nor are they respected when cellars, basements and other similar premises are used for disciplinary punishment, since this is contrary to Article 87, paragraph 3, which forbids imprisonment in premises without daylight.

The sanitary requirements relate not only to the premises but also to the prisoners of war ; during the Second World War, the conditions laid down by the 1929 Convention in this respect were not always properly observed [1]. Reference should also be made to the commentary on Article 29, and it should be emphasized that is no reason why prisoners undergoing imprisonment should not have the same facilities in regard to their personal cleanliness as other prisoners of

[1] See BRETONNIERE, *op. cit.*, pp. 380-381.

war. On the contrary, as the premises in which disciplinary punishments are served are often inadequate, the Detaining Power should pay special attention to the personal cleanliness of those detained there.

PARAGRAPH 3. — CONFINEMENT OF OFFICERS AND PERSONS OF EQUIVALENT STATUS

This provision should be compared with Article 98, paragraph 2, which safeguards the prerogatives of officers ; these two clauses were contained in the same Article in the 1929 Convention. One of the essential prerogatives of officers and persons of equivalent status in all armed forces, except of course in exceptional cases, is to have accommodation separate from that of the other ranks ; *a fortiori*, this must also apply in case of confinement. Officers frequently serve a punishment of confinement in their quarters, and if that is not possible they must be assigned to premises which offer at least all the safeguards stated in the present Article [1].

PARAGRAPH 4. — WOMEN PRISONERS OF WAR

The present provision was inserted because during the Second World War a certain number of women were members of the armed forces ; it may be compared with the other provisions of the Con-

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[1] In this connection, it may be useful to recall the text of Article 54 in the first draft of the 1929 Convention : " The premises in which disciplinary sentences are undergone by officer prisoners of war shall conform to the requirements of hygiene, and shall be sufficiently large, dry, ventilated, heated during the cold season and have artificial lighting from twilight until 9 p.m. They shall be furnished with at least a bed, sheets, blankets, a table, a chair and a wash-basin."

The latter conditions are those usually enjoyed by officers on active service.

Article 57, which related to non-commissioned officers and other ranks, read as follows :

" The premises in which disciplinary sentences are undergone by prisoners of war who are non-commissioned officers or men shall conform to the requirements of hygiene and shall be sufficiently light, dry, ventilated, and heated during the cold season.

" They shall be furnished with a bunk consisting of a wooden board without a palliasse. The prisoner undergoing punishment shall, however, be provided with a palliasse for one night out of four. He shall be provided with a blanket, and if the temperature is below 7.5 degrees Centigrade he shall be given an additional blanket. Prisoners of war undergoing punishment shall retain their uniform, including greatcoat."

vention relating to women [1]. The Detaining Power is naturally free to treat women undergoing imprisonment less harshly than men, or to provide them with more comfortable accommodation. It must, however, respect in full the present provision which is designed to protect the honour and modesty of women prisoners of war.

Reference should be made in particular to Article 25, paragraph 4, which states that women prisoners of war must have separate dormitories and Article 29, paragraph 2, which requires separate conveniences to be provided.

ARTICLE 98. — EXECUTION OF PUNISHMENT: II. ESSENTIAL SAFEGUARDS

A prisoner of war undergoing confinement as a disciplinary punishment, shall continue to enjoy the benefits of the provisions of this Convention except in so far as these are necessarily rendered inapplicable by the mere fact that he is confined. In no case may he be deprived of the benefits of the provisions of Articles 78 and 126.

A prisoner of war awarded disciplinary punishment may not be deprived of the prerogatives attached to his rank.

Prisoners of war awarded disciplinary punishment shall be allowed to exercise and to stay in the open air at least two hours daily.

They shall be allowed, on their request, to be present at the daily medical inspections. They shall receive the attention which their state of health requires and, if necessary, shall be removed to the camp infirmary or to a hospital.

They shall have permission to read and write, likewise to send and receive letters. Parcels and remittances of money, however, may be withheld from them until the completion of the punishment; they shall meanwhile be entrusted to the prisoners' representative, who will hand over to the infirmary the perishable goods contained in such parcels.

The contents of this Article are not new but were previously to be found in a number of provisions of the 1929 Convention (Article 49, paragraph 2, and Articles 56, 57, 58 and 67) [2].

Strict rules are laid down as to the nature and duration of punishment, and the application of disciplinary power must also be regulated.

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[1] See the commentary on Article 14, paragraph 2, above, and also that on Article 88, paragraphs 2 and 3.

[2] See below, pp. 732, 733 and 739.

The fact that only the camp commander is authorized to exercise disciplinary power is already a safeguard, and one may assume that he will always bear in mind the fact that this is one of the most important responsibilities of a military commander [1].

PARAGRAPH 1. — APPLICABILITY OF THE PROVISIONS OF THE CONVENTION ; EXCEPTIONS

Confinement may range from detention in cells to mere restrictions on liberty outside working hours (open confinement) ; confinement as a disciplinary punishment usually consists of continuous confinement during the whole duration of the punishment.

In general, the benefits of the Convention continue to apply, but some of them are obviously in contradiction with confinement. Prisoners of war undergoing confinement are entitled, under Article 27, to retain their uniform, but it is customary to remove their shoe-laces, ties, and anything else which might enable them to attempt suicide in a fit of depression. It should also be noted that when, as in the case of parcels or premises, the Convention refers specifically to disciplinary confinement, the other provisions of the Convention are overridden.

In the event of air bombardment, a prisoner of war undergoing confinement will always be able to go to the shelters (Article 23). Confinement prevents prisoners from going to the canteen, but it must not prevent them from acquiring necessary personal articles such as soap (Article 28), and, like their fellow-prisoners, they will have a medical inspection once a month (Article 31). They must be able freely to exercise their religious duties (Article 34) and to receive the assistance of their chaplains (Article 35), but a minister of religion serving a disciplinary sentence will obviously not be able to exercise his ministry (Article 36). There can be no withdrawal of the right to be informed of the Convention and of regulations, orders, notices and publications (Article 41). If a prisoner of war is under close arrest, he will obviously be unable to work and will therefore receive no working pay. He will, however, continue to receive the normal advances of pay.

In emergency cases, prisoners of war undergoing confinement must be enabled to draw up and transmit legal documents (Article 77)

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[1] In disciplinary matters, abuse can easily occur, and in fact has occurred ; it is perhaps for this reason that the authors of the 1929 Convention as well as those of the present Convention provided safeguards which are, generally speaking, rather favourable to prisoners of war.

and also to take part in the election of prisoners' representatives (Article 79). Wounded or sick prisoners of war undergoing confinement must be able to present themselves before the Mixed Medical Commissions (Article 113).

Without considering this list as an exhaustive one, but taking into account the subsequent paragraphs of the present Article, it thus appears that confinement does render a limited number of provisions inapplicable.

An express reference is made to Articles 78 and 126 ; the first relates to the right of complaint, and the second to the right of supervision of the Protecting Power and the International Committee of the Red Cross. Whatever the disciplinary system imposed on a prisoner of war undergoing confinement, he may therefore never be deprived either of the right freely to express himself, or of the right to be in touch at any time with delegates of the two bodies referred to.

In fact, these Articles are among the provisions which cannot be rendered inapplicable by the fact of confinement. Because of their very great importance, however, and of the experience gained in this connection during the Second World War, special reference was made to them [1].

PARAGRAPH 2. — PREROGATIVES ATTACHING TO RANK

A. *Officers.* — Officers retain the right to wear the insignia of their rank (Article 44). They may not be required to work (Article 49, paragraph 3) or to provide their own service (Article 44, paragraph 2), for that would amount to making them perform fatigue duties, which is forbidden under Article 89, paragraph 2. In accordance with Article 97, paragraph 3, officers will be lodged in quarters separate from those of non-commissioned officers and other ranks. These provisions were in the main observed during the Second World War [2].

B. *Non-commissioned officers.* — This refers mainly to the right not to be compelled to work, in accordance with Article 49, paragraph 2. During the Second World War this provision was not respected [3].

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[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 494-495.

[2] See BRETONNIÈRE, *op. cit.*, pp. 321-322. For his part, SCHEIDL (*op. cit.*, p. 414) deplores the fact that the provisions of the 1929 Convention were more restrictive than those contained in the Franco-German agreement of March 15, 1918, Article 47.

[3] See BRETONNIÈRE, *op. cit.*, pp. 321-322.

It will be noted that here, as in Article 44, the English word "rank" corresponds to "grade" in French.

PARAGRAPH 3. — EXERCISE IN THE OPEN AIR

This clause, which may be compared with Article 38, is essential for the fitness and health of prisoners undergoing confinement, but it has been violated all too frequently [1]. "Exercise" must be taken to mean the opportunity to walk and run, which implies that a sufficiently large space must be made available for this purpose.

PARAGRAPH 4. — MEDICAL INSPECTIONS

Article 30, paragraph 4, of the present Convention provides that "prisoners of war may not be prevented from presenting themselves to the medical authorities for examination"; one may assume that there will be daily medical inspections in prisoner-of-war camps; although this is not stated in Article 30, it is mentioned in the present provision [2].

The guards are not entitled to forbid prisoners to attend daily medical inspections. This does not mean, however, that prisoners of war undergoing confinement must necessarily be received by the doctor every day. If a prisoner's request seems unjustified and likely to prejudice the efficient functioning of the medical service, it will be for the doctor to decide and to take the necessary measures on his own responsibility.

PARAGRAPH 5. — READING, CORRESPONDENCE AND PARCELS

1. *First sentence. — Reading and correspondence*

Article 57, paragraph 1, of the 1929 Convention was almost identical to the present text.

This provision has given rise to some considerations which have already been referred to. It is obvious that detention is likely to

[1] See BRETONNIERE, *op. cit.*, pp. 380-381.

[2] This requirement will help to prevent the many abuses which occurred during the Second World War. See *Report on the Work of the Conference of Government Experts*, p. 220; BRETONNIERE, *op. cit.*, p. 384.

lose much of its effectiveness as a punishment, particularly since disciplinary confinement is usually of short duration, by virtue of the fact that prisoners of war undergoing confinement are permitted not only to write at least two letters and four cards per month, as provided for in Article 71, but also to read.

2. *Second sentence. — Parcels*

Article 57, paragraph 2, of the 1929 Convention was similar in scope to the present text, since it also authorized the Detaining Power to withhold parcels addressed to prisoners of war undergoing confinement.

In accordance with Article 26 of the Convention, prisoners of war must be given adequate food to keep them in good health and to prevent loss of weight or the development of nutritional deficiencies. Those conditions, therefore, do not preclude restrictions on food in the case of men who are not working, subject of course to medical supervision ; the present paragraph permits the withholding of all extra rations as well as alcohol and tobacco, of course. Such restrictions were not always applied during the Second World War [1].

The 1929 text authorized the Detaining Power to hand over either to the infirmary or to the camp kitchen undelivered parcels addressed to prisoners of war undergoing confinement when those parcels contained perishable foodstuffs ; the present text states that such parcels may be handed over only to the infirmary, through the intermediary of the prisoners' representative. The Government Experts deliberately removed the possibility of such parcels being handed over to the camp kitchen [2].

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[1] See BRETONNIÈRE, *op. cit.* p. 382.
[2] See *Report on the Work of the Conference of Government Experts*, p. 219.

III. JUDICIAL PROCEEDINGS

ESSENTIAL RULES

(ARTICLES 99 TO 101)

ARTICLE 99. — ESSENTIAL RULES: I. GENERAL PRINCIPLES

No prisoner of war may be tried or sentenced for an act which is not forbidden by the law of the Detaining Power or by International Law, in force at the time the said act was committed.

No moral or physical coercion may be exerted on a prisoner of war in order to induce him to admit himself guilty of the act of which he is accused.

No prisoner of war may be convicted without having had an opportunity to present his defence and the assistance of a qualified advocate or counsel.

PARAGRAPH 1. — " NULLUM CRIMEN SINE LEGE "

The principle of *nullum crimen sine lege*, which is a traditional principle of penal law, was added by the drafters of the Convention to the basic principles set forth in Article 61 of the 1929 Convention (now contained in paragraphs 2 and 3 of the present Article); it has been specified, however, in order to take Article 85 into account, that both the legislation of the Detaining Power and international law must be taken into consideration.

This provision should be compared with Article 11, paragraph 2, of the Universal Declaration of Human Rights, which states: " No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed."

The phrase " international law, in force " is nevertheless vague. The Rapporteur of Committee II pointed out to the Plenary Assembly of the 1949 Conference that this referred only to " generally recognized provisions " [1]. Does this refer to customary international law or to

[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 571. Only Spain took a definite stand on the matter by making the following reservation at the time of signature: " Under ' international law in force ', Spain understands she only accepts that which arises from contractual sources or which has been previously elaborated by organizations in which she participates ". *Final Record*, Vol. I, p. 346.

international law as set forth in legal instruments ? The French text seems to refer to the latter, since it states that in order for the act to be punishable, it must be " expressément réprimé " (expressly forbidden) by international law in force ; on the other hand, the English text, which is also authentic, is more flexible (" no prisoner of war may be tried or sentenced for an act which is not forbidden . . . ") and seems to permit the application of customary law [1].

In actual fact, since the codification of 1949, there are no customary rules which are not included either in the Hague Conventions or in the new Conventions. The points for which no provision is made are precisely those on which there is a lack of agreement (e.g. definition of military objectives, attitude to be adopted towards a pilot who escapes from his plane by parachute, wearing of uniforms of the enemy armed forces, etc.). Any customary rules which are not embodied in national legislation should therefore be applied only in accordance with instructions regularly given to national troops and which are therefore respected in the normal way by those troops.

On the other hand, the customary rules become fully applicable in the case of a prisoner whose country of origin, or the Power on which he depends, is not a party to the international instruments governing the laws of war.

Paragraph 2. — Prohibition of coercion

In accordance with present-day concepts, an accused person may not be induced by coercion to make statements ; he is always entitled to refuse to reply to any questions put to him, whether by police officials or by a magistrate or judge. The onus of proof is on the prosecution ; the accused may simply abstain from making any statement, in accordance with the principle *nemo tenetur edere contra se.*

The notion that the accused "owes" it to justice to tell the truth led to the institution of torture. Torture may, however, lead to results which are contrary to the law if, under the effect of exhaustion or pain, the accused is induced to make a statement which is untrue. In accordance with the Conventions, questioning must be carried out in normal conditions : not only is torture forbidden, but also the use of any chemical products designed to overcome a person's powers

[1] See Hinz, *Das Kriegsgefangenenrecht*, Berlin-Frankfurt 1955, p. 155 ff ; see also Article 85 above, pp. 414 and 416.

of discernment, to influence or restrain free will, or to build up artificial impressions ; hypnosis and narco-analysis are also forbidden. The same obviously applies to practices such as protracted questioning resulting in extreme exhaustion and nervous breakdown and carried out in such conditions that the accused is induced to admit anything at all in order to bring it to an end.

PARAGRAPH 3. — RIGHT OF DEFENCE

This provision is complemented by Article 105 below, which sets forth in detail the rights and means of defence.

This principle is also contained in the Universal Declaration of Human Rights of December 10, 1948 (Articles 10 and 11), as well as in the draft Covenant on Human Rights, Article 6 of which is based on certain safeguards considered as essential : the right to a fair and public hearing by an independent and impartial tribunal, during a trial at which the accused has all the guarantees necessary for his defence ; the right to defend himself in person or through legal assistance, the latter to be given free if the accused has not sufficient means to pay for it.

In addition to the conditions set forth in paragraphs 1 and 2 of the present Article, the following guarantees are now considered as necessary for the accused :

(a) to be notified, in good time, in detail, and in a language which he understands, of particulars of the charge brought against him (see Articles 104 and 105, paragraph 4) ;

(b) to have sufficient time to prepare his defence (Articees 104 and 105, paragraphs 1, 2, 3 and 4) ;

(c) to conduct his own defence or to obtain the assistance of an advocate or counsel of his own choice or, if he is without the necessary funds, to obtain free assistance by a counsel so appointed (Article 105, paragraphs 1 and 2) ;

(d) to question or to have questions put to witnesses for the prosecution in the presence of the accused and to question witnesses for the defence, in the same way as witnesses for the prosecution are questioned and in accordance with the normal rules of procedure (accusatorial or inquisitorial) (see Article 105, paragraph 3) ;

(e) to have the services, free of charge, of an interpreter, if he does not understand the language of the discussion or cannot express himself in the language of the court (see Article 105, paragraph 1).

Lastly, the freedom of the counsel for the defence must be ensured ; not only must he be able to communicate freely with the accused, to prepare the whole defence and to plead without restriction (Article 105, paragraph 3), but he must also be assured of suffering no prejudice of any kind, whether personal or professional, for having taken on the prisoner's defence. It goes without saying that the defence must be proper and must not offend the dignity of the court.

ARTICLE 100. — ESSENTIAL RULES : II. DEATH PENALTY

Prisoners of war and the Protecting Powers shall be informed, as soon as possible, of the offences which are punishable by the death sentence under the laws of the Detaining Power.

Other offences shall not thereafter be made punishable by the death penalty without the concurrence of the Power upon which the prisoners of war depend.

The death sentence cannot be pronounced on a prisoner of war unless the attention of the court has, in accordance with Article 87, second paragraph, been particularly called to the fact that since the accused is not a national of the Detaining Power, he is not bound to it by any duty of allegiance, and that he is in its power as the result of circumstances independent of his own will.

During the preparatory work for the 1949 Diplomatic Conference, the International Committee of the Red Cross had suggested that the death sentence should be abolished, or at least confined to certain crimes [1]. This proposal was not approved by the majority of delegations, which pointed out the great differences existing in this field between national legislations, and the fact that a State which generally refuses to apply the death penalty may find it necessary to do so in time of war. In their opinion, it was therefore preferable to avoid weakening the Convention by inserting stipulations or details which some signatory States might have difficulty in accepting. It was none the less essential to preclude any arbitrary action in such an important matter.

[1] See *Report on the Work of the Conference of Government Experts*, p. 231.

PARAGRAPH 1. — NOTIFICATION OF PRISONERS OF WAR AND PROTECTING POWERS

Prisoners of war will be notified in accordance with the provisions of Article 41, in order to carry out the maxim *nemo jus ignorare censetur*.

The Protecting Powers will also be informed and will thus be able to inform the Power on which the prisoners of war depend. The text states that this notification must be made " as soon as possible ". It is obvious that this must be done immediately after capture, for it would be inconceivable—and absolutely contrary to the spirit of the present Convention—for prisoners to be informed of the consequences of their acts only after those acts had been committed. On the other hand, the Detaining Power is free to withhold any communication of this kind as long as it refrains from imposing the death penalty. In that case, the death sentence may be applied only in respect of acts committed after the notification was made.

PARAGRAPH 2. — RESERVATION : CONCURRENCE OF THE POWER UPON WHICH THE PRISONERS OF WAR DEPEND

The present paragraph was inserted at the Stockholm Conference and adopted without amendment by the Diplomatic Conference of 1949. It requires the concurrence of the Power upon which prisoners of war depend before any other offences can be made punishable by the death penalty, after prisoners of war and the Protecting Powers have been notified pursuant to paragraph 1.

This means in practice that the Detaining Power may not unilaterally amend its legislation in this matter once it has made the first notification unless it first obtains the concurrence of the Power on which the prisoners of war depend ; it constitutes a guarantee for prisoners of war against *ad hoc* legislation enacted by the Detaining Power which could worsen their position.

PARAGRAPH 3. — EXTENUATING CIRCUMSTANCES

This provision reiterates the extenuating circumstances mentioned in Article 87, paragraph 2, to which a specific reference is made : since the accused is not a national of the Detaining Power, he is not bound to it by any duty of allegiance, and is in its power as the result of circumstances independent of his own will. These circumstances

must be expressly mentioned in court, in order to ensure a lenient attitude on the part of the judges. This will normally be done by the Attorney-General or by the President of the tribunal who must see to it that this imperative provision is respected. Otherwise, there would be grounds to appeal for the court's findings to be set aside.

ARTICLE 101. — ESSENTIAL RULES : III. DELAY IN EXECUTION OF THE DEATH PENALTY

If the death penalty is pronounced on a prisoner of war, the sentence shall not be executed before the expiration of a period of at least six months from the date when the Protecting Power receives, at an indicated address, the detailed communication provided for in Article 107.

While the case of prisoners of war sentenced to a mild penalty is usually studied and settled on the spot by the representatives of the Protecting Power, that of prisoners liable to the death penalty is more often referred for study to the country of origin, which can then make diplomatic representations with a view to obtaining a reduction of sentence. In those circumstances the drafters of the new Convention considered that the time-limit of three months, specified in Article 66, paragraph 2, of the 1929 Convention, was not sufficient and increased it to six months.

In order to avoid any misunderstanding, the Article states exactly how the period is to be computed : it runs from the date when the Protecting Power receives the detailed communication, that is to say, from the date on which the communication is delivered to the address indicated by the Protecting Power for this purpose. The Convention does not, however, state how the communication must be made and this will depend on the procedural laws of the Detaining Power. It will be in the interest of the latter to take all proper precautions (registered letter, writ, etc.) in order to be able to prove that the communication was actually received by the Protecting Power.

The minimum period of six months may obviously be extended by the Detaining Power but in no case may it be reduced if execution of the death penalty is suspended after the final judgment has been notified to the Protecting Power ; this time-limit is a final guarantee against a judgment based on the circumstances of the moment, too often affected by emotional considerations. During that time, the Protecting Power will be able to intercede in behalf of the condemned person either in the name of the Power on which he depends or of its own accord. Article 107 below specifies the contents of the communication.

PROCEDURE

(ARTICLES 102 TO 107)

ARTICLE 102. — PROCEDURE: I. CONDITIONS FOR VALIDITY OF SENTENCE

A prisoner of war can be validly sentenced only if the sentence has been pronounced by the same courts according to the same procedure as in the case of members of the armed forces of the Detaining Power, and if, furthermore, the provisions of the present Chapter have been observed.

The principle of the assimilation of prisoners of war to the armed forces of the Detaining Power in court and procedural matters was already set forth in Article 63 of the 1929 Convention [1]. The present Article supplements it by requiring respect for the provisions of the Convention relating to judicial proceedings. In any case of doubt which might be to the disadvantage of prisoners of war, these provisions (which are imperative and are contained in Articles 82 to 108) must outweigh the corresponding provisions in the legislation of the Detaining Power, and the latter must in any event afford as a minimum the safeguards specified in the Convention. This interpretation is also clear from the text itself [2].

Article 84 should also be borne in mind ; its first paragraph states that a prisoner of war may be tried only by a military court, unless the laws of the Detaining Power expressly provide otherwise. Paragraph 2 of Article 84 confirms the last phrase of the present provision, by expressly forbidding the Detaining Power to bring a prisoner of war before any court which does not offer the essential guarantees of independence and impartiality as generally recognized, and makes a reference to the safeguards provided for under Article 105.

Under the present Article, the Detaining Power must respect not only the provisions of Article 105, but also all the provisions of the present Chapter. The rules of the Convention therefore outweigh national legislation and the States party to the Convention must modify their own legislation if necessary, and in particular their military penal code, in order to respect the minimum standards set forth in Chapter III (Articles 82 to 108). If one or other of these provisions is not observed, then there are grounds for appeal, pursuant to Article 106.

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[1] See below, p. 735.

[2] The last phrase is categorical: "—A prisoner of war can be validly sentenced only . . . if, *furthermore*, the provisions of the present Chapter have been observed."

ARTICLE 103. — PROCEDURE : II. CONFINEMENT AWAITING TRIAL (DEDUCTION FROM SENTENCE, TREATMENT)

Judicial investigations relating to a prisoner of war shall be conducted as rapidly as circumstances permit and so that his trial shall take place as soon as possible. A prisoner of war shall not be confined while awaiting trial unless a member of the armed forces of the Detaining Power would be so confined if he were accused of a similar offence, or if it is essential to do so in the interests of national security. In no circumstances shall this confinement exceed three months.

Any period spent by a prisoner of war in confinement awaiting trial shall be deducted from any sentence of imprisonment passed upon him and taken into account in fixing any penalty.

The provisions of Articles 97 and 98 of this Chapter shall apply to a prisoner of war whilst in confinement awaiting trial.

PARAGRAPH 1. — GENERAL PRINCIPLES

1. *First sentence. — Investigations*

Under Article 82, paragraph 1, judicial investigations relating to a prisoner of war must be conducted in accordance with the laws, regulations and orders in force in the armed forces of the Detaining Power ; questioning, the hearing of witnesses, examination by experts, etc. must take place in accordance with those rules, and in this instance the Convention cannot in any way be substituted for the provisions of national legislation. The application of the principle of assimilation should ensure that prisoners of war receive humane treatment as required by the Convention. In order, however, to prevent certain instances of abuse such as occurred during the Second World War, the present provision enjoins the authorities concerned to conduct investigations " as rapidly as circumstances permit ". The fact that prisoners of war are involved may well make certain procedures more difficult ; it was nevertheless desirable to permit some flexibility, in order not to give any semblance of justification for hasty investigation.

The text adds " and so that his trial shall take place as soon as possible ". At first sight, this recommendation may seem superfluous since the purpose of the investigations is to prepare the trial. The words clearly demonstrate the intention of the authors of the Convention to keep the period of investigation as short as possible and

to protect the prisoner of war during that time from any vexatious or other measures not directly intended to expedite the opening of the trial. In this connection, one should bear in mind the rule that the police authorities are not competent to conduct the investigations and there must be absolute separation between the police and the judicial authorities.

2. *Second sentence. — Confinement awaiting trial, prohibition*

This provision sets forth the principle that a prisoner of war may not be confined while awaiting trial [1] unless a member of the armed forces of the Detaining Power would be so treated in similar circumstances.

The principle is, however, subject to an important reservation already referred to : that of the interests of national security. The phrase " or if it is essential to do so in the interests of national security " is very general and may give the Detaining Power wide discretion, according to whether the national legislation extends or on the other hand restricts the use of confinement while awaiting trial. Such confinement must nevertheless be resorted to only in exceptional cases when the interests of national security are concerned ; it may therefore only be applied when investigations have already been commenced regarding a prisoner of war, and there must therefore be a valid justification.

3. *Third sentence. — Maximum duration*

This provision gave rise to some discussion during the 1949 Diplomatic Conference. Some delegations thought that it should be possible, as an exceptional measure, to extend the maximum of three months in the case of prisoners of war accused of offences against the laws and customs of war, on the grounds that it was more difficult to ensure a fair trial for them during the war than after the end of hostilities. It should be noted that there is nothing in the Convention to prevent them from being tried later or even, in the interim, from being placed in separate camps in order to preclude any possibility

[1] " Confinement while awaiting trial is a measure of precaution and security during the enquiries, investigations and procedure which must precede any trial ". (GRAVEN : *Les conditions d'une réglementation satisfaisante de la détention préventive, Revue internationale du droit pénal*, 1950, p. 191.)

of their obtaining false evidence [1]. Recourse will be had to this solution in particular where, during the period of three months, the accused prisoner of war has not been in a position to furnish proof or evidence which might establish his innocence.

The accused must be released as soon as the charges against him have been withdrawn. Where appropriate, he must be able to appeal in accordance with Article 106.

PARAGRAPH 2. — DEDUCTION FROM SENTENCE

Many penal codes provide that the time spent in confinement while awaiting trial must be deducted in full from the period of imprisonment to which the convicted person is sentenced, to the extent, of course, that the accused did not himself bring about his detention or its prolongation by his own conduct or attitude after the offence or during the investigations. The present paragraph therefore corresponds to a rule which has been adopted by most national legislations. As is pointed out by the author already quoted, " it is a requirement of justice, since, in actual fact, loss of liberty, even in the form of confinement while awaiting hearing, is felt as a penalty and, as regards the hardship it causes, has the same features even though it is not one " [2]. This deduction is therefore compulsory and must be made at the time of sentencing by the court. It is also desirable that an accused person wrongly detained while awaiting trial, or whose confinement has been wrongly prolonged, should obtain compensation.

PARAGRAPH 3. — CONDITIONS OF APPLICATION

The present paragraph specifies that prisoners of war who are confined while awaiting trial must enjoy all the guarantees conferred by Articles 97 and 98 on prisoners of war undergoing disciplinary punishment (i.e. as regards premises and the general conditions of detention). Reference should therefore be made to the commentary on those Articles. In addition, one should bear in mind the principle

[1] The period of three months is, moreover, a maximum which must only be reached in exceptional cases, for confinement awaiting hearing must remain only a security measure. " This measure is therefore only justified if the law is obliged to make certain of the presence of the person accused for the purpose of investigation, questioning and confrontation." (GRAVEN, *ibid.*) Its significance as a security factor is " the criterion of its extent as well as its justification."

[2] GRAVEN, *op. cit.*, p. 203.

that confinement while awaiting trial is merely a measure of security and it must not represent for the accused person a penalty more severe than a disciplinary punishment. Solitary confinement, for which provision is sometimes made in national legislation in cases of exceptional gravity and for the needs of the investigation, is therefore excluded. It should also be remembered that prisoners confined while awaiting trial may not be placed with convicted persons.

ARTICLE 104. — PROCEDURE : III. NOTIFICATION OF PROCEEDINGS

In any case in which the Detaining Power has decided to institute judicial proceedings against a prisoner of war, it shall notify the Protecting Power as soon as possible and at least three weeks before the opening of the trial. This period of three weeks shall run as from the day on which such notification reaches the Protecting Power at the address previously indicated by the latter to the Detaining Power.

The said notification shall contain the following information :

(1) *Surname and first names of the prisoner of war, his rank, his army, regimental, personal or serial number, his date of birth, and his profession or trade, if any.*

(2) *Place of internment or confinement.*

(3) *Specification of the charge or charges on which the prisoner of war is to be arraigned, giving the legal provisions applicable.*

(4) *Designation of the court which will try the case, likewise the date and place fixed for the opening of the trial.*

The same communication shall be made by the Detaining Power to the prisoners' representative.

If no evidence is submitted, at the opening of a trial, that the notification referred to above was received by the Protecting Power, by the prisoner of war and by the prisoners' representative concerned, at least three weeks before the opening of the trial, then the latter cannot take place and must be adjourned.

When the Regulations concerning the Laws and Customs of War on Land, annexed to the Fourth Hague Convention of 1907, were drawn up, no specific clauses were included providing legal assistance to prisoners of war under prosecution. Article 8 of those Regulations merely stated : " Prisoners of war shall be subject to the laws, regula-

tions and orders in force in the army of the State in whose power they are ". Legal assistance is, however, of vital necessity for prisoners of war liable to penalties, and even to the death sentence, under enemy jurisdiction.

During the First World War, a purely conservative agreement was signed by the belligerents—France and Germany—at Berne on August 30, 1916 ; it provided that as from September 1, 1916, the execution of sentences passed against prisoners of war during captivity by military tribunals in France or Germany in respect of offences committed prior to that date should be suspended until the conclusion of peace.

In 1929, the Diplomatic Conference convened at Geneva established the right for prisoners of war to choose counsel and nominate an interpreter, and laid down for their benefit, in accordance with the principles of the Hague Regulations, the same rules of judicial competence, procedure and appeals as for members of the armed forces of the Detaining Power. The supervision of these stipulations rests entirely with the Protecting Power, which must be given due notice of the judicial proceedings, in order that it may follow the case, unless exceptional circumstances oblige them to be held *in camera*, in the interest of the State.

Although the duty of the Protecting Power is to guarantee legal assistance to prisoners of war, it acts in these circumstances as the mandatory of the Power in whose armed forces the prisoner of war served, and which is, ultimately, responsible for defending members of its own forces. Since a state of war prevents it from taking action through its own diplomatic representatives, it has recourse either to a neutral Power, which agrees to act on its behalf, or, if there is none, to the intermediary of a humanitarian organization [1].

At the Conference of Government Experts, however, it was pointed out that Article 60 of the 1929 Convention contained certain technical deficiencies which had been remarked during the Second World War by all who had had to apply that Convention [2].

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[1] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, p. 352 ff. See also, with regard to the rôle of the Protecting Power, Article 8 above.

[2] In the first place, paragraphs 1 and 3 of Article 60 were contradictory, for the complementary notification mentioned in paragraph 3 had to be supplied to the Protecting Power at least three weeks prior to the opening of the hearing, whereas no time-limit was fixed for the notification of proceedings containing all necessary particulars mentioned in paragraph 1. It was also noted that certain other points should be clarified ; these will be referred to later. See *Report on the Work of the Conference of Government Experts*, pp. 222-223.

PARAGRAPH 1. — THE PRINCIPLE OF NOTIFICATION

As has already been stated, this is an instance of application of Article 8, which provides for the co-operation of the Protecting Power in the application of the Convention. In accordance with the present paragraph, whenever the Detaining Power decides to institute proceedings against a prisoner of war, it must, at least three weeks before the opening of the trial, notify the Protecting Power, the prisoners' representative, and the accused prisoner of war, pursuant to paragraph 4 as will be seen below. This period of three weeks is a minimum and the notification should actually be made " as soon as possible ". Furthermore, no exceptions are permitted. In order to eliminate delay which resulted from the vagueness of the 1929 text and sometimes prevented the Protecting Power from acting in time, the drafters of the new Convention also specified that the period of three weeks is to run as from the day on which the notification is received by the representative of the Protecting Power, and not as from the day on which it is despatched. Article 101 contains a similar provision. From the moment when it agrees to represent a certain category of prisoners, the Protecting Power must therefore give an appropriate address.

PARAGRAPH 2. — CONTENTS OF THE NOTIFICATION

The text of the 1929 Convention concerning the contents of the notification has also been supplemented and clarified. It must contain the following information :

(1) The same data as was specified in Article 17, paragraph 1, of the present Convention which a prisoner of war is required to give when questioned following capture, i.e. surname and first names, rank, date of birth, and army, regimental, personal or serial number. The present provision also states that a reference should be made to the prisoner's profession or trade, if any, in order to prevent confusion of identity wherever possible.

(2) The place of internment of the prisoner of war is normally known to his family and the Central Prisoners of War Agency, thanks to the capture card filled in and sent in accordance with Article 70, a fresh card being sent upon each transfer. The Protecting Power, however, is not automatically informed of this. This also applies to the place of confinement, since the prisoner is

protected by the safeguards in Articles 108 and 126 which afford him the same benefits, under the scrutiny of the Protecting Power.

The Protecting Power is, however, required to exercise individual supervision in any case of judicial proceedings, and must therefore be accurately informed of the place of internment or confinement of the prisoner of war to whom assistance is to be given.

(3) Thirdly, the notification must specify the charge or charges made against the prisoner of war, as well as the legal provisions applicable. This text corresponds to the 1929 version, which did not require the Detaining Power to include in the notification the full text of the charge or charges [1]. This information will enable the Protecting Power to check that the relevant provisions of the Convention are respected (and in particular Article 82 which provides that prisoners of war are subject to the laws, regulations and orders in force in the armed forces of the Detaining Power, to the exclusion of all others, except as provided in the present Chapter).

(4) Lastly, the notification must designate the court which will try the case, and also the date and place fixed for the opening of the trial. This provision is the same as the corresponding clause in the 1929 text ; under the present Convention, however, the compulsory period of three weeks now applies not only to this provision but to all the points referred to. As regards the designation of the court, one should bear in mind the provisions of Article 102, which requires that the judicial authority pronouncing sentence on prisoners of war must be the same as in the case of members of the armed forces of the Detaining Power.

PARAGRAPH 3. — NOTIFICATION OF THE PRISONERS' REPRESENTATIVE

In the Second World War it became apparent that the prisoners' representative can play a very useful rôle whenever judicial proceedings are brought against prisoners of war of certain nationalities, especially when they have no regular Protecting Power [2]. The International Committee of the Red Cross therefore proposed at the

[1] See *Actes de la Conférence de 1929*, p. 497.

[2] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 572.

Conference of Government Experts that a similar notification should be sent to the prisoners' representative.

As has already been mentioned in connection with Article 80, paragraph 1, during the Second World War the prisoners' representatives in some prisoner-of-war camps set up legal advice services. These services were most helpful, particularly as regards assistance to prisoners of war against whom judicial proceedings had been instituted.

PARAGRAPH 4. — SANCTION

If the stipulations of the preceding paragraphs have not been observed, the hearing must be adjourned ; this is the logical conclusion of these provisions, which are mandatory. The text does not merely state that the trial must be adjourned, but goes so far as to specify that before the trial can be opened, evidence must be submitted that the notification was made in accordance with the time-limit laid down. The present paragraph contains an additional requirement not included in the previous paragraphs : it must also be shown that the notification was received by the prisoner of war concerned. This question of proof is very important and it will be in the interest of the Detaining Power to despatch the notification in a form which will easily enable it to adduce the evidence required. In accordance with Article 41, paragraph 2, the notification should furthermore be made in a language which the prisoner of war concerned understands. Evidence of the notification may be in the form of either a verbal statement by the persons concerned or their representatives, or a written statement ; but if the court does not do so of its own accord the defence counsel is entitled at the opening of the trial to ask for the evidence required.

ARTICLE 105. — PROCEDURE : IV. RIGHTS AND MEANS OF DEFENCE

The prisoner of war shall be entitled to assistance by one of his prisoner comrades, to defence by a qualified advocate or counsel of his own choice, to the calling of witnesses and, if he deems necessary, to the services of a competent interpreter. He shall be advised of these rights by the Detaining Power in due time before the trial.

Failing a choice by the prisoner of war, the Protecting Power shall find him an advocate or counsel, and shall have at least one week at its

disposal for the purpose. The Detaining Power shall deliver to the said Power, on request, a list of persons qualified to present the defence. Failing a choice of an advocate or counsel by the prisoner of war or the Protecting Power, the Detaining Power shall appoint a competent advocate or counsel to conduct the defence.

The advocate or counsel conducting the defence on behalf of the prisoner of war shall have at his disposal a period of two weeks at least before the opening of the trial, as well as the necessary facilities to prepare the defence of the accused. He may, in particular, freely visit the accused and interview him in private. He may also confer with any witnesses for the defence, including prisoners of war. He shall have the benefit of these facilities until the term of appeal or petition has expired.

Particulars of the charge or charges on which the prisoner of war is to be arraigned, as well as the documents which are generally communicated to the accused by virtue of the laws in force in the armed forces of the Detaining Power, shall be communicated to the accused prisoner of war in a language which he understands, and in good time before the opening of the trial. The same communication in the same circumstances shall be made to the advocate or counsel conducting the defence on behalf of the prisoner of war.

The representatives of the Protecting Power shall be entitled to attend the trial of the case, unless, exceptionally, this is held in camera *in the interest of State security. In such a case the Detaining Power shall advise the Protecting Power accordingly.*

The provisions concerning rights and means of defence for the accused reproduce the main features of Articles 61 and 62 of the 1929 Convention with the additional obligation for the Detaining Power to provide the accused with an advocate or counsel if neither he nor the Protecting Power has chosen one. It was finally decided not to lay down specific regulations governing the expenses of defence, as it was considered that the Protecting Power should normally bear such costs when the defence counsel was chosen by it or by the prisoner, and that the question did not arise in the case of a lawyer selected by the Detaining Power. The provisions of the present Article are fully applicable in the case of appeals as provided for in Article 106 [1].

[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 514.

PARAGRAPH 1. — RIGHTS OF THE PRISONER OF WAR

1. *First sentence. — Right to have an assistant, an advocate or counsel and an interpreter*

The present paragraph provides any prisoner of war against whom proceedings are instituted with three possible means of assistance :

(a) the right to be assisted by one of his fellow-prisoners ;

(b) the right to be defended by an advocate or counsel ;

(c) the right to have the services of a competent interpreter.

A. *The right to be assisted by a fellow-prisoner.* — The 1929 Convention did not refer to the right of a prisoner of war against whom proceedings are instituted to be assisted by a fellow-prisoner ; during the Second World War, however, this became common practice [1]. One must differentiate between this " assistance " and " defence " strictly speaking, and in fact the text makes the distinction by specifying that the prisoner of war concerned is entitled to " assistance " by one of his prisoner-comrades and to " defence " by a qualified advocate [2].

The fellow-prisoner in question may be a member of the legal service established by the prisoners' representative who is familiar with the laws in force in the armed forces of the Detaining Power. He will intervene in the proceedings for establishing the facts of the case and may serve as an intermediary between the prisoner and his advocate or counsel.

B. *The right to defence by an advocate.* — The advocate can call witnesses ; he is officially entitled to address the court ; in addition, he has a knowledge of judicial practice and procedure which an amateur jurist, however competent, does not usually have.

The advocate may be freely chosen by the prisoner of war. The question was put whether a prisoner of war might select one resident abroad. The Conference of Government Experts considered that this was dependent on national legislation. In practice, prisoners

[1] Certain laws of military procedure made express provision for it.

[2] See *Report on the Work of the Conference of Government Experts*, p. 224.

of war mostly rely on the Protecting Power for the choice of counsel [1], and the latter will usually be a national of the Detaining Power. Prisoners of war have sometimes been authorized by the Detaining Power to choose an advocate among their fellow-prisoners, but in practice the disadvantages of this solution outweigh its advantages, especially since an advocate who is a prisoner of war is not sufficiently familiar with the procedure in force in the courts of the Detaining Power.

C. *The right to have the services of a competent interpreter.* — The right of an accused prisoner of war to have the services of a competent interpreter " if he deems necessary " automatically results from the rights of defence if the language currently used in the detaining country is unfamiliar or unknown to the prisoner of war. In this connection, it should be noted that it is for the prisoner himself to judge whether he needs an interpreter. The word " competent " denotes an interpreter who not only knows the two necessary languages—that of the prisoner of war and that of the detaining country—but also is familiar with legal terminology and accustomed to acting as an interpreter during judicial proceedings. This interpreter must be supplied by the Detaining Power ; if the prisoner of war prefers to have the services of one of his fellow-prisoners with the necessary qualifications, he may do so [2], provided that the person appointed also enjoys the confidence of the court.

2. *Second sentence. — Notification of the prisoner of war*

In accordance with the present provision, the Detaining Power must advise the prisoner of war of his rights.

This obligation for the Detaining Power is broader in scope than Article 41, paragraph 1, which states that the text of the Convention must be posted in every camp. A prisoner of war undergoing confinement is unable to refer to this source of information, and he must therefore be provided with the text of the present paragraph, in his own language or in a language which he understands. The Convention does not state at exactly what moment this information must be

[1] See *Report on the Work of the Conference of Government Experts*, p. 225. National legislation usually subjects the right to defend a third party before the courts to several conditions which a foreigner cannot fulfil until after a considerable time has elapsed.

[2] This undoubtedly comes within the meaning of " assistance " as referred to in the first line of the paragraph.

given, merely saying that prisoners of war must be advised "in due time". It is our opinion that here one may refer to Article 104 and state that this information must be given as soon as possible and, at the latest, at the same time as the notification provided under that Article, that is to say at least three weeks before the opening of the trial.

PARAGRAPH 2. — ROLE OF THE PROTECTING POWER

1. *First and second sentences. — Choice of an advocate or counsel by the Protecting Power*

If the prisoner of war does not choose an advocate or counsel, the Protecting Power must automatically intervene; it must therefore make enquiries on this matter as soon as it receives the notification for which provision is made in Article 104. The criteria governing its choice will naturally be based exclusively on the interest of the prisoner of war. A period of one week is provided for this purpose [1].

For the assistance of the Protecting Power, the Convention states that the Detaining Power must provide it with a list of persons qua-

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[1] It may be useful to recall the principles adopted by the Sixth International Congress on Penal Law, held at Rome in 1953:

"1. As soon as the accused is remanded by a magistrate and at the first questioning regarding identity, he must before making any statement be warned by the judge that he is entitled not to reply unless an advocate or counsel is present. Every accused person questioned on the charge is therefore entitled to assistance by counsel. In case of indigence, arrangements must be made for him to have a defence counsel.

2. The investigation procedures must be so regulated as to ensure the right of inspection by the accused or his counsel whenever the former is required to submit to questioning. The exercise of this right is of particular interest in regard to expert investigations and enquiries concerning the character of the accused. It should be noted that investigation is merely a preparatory phase and that the accused will be able freely to defend himself before the court of justice, if the case is sent on to the latter.

3. In each State, and taking into account its procedural system, the investigation procedure should be so organized as to give as much scope as possible to the right to cross-examine.

4. An accused person is not obliged, and *a fortiori* cannot be compelled, to reply to questions put to him. He may adapt his attitude to his own interest and convenience, without prejudice to the rights of the defence.

5. The accused may not be subjected to any artificial procedure, violence or pressure in order to induce him to confess. Confession is not the purpose of the investigation, for confession is not a proof in law. Moreover, confessions may always be retracted and the judge appraises them independently, having before him all the relevant facts and elements of proof."

lified to present the prisoner's defence. This list should be sent at the same time as the notification for which provision is made in Article 104.

2. *Third sentence. — Appointment of an advocate or counsel*

In the event that neither the prisoner of war nor the Protecting Power selects an advocate, the Detaining Power must appoint one. This solution will also apply if a prisoner of war fails to make a choice and there is no Protecting Power or substitute for one.

Here the question of the cost of defence arises, which was the subject of lengthy discussion at the Conference of Government Experts as well as at the 1949 Diplomatic Conference. If the Protecting Power has not received any funds to pay for the defence of the prisoner and he is unable to pay for it himself, as was frequently the case during the Second World War, he must not be left without any defence. The Conference of Government Experts considered, however, that the general provisions, and in particular Article 99, paragraph 3, afforded adequate protection. The matter was again discussed at the 1949 Diplomatic Conference [1].

While some delegations considered that the question was a very important one, others thought that it was only a secondary matter since although the 1929 Convention made no reference to the subject, no complaints had ever been made.

The International Committee of the Red Cross pointed out that it was generally the country of origin which reimbursed the cost of defence to the Protecting Power. In a case where the country of origin had for the time being no Government, the Protecting Power could bear the cost and recover it later from the country of origin, when a Government was re-established there.

It was finally decided to adopt a text providing for the application of the principle stated in Article 99, paragraph 3 [2].

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[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 497-498. In particular, the following text was proposed :

" The cost of defence shall be charged to the Power upon which the prisoner depends. Where that Power has no longer an effective Government, or where, in exceptional cases, effective communication with that Power cannot be established, the Detaining Power shall meet the necessary cost of defence of that prisoner of war by qualified counsel ".

It was intended that this text should become paragraph 5 of Article 105, but it was eventually rejected.

See *Final Record*, Vol. II-A, p. 511.

[2] *Ibid.*, pp. 513-514.

PARAGRAPH 3. — RIGHTS OF DEFENDING COUNSEL

A. *Minimum period of two weeks.* — This minimum period corresponds to the rules already set forth in Articles 104 and 105. Article 104 states that the notification of proceedings must reach the Protecting Power at least three weeks before the opening of the trial. One may suppose that the list of advocates from which the prisoner's defending advocate or counsel is to be chosen should reach the Protecting Power at the same time. In our view, the phrase " in due time " should be taken in this sense, since in accordance with paragraph 2 of the present Article, the Protecting Power must have at least one week for choosing an advocate or counsel. Thus the defending advocate or counsel has at least two weeks in which to prepare the defence.

The Conference of Government Experts realized the need to specify these various time-limits. Experience has shown that quite frequently advocates were informed too late and were sometimes even unable to arrive at court in time. The periods specified are a minimum.

B. *Right to interview the accused in private.* —This is an essential prerogative ; such visits must be possible whenever the advocate or counsel thinks fit or the accused so requests. In this connection, it should be borne in mind that in accordance with most national legislations, during the preparatory investigations the accused is never required to reply to questioning in the absence of his advocate or counsel.

C. *Right of the defending advocate or counsel to confer with witnesses for the defence.* — This right was the subject of some discussion at the Diplomatic Conference. Certain legislations only permit such interviews in the presence of the examining magistrate or his representative, and account was therefore taken of this in the final text [1]. It is specified that the defending counsel or advocate may confer with prisoners of war cited as witnesses for the defence ; during the Second World War, in many cases the lack of necessary permits for visiting prisoners of war in camp and interviewing witnesses hampered the advocate in his work ; the new text puts this situation right [2].

[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 497 and 511-512.

[2] See *Report on the Work of the Conference of Government Experts*, p. 226.

The enumeration of facilities under A, B and C above is in no way exhaustive and the Detaining Power may grant others ; those listed in the present paragraph represent the minimum standard.

PARAGRAPH 4. — COMMUNICATION OF THE CHARGE OR CHARGES AND RELEVANT DOCUMENTS

This provision is new and was introduced at the Conference of Government Experts [1]. The documents to be communicated will include the applicable legal provisions and must be communicated to the accused prisoner of war " in a language which he understands " ; in this connection, reference should be made to the commentary on Article 41 above.

This communication is quite separate from that referred to in Article 104, paragraph 4, which states that the prisoner of war concerned must receive a copy of the notification sent to the Protecting Power. The latter notification need only contain a specification of the charge or charges on which the prisoner of war is to be arraigned, while under the present paragraph the full text must be communicated.

The Convention specifies no time-limit and merely states that the accused prisoner of war must receive these documents " in good time before the opening of the trial ". If possible, they should be transmitted at the same time as the notification referred to in Article 104, that is to say three weeks before the opening of the trial, since it is on the basis of these documents that the accused or his legal assistant will select an advocate or counsel. At the latest, this communication must be made two weeks before the opening of the trial, in order to afford the advocate or counsel the requisite period in which to prepare the defence.

The second sentence of the present paragraph states that the same communication must be made to the defending advocate or counsel " in the same circumstances " ; obviously, it cannot be made before the advocate or consul is nominated, but must be made at least two weeks before the opening of the trial.

PARAGRAPH 5. — RIGHT OF THE PROTECTING POWER TO ATTEND THE TRIAL

At the Conference of Government Experts, the International Committee of the Red Cross had proposed that representatives of

[1] See *Report on the Work of the Conference of Government Experts*, p. 225.

the Protecting Power should be granted the right to ensure themselves the defence of prisoners of war under their care. This system would have allowed prisoners of war to be defended by nationals of neutral countries who would no doubt enjoy greater moral authority. It was pointed out, however, that on the whole the national advocates had been conscientious in the discharge of their professional duties on behalf of prisoners of war during the Second World War ; the Government Experts therefore concluded that though prisoners of war should still be permitted to choose a representative of the Protecting Power to defend them, it was unnecessary to stipulate it in the Convention [1]. Thus the present paragraph merely authorizes representatives of the Protecting Power to attend the trial, which gives them every opportunity to intervene if they find that the Convention is not being respected. An important exception is made to this rule, however, if " in the interest of State security " the trial is held *in camera*.

This is not the first instance in which the Convention makes a reservation with regard to the security requirements of the Detaining Power. Another example is to be found in Article 8, which relates to the rôle and duties of the Protecting Power.

The present clause is therefore an implementing provision for the more general clause contained in the last sentence of Article 8, paragraph 4 ; moreover, it corresponds to national legislation which always provides for hearings *in camera* when necessary for reasons of security. The Detaining Power will be responsible for ensuring that this rule is applied only in exceptional cases ; if abusive use were made of it, trials would be removed from the supervision of the Protecting Power without any valid reason.

ARTICLE 106. — PROCEDURE : V. APPEALS

Every prisoner of war shall have, in the same manner as the members of the armed forces of the Detaining Power, the right of appeal or petition from any sentence pronounced upon him, with a view to the quashing or revising of the sentence or the re-opening of the trial. He shall be fully informed of his right to appeal or petition and of the time-limit within which he may do so.

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[1] See *Report on the Work of the Conference of Government Experts*, p. 226.

Article 64 of the 1929 Convention recognized the right of prisoners of war to appeal against any sentence against them, though the text was less detailed [1].

This clause was considered inadequate by the International Committee of the Red Cross which had acquired considerable experience in regard to assistance to prisoners of war under prosecution, particularly in France. At the Conference of Government Experts, the International Committee stressed the advisability of specifying the procedures of appeal, in particular appeal for fresh trial, which is particularly useful to prisoners of war sentenced for offences committed before captivity ; at the time of trial these men are very often not in a position to adduce evidence in their favour. The text adopted by the 1949 Conference is therefore clearer and more detailed than the corresponding provision in the 1929 Convention.

1. *First sentence. — Form of appeals*

Here there is a divergence between the English and French texts. Whereas the former refers to " . . . the right of appeal or petition . . . with a view to the quashing or revising of the sentence or the reopening of the trial ", the latter uses the wording " . . . *le droit . . . de recourir en appel, en cassation ou en revision . . .* ". The reason is that under Anglo-Saxon legislation there is no judicial procedure for appeal in penal matters, but before becoming final the sentence must be confirmed by the military high command. The phrase " right of petition " refers to this.

Prisoners of war have the right to appeal or petition " in the same manner as the members of the armed forces of the Detaining Power ". It would not seem, however, that the drafters of the Convention intended by this wording to give prisoners of war access to certain means of appeal which are available only to nationals of the country concerned [2].

What happens when an appeal is made not by the prisoner of war but by the prosecution ? At the 1949 Diplomatic Conference, some delegations were in favour of including the following sentence in order to take account of this possibility : " In no case may the sentence pronounced against a prisoner of war be made more severe on appeal or petition by the prosecution " [3]. It was finally decided

[1] See below, p. 737.

[2] See *Report on the Work of the Conference of Government Experts*, p. 228.

[3] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 515.

to delete this sentence, however, lest it cause courts to pass maximum sentences in the first instance [1]. Since the Convention makes no ruling on the matter, it must be assumed that the prosecution may appeal or petition provided the procedure followed is in accordance with the legislation of the Detaining Power.

Lastly, it will be noted that the Article makes no mention of appeals for pardon or reprieve. This does not mean that convicted prisoners of war, their defending advocates or even the Protecting Power may not submit an appeal for mercy to the authority which under the national legislation is empowered to grant a pardon or reprieve. The Convention deals only with the legal procedure for appeal.

2. *Second sentence. — Information of the prisoner of war*

This provision supplements sub-paragraph (3) of the second paragraph of Article 104 and Article 105, paragraph 4, which provide respectively that the notification of proceedings must mention the legal provisions applicable, and that the prisoner of war concerned must be given " the documents which are generally communicated to the accused by virtue of the laws in force in the armed forces of the Detaining Power ". The latter documents will normally include the legal provisions applicable to appeal or petitition. The present clause is nevertheless an important one since it provides an additional safeguard which is clearly stated and leaves no room for doubt.

At the 1949 Diplomatic Conference, however, some delegations considered that the Article was not complete and that it should make provision for informing the Protecting Power [2] and also for the applicability in the case of petition or appeal of the rights and means of defence specified in Article 105 [3]. The first proposal was accepted by the Diplomatic Conference but it was decided to include it in Article 107, paragraph 1, to which reference will be made below. The Conference considered that the second suggestion was not necessary, it being understood, however, that the provisions of Article 105 were fully applicable in case of appeal or petition.

Apart from the obligations incumbent on the Detaining Power to apply the same rules to prisoners of war as in the case of members of its own armed forces, attention should be drawn to the following

[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 516.

[2] *Ibid.*, p. 317.

[3] *Ibid.*, p. 515, and Vol. III, pp. 84-85.

Articles which, if not respected, would give grounds for appeal or petition:

Article 86	" non bis in idem " ;
Article 99, paragraph 2	prohibition of coercion ;
Article 99, paragraph 3	rights of defence ;
Article 100, paragraphs 2 and 3	conditions for pronouncement of the death penalty ;
Article 101	delay in execution of the death penalty ;
Article 103, paragraph 2	deduction from sentence of period of confinement awaiting trial ;
Article 104, paragraph 4	failure to respect the provisions of Article 104 concerning notification of proceedings ;
Article 105	rights of defence.

This list is not exhaustive, but merely indicates the most important provisions. In addition to the cases quoted above, any failure on the part of the Detaining Power to respect provisions applicable to members of its own armed forces would also constitute grounds for appeal or petition.

ARTICLE 107. — PROCEDURE : VI. NOTIFICATION OF FINDINGS AND SENTENCE

Any judgment and sentence pronounced upon a prisoner of war shall be immediately reported to the Protecting Power in the form of a summary communication, which shall also indicate whether he has the right of appeal with a view to the quashing of the sentence or the re-opening of the trial. This communication shall likewise be sent to the prisoners' representative concerned. It shall also be sent to the accused prisoner of war in a language he understands, if the sentence was not pronounced in his presence. The Detaining Power shall also immediately communicate to the Protecting Power the decision of the prisoner of war to use or to waive his right of appeal.

Furthermore, if a prisoner of war is finally convicted or if a sentence pronounced against a prisoner of war in the first instance is a death sentence, the Detaining Power shall as soon as possible address to the Protecting Power a detailed communication containing :

(1) *the precise wording of the finding and sentence ;*

(2) *a summarized report of any preliminary investigation and of the trial, emphasizing in particular the elements of the prosecution and the defence ;*

(3) *notification, where applicable, of the establishment where the sentence will be served.*

The communications provided for in the foregoing sub-paragraphs shall be sent to the Protecting Power at the address previously made known to the Detaining Power.

At the 1949 Diplomatic Conference, considerable improvements were made in the procedure for notifying findings and sentences, which was covered by Article 65 and Article 66, paragraph 1, of the 1929 Convention [1]. In its essential features, however, the new procedure is not very different from the 1929 system since it also provides for two kinds of communication :

(a) a summary communication in the case of all judgments and sentences ;

(b) a detailed communication, to be made only if the prisoner of war is finally convicted and sentenced.

PARAGRAPH 1. — SUMMARY COMMUNICATION

1. *First sentence. — Purpose of the communication*

During the Second World War, the word " judgment " was variously interpreted by Detaining Powers, both as regards the kind of decision to be communicated (judicial investigation, dismissal of charges, etc.) and the scope of this communication.

It is necessary for the Protecting Power to be informed as soon as possible of any judgment relating to a prisoner of war, in order that it may carry out its duty of supervision (and in particular regarding appeal within the statutory time-limit). The assembling of the details specified in paragraph 2 below might take some time, and it is essential that the Protecting Power be informed without delay.

Provision is therefore made for a summary communication of all judgments and sentences and for a detailed communication only in

[1] See below, p. 728.

the cases specified in paragraph 2 below; it should be emphasized that the latter does not in any way relieve the Detaining Power of its obligation to send a summary communication.

The summary communication will include the wording of the judgment together with an indication as to whether the prisoner of war concerned has the right to appeal with a view to the quashing of the sentence or the re-opening of the trial. This provision was inserted at the 1949 Diplomatic Conference at the suggestion of several delegations, during the discussion of Article 106, already referred to above [1]. The wording of the French text (" *le droit de recourir en appel, en cassation ou en revision* ") is exactly the same as in Article 106; the English text, however, is not identical (" the right of appeal with a view to the quashing of the sentence or the re-opening of the trial ", whereas Article 106 speaks of " the right of appeal *or petition* "). The omission of the words " or petition " is probably due to an oversight.

The present paragraph, like the corresponding provision in the 1929 Convention, merely states that the summary communication must be sent to the Protecting Power. In practice, during the Second World War this communication was sent to the representatives of that Power, and paragraph 3 of the present Article refers to this in more detail.

2. *Second sentence. — Communication to the prisoners' representative*

Following a suggestion by a national Red Cross Society, the International Committee of the Red Cross proposed that the prisoners' representative should also be informed, and the Diplomatic Conference accepted the proposal. In some camps, the prisoners' representatives play an important part in the field of legal assistance [2], and they are often better placed than the Protecting Power to give a prisoner of war advice regarding his rights of appeal or petition. A similar provision is contained in Article 104, paragraph 3.

3. *Third sentence. — Communication to the prisoner*

The Detaining Power need only inform the prisoner of war concerned if the sentence was not pronounced in his presence. This

[1] See also *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 330, 518-519 and 524.

[2] See the commentary on Article 80, paragraph 1, pp. 395-396.

refers to the case of legislations under which sentence may be pronounced without the accused being present, rather than to that of contumacy. It does not imply, however, that the accused may be tried *in absentia* [1].

4. *Fourth sentence. — Communication of the prisoner's decision regarding his right of appeal*

The Protecting Power must be informed of the decision of the prisoner of war to use or to waive his right of appeal at the same time as it receives the communication referred to in the first sentence of the present paragraph, if the prisoner has taken a decision immediately after sentence has been pronounced. Otherwise, a separate communication must be sent, since the communication indicating the judgment and sentence pronounced upon the prisoner of war may not for any reason be delayed.

As soon as the Protecting Power is informed of the prisoner's decision to use or to waive the right of appeal, it will, if necessary, take the measures provided for in Article 105, paragraph 2.

PARAGRAPH 2. — DETAILED COMMUNICATION

At the 1949 Diplomatic Conference, certain delegations would have preferred that the detailed communication should be sent as soon as sentence was pronounced in the court of first instance; it was decided to retain this proposal only in the case of the death penalty, and that in all other cases it was preferable that the detailed notification should be sent only when the whole proceedings, including any appeals, were terminated [2]. The present provision is nevertheless a marked improvement as compared with the 1929 Convention; Article 66, paragraph 1, of the latter made provision for a detailed communication only in the case of the death sentence.

In this last case, the communication is of special importance in view of Article 101 above, which states that the death sentence may not be carried out before the expiration of a period of six months after the notification.

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[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 512.

[2] *Ibid.*, p. 572.

The 1929 text stated that the communication should set forth " in detail the nature and circumstances of the offence " (Article 66, paragraph 1).

The present Article is more explicit and specifies that the following must be included :

(1) *The precise wording of the finding and sentence :* The Stockholm draft referred to " the motives and wording of the judgment ". During the Second World War the Protecting Power had in too many cases been notified of a judgment without any precise indication of the motives which prompted it. As the representative of the International Committee of the Red Cross pointed out at the 1949 Diplomatic Conference, the knowledge of such motives is of great importance, especially in the case of the death sentence [1]. The words " motives and wording " were subsequently replaced by the expression " precise wording ", that is to say the full text, in accordance with the normal judicial procedure of many countries [2].

(2) *Summarized report of any preliminary investigation and of the trial, emphasizing in particular the elements of the prosecution and the defence :* The text proposed by the Government Experts mentioned the judgment and the grounds adduced [3], but the 1949 Diplomatic Conference decided not to mention it, in order to take account of Anglo-Saxon procedure, and in its stead referred to the elements of the prosecution and the defence [4].

(3) *Notification, where applicable, of the establishment where the sentence will be served :* This provision obviously applies only in the case of a sentence involving confinement. It will enable the Protecting Power to carry out its right of inspection, in accordance with Article 126. A similar provision is contained in Article 104, second paragraph, sub-paragraph (2), referring to prisoners of war confined while awaiting trial.

In the case of the death sentence, the 1929 Convention specified in Article 66, paragraph 1, that the communication regarding the

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[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 513.

[2] *Ibid.*, p. 519.

[3] See *Report on the Work of the Conference of Government Experts*, p. 229.

[4] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 572.

judgment and sentence must be sent to the Protecting Power " for transmission to the Power in whose armed forces the prisoner served ".

The drafters of the 1949 text considered that clause unnecessary ; this in no way implies that the Protecting Power is not authorized to transmit this information to the Power on which the prisoner of war depends ; on the contrary, it is clearly its duty to do so.

PARAGRAPH 3. — ADDRESS TO WHICH THE COMMUNICATIONS MUST BE SENT

The communications referred to in the present Article must be sent to the Protecting Power at the address previously indicated by it ; this provision is similar to that contained in the second sentence of Article 104, paragraph 1, and it is of great importance in the case of the death sentence. Article 101 states that the six months period which must elapse between pronouncement of the death penalty and its execution is to run from the date on which the detailed notification is received at the address previously indicated by the Protecting Power.

The address will normally be that of the representative of the Protecting Power who is accredited to the Detaining Power. The requirement concerning the indication of an address may seem superfluous since the Protecting Power has agencies and consulates which are well known. The reason for including it is twofold. In the first place, communications must be centralized at a single address and, secondly, during the Second World War some Protecting Powers were obliged, because of their extensive duties, to open a special office for the protection of foreign interests, which was sometimes completely separate from the building in which their regular diplomatic offices were situated.

ARTICLE 108. — EXECUTION OF PENALTIES. PENAL REGULATIONS

Sentences pronounced on prisoners of war after a conviction has become duly enforceable, shall be served in the same establishments and under the same conditions as in the case of members of the armed forces of the Detaining Power. These conditions shall in all cases conform to the requirements of health and humanity.

A woman prisoner of war on whom such a sentence has been pronounced shall be confined in separate quarters and shall be under the supervision of women.

In any case, prisoners of war sentenced to a penalty depriving them of their liberty shall retain the benefit of the provisions of Articles 78 and 126 of the present Convention. Furthermore, they shall be entitled to receive and despatch correspondence, to receive at least one relief parcel monthly, to take regular exercise in the open air, to have the medical care required by their state of health, and the spiritual assistance they may desire. Penalties to which they may be subjected shall be in accordance with the provisions of Article 87, third paragraph.

The first sentence of paragraph 3 of this Article is an expanded version of Article 67 of the 1929 Convention [1]; the rest of the Article is new.

The Convention affords important safeguards to prisoners of war confined following a judicial sentence. Some of these safeguards result from general provisions applicable to all the conditions relating to internment, such as Article 13 (humane treatment), Article 14 (respect for the person of prisoners, special regard due to women), Article 16 (equality of treatment). Other provisions refer expressly to the execution of penalties and specifically prohibit cruelty, any attack on a prisoner's honour (Article 87), and discriminatory treatment (Article 88).

PARAGRAPH 1. — GENERAL CONDITIONS OF INTERNMENT

1. *First sentence. — Assimilation to members of the armed forces of the Detaining Power*

This provision should be compared with Article 88, paragraph 1, which states that prisoners of war undergoing punishment must not receive more severe treatment than that applied in respect of the same punishment to members of the armed forces of the Detaining Power of equivalent rank. The best means of ensuring this is obviously for prisoners of war to serve their sentence in the same conditions and the same establishments as members of the armed forces of the Detaining Power.

As has already been pointed out several times, however, the application of the principle of assimilation may be somewhat dangerous (especially as regards food, to which Article 26 above refers) when there is too great a difference between the customary practices in the armed forces of the Detaining Power and the minimum standard

[1] See below, p. 739.

applied in the armed forces to which the prisoner of war belongs, or when those practices do not conform to the requirements of humane treatment. With this in mind, the authors of the Convention provided additional safeguards which are contained in the second sentence of the present paragraph.

Furthermore, the general safeguards referred to above will also override the principle of assimilation if the case arises.

2. *Second sentence. — Conditions of health and humanity*

The conditions of health and humanity must conform to the requirements laid down in the relevant Articles of the Convention.

Article 87, paragraph 3, expressly forbids " imprisonment in premises without daylight and, in general, any form of torture and cruelty ". As regards conditions of health, reference should be made, as in Article 97 above, relating to the execution of disciplinary punishment, to Articles 25 and 29 of the Convention, which lay down minimum standards of accommodation for prisoners of war.

PARAGRAPH 2. — WOMEN PRISONERS OF WAR

The conditions set forth in paragraph 1 are applicable *a fortiori* to women prisoners of war, pursuant to Article 88, paragraph 3, which states: " In no case may a woman prisoner of war be . . . treated whilst undergoing punishment more severely than a male member of the armed forces of the Detaining Power dealt with for a similar offence ". Moreover, they may not be " treated whilst undergoing punishment more severely than a woman member of the armed forces of the Detaining Power dealt with for a similar offence " (Article 88, paragraph 2), but " with all the regard due to their sex " (Article 14, paragraph 2) ; in accordance with the latter provision, the present paragraph states that women prisoners of war must be confined in separate quarters and must be under the supervision of women. Article 97, paragraph 4, which relates to the execution of disciplinary punishments, contains a similar provision. It should also be noted that the term " separate quarters " includes not only the installations referred to in Article 25 of the Convention, but also those mentioned in Article 29.

PARAGRAPH 3. — ESSENTIAL SAFEGUARDS

As already seen in connection with Article 98 above, which relates to the execution of disciplinary punishment, disciplinary confinement does not involve any suppression of the principal safeguards afforded to prisoners of war by the present Convention, and the number of provisions rendered inapplicable by the fact of disciplinary confinement is therefore small [1].

The same remarks are applicable to the case of judicial confinement, and reference should therefore be made to the commentary on Article 98.

1. *First sentence. — Reservation : Articles 78 and 126*

This clause, which states that prisoners of war retain the benefit of the provisions of Articles 78 and 126, is similar to that contained in Article 89, paragraph 1. Article 78 concerns the right to make complaints and requests ; Article 126 relates to the right of scrutiny of the Protecting Power and the International Committee of the Red Cross. A prisoner of war undergoing confinement may therefore not be deprived either of the right of free expression, or of the right to get in touch at any time with the delegates and representatives of the two authorities mentioned, whatever the penitentiary system to which he is subjected.

In fact, these Articles are among the provisions which are not rendered inapplicable by confinement. Because of their great importance, however, and also the experience gained during the Second World War, special reference was made to them. One should also refer to the commentary on Articles 78 and 126.

2. *Second sentence. — Correspondence, relief, health, spiritual assistance*

A. *Correspondence.* — In accordance with Article 71, prisoners of war must be allowed to send at least two letters and four cards monthly. No limit is specified as regards correspondence addressed to prisoners of war, and any such restrictions may only be imposed by the Power on which prisoners of war depend.

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[1] In this connection, it may be noted that under Article 67 of the 1929 Convention, prisoners of war sentenced to a penalty could not be deprived of the benefit of Article 42 of the same Convention (right of complaint).

The present provision merely states that prisoners of war " shall be entitled to receive and despatch correspondence " ; if restrictions are imposed on correspondence sent by a prisoner of war, the minimum of two letters and four cards monthly must still be respected. There is no restriction on correspondence received by prisoners of war, unless any such restrictions are applied to all the prisoners of war who depend on the same Power. The rules governing censorship and any temporary prohibition of correspondence are contained in Article 76, paragraphs 1 and 3.

B. *Relief.* — Prisoners of war undergoing confinement are entitled to receive at least one relief parcel monthly, but the size of the parcel is not specified ; in this connection, one should refer to the parcels usually received by prisoners of war depending on the same Power [1]. Parcels will be examined in accordance with Article 76, paragraph 2. The Detaining Power is, of course, at liberty to allow a greater number of parcels to be distributed. In our opinion, any parcels addressed to prisoners of war which cannot be delivered to them should, by analogy, be disposed of in accordance with Article 98, paragraph 5. It should be noted, however, that the Detaining Power is not entitled to withhold parcels from prisoners of war sentenced to a judicial punishment, whereas under Article 98 it may do so in the case of those undergoing a disciplinary punishment. The reason for this difference is that confinement as a disciplinary punishment may not exceed thirty days.

C. *Exercise in the open air.* — This provision, which may be compared with Article 38, is essential for the health of prisoners of war undergoing confinement. They must be able to walk and run, and a sufficiently large space must therefore be available to them. The provision states that they must be able to take " regular " exercise, whereas Article 98, paragraph 3, states that prisoners of war undergoing confinement as a disciplinary punishment must be allowed to exercise " at least two hours daily ".

D. *Medical attention.* — Article 30, paragraph 4, states : " Prisoners of war may not be prevented from presenting themselves to the medical authorities for examination ". As a general rule, a daily medical inspection should be held in prisoner-of-war camps, and this requirement is expressly mentioned in Article 98, paragraph 4, in

[1] See Article 72 above.

regard to prisoners of war undergoing confinement as a disciplinary punishment. It does not mean, however, that the doctor is obliged to receive them every day ; he will decide what action to take on requests of prisoners of war undergoing confinement, in order to avoid abuse and to ensure the smooth operation of the medical service. Prisoners of war must, however, be able to present themselves for medical examination or to ask that the doctor should visit them. Furthermore, while undergoing confinement they must have the monthly medical inspections provided for in Article 31.

If need be, prisoners of war will be removed to hospital, as provided for in Article 98, paragraph 4.

E. *Spiritual assistance.* — Confinement must not prevent prisoners of war from freely exercising their religious duties (Article 34) within the limits fixed by the prison administration, or from receiving assistance from their chaplains (Article 35).

3. *Third sentence. — Penalties*

The Conference of Government Experts was of the opinion that penalties inflicted upon prisoners of war serving judicial sentences should be subject to the provisions of Article 89 [1]. The International Committee thought it difficult to assimilate in all respects the penalties inflicted on prisoners of war detained in prison to the disciplinary punishment inflicted on prisoners of war in camps, and considered it preferable to mention Article 87, paragraph 3 [2] ; reference may be made to the commentary on that provision.

[1] See *Report on the Work of the Conference of Government Experts*, p. 227.

[2] See *XVIIth International Red Cross Conference, Draft Revised or New Conventions for the Protection of War Victims*, p. 118.

PART IV

TERMINATION OF CAPTIVITY

SECTION I

DIRECT REPATRIATION AND ACCOMMODATION IN NEUTRAL COUNTRIES

HISTORICAL BACKGROUND

From the outbreak of the Second World War, the repatriation of seriously wounded or sick prisoners of war formed part of the main activities which the International Committee of the Red Cross set itself. This intention was notified to the belligerent States on September 4, 1939, in the first circular letter addressed to them by the International Committee.

In its Memorandum of October 21, 1939, the International Committee defined its views on the possibility of agreements to improve in some degree the position of war victims during hostilities. The International Committee expressed these views as follows :

The Final Act of the Diplomatic Conference of 1929 includes a recommendation that further guarantees shall be enacted in behalf of the seriously wounded and the seriously sick who may have fallen into enemy hands.

In the meantime, the belligerent Powers may arrange for the exchange of the seriously wounded and the seriously sick by reference to the Model Draft Agreement, annexed to the Prisoners of War Convention, Article 68, for purposes of information. The International Committee of the Red Cross has been informed that certain Protecting Powers have already taken steps towards a provisional application of the said Model Draft Agreement. It expresses the hope that an understanding on this subject may be reached without delay, and is itself ready to act as intermediary to this end.

The Governments concerned made known that they were ready, subject to reciprocity, to apply the Model Draft Agreement without amendment. There was, however, a divergence of opinion concerning the crossing of war zones by hospital ships or ambulance planes used for repatriation. This caused great delay and required much protracted negotiation on the part of the International Committee. Furthermore, some negotiations were not successful because of a demand that prisoners of war should be exchanged on a " man for man " basis. Delays in repatriation were, however, not solely attributable to subjective causes. Real difficulties arose because of military operations, the great number of seriously wounded prisoners of war to be repatriated, the small number of neutral States, and the long distances to be travelled. These difficulties often had serious effects on the condition of the sick and wounded. The International Committee strove to remedy this state of affairs by facilitating the despatch of artificial limbs to the disabled and by arranging for handicrafts for the invalids who could not be sent home, although under the terms of the Model Draft Agreement the Mixed Medical Commissions would have declared them as eligible for repatriation.

Lastly, the belligerents feared that certain repatriated persons, although disabled, might be employed in war industries.

With the co-operation of the Swiss Government, the efforts of the International Committee of the Red Cross nevertheless met with some success, and on February 15, 1944, it addressed a Memorandum to all the belligerent Governments, in which it reaffirmed its position and stressed the need for carrying out repatriations as speedily as possible after the Medical Commissions had made their decisions, regardless of numbers ; it also asked that the repatriations should include the widest categories possible, so as to cover not only *ratione personae* (prisoners of war and civilian internees), but also *ratione conditionis* (wounds, diseases, age, prolonged captivity, and mental cases, in which class should be included captivity psychosis[1]).

As a result of this Memorandum, discussions between the belligerents were resumed and resulted in new exchanges, assisted by the national Red Cross Societies of neutral countries which lent their good offices and gave valuable assistance to persons being repatriated [2]. Many repatriations were negotiated or carried out by Switzerland as Protecting Power, and Sweden also played an important part.

[1] " Barbed-wire sickness ".

[2] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pp. 373-377 ; see also, as regards the rôle of the International Committee in actual repatriation operations, *ibid.*, pp. 377-382.

In addition to the direct repatriation of the seriously sick or wounded, the 1929 Convention made provision for the accommodation in neutral countries of those prisoners of war whose recovery could be expected within a year and those whose health seemed likely to be gravely impaired by further detention. Despite numerous efforts by the International Committee, however, the belligerent Powers gave up the practice of accommodation in neutral countries, and the question remained without any real settlement [1].

ARTICLE 109. — GENERAL OBSERVATIONS

Subject to the provisions of the third paragraph of this Article, Parties to the conflict are bound to send back to their own country, regardless of number or rank, seriously wounded and seriously sick prisoners of war, after having cared for them until they are fit to travel, in accordance with the first paragraph of the following Article.

Throughout the duration of hostilities, Parties to the conflict shall endeavour, with the co-operation of the neutral Powers concerned, to make arrangements for the accommodation in neutral countries of the sick and wounded prisoners of war referred to in the second paragraph of the following Article. They may, in addition, conclude agreements with a view to the direct repatriation or internment in a neutral country of able-bodied prisoners of war who have undergone a long period of captivity.

No sick or injured prisoner of war who is eligible for repatriation under the first paragraph of this Article, may be repatriated against his will during hostilities.

PARAGRAPH 1. — REPATRIATION OF SERIOUSLY WOUNDED AND SERIOUSLY SICK PRISONERS OF WAR

This provision is almost identical to that contained in Article 68, paragraph 1, of the 1929 Convention, on the basis of which repatriation was carried out during the Second World War. The Conference of Government Experts therefore recommended that it should be retained unchanged [2].

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[1] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pp. 382-385.

[2] See *Report on the Work of the Conference of Government Experts*, p. 232.

The neutral members of the Mixed Medical Commissions who met at Geneva on September 27 and 28, 1945, recommended that repatriation should take place within a period of three months ; if insuperable reasons made it impossible to arrange it within that time, the prisoners of war concerned should have special facilities and should, in particular, be freed from work and have temporary artificial limbs, if required [1]. These suggestions were, however, not approved either by the Conference of Government Experts or by the 1949 Diplomatic Conference, which preferred to retain the 1929 text.

The wording of the provision is imperative (" Parties to the conflict are bound . . . " and in French " seront tenus "), but a reservation is made for cases covered by paragraph 3, in which a new and important provision is introduced.

Repatriation must be arranged *regardless of number or rank*, and " man for man " exchanges are therefore expressly prohibited since the number of prisoners of war repatriated would inevitably be reduced. It is not essential for them to be designated by the Mixed Medical Commissions provided for in Article 112 ; the decision may also be taken by the Detaining Power, provided that the conditions of the present paragraph are respected, that is to say that the prisoners concerned have been cared for until they are fit to travel [2]. The second paragraph of Article 112 expressly confirms this right of the Detaining Power.

The prisoners of war to be repatriated will be designated in accordance with the criteria contained in Article 110, paragraph 1, below, and also in Articles 114 and 115 (prisoners meeting with accidents and prisoners serving a sentence).

The Powers concerned are responsible for organizing and carrying out repatriation ; the only reference to this in the Convention is contained in Article 116, concerning the apportionment of costs. At the Conference of Government Experts, the International Committee of the Red Cross had specifically proposed that the Protecting Powers, or in their absence the International Committee, should arrange for the practical carrying out of repatriations [3], but this proposal was not supported by the drafters of the Convention. There is, however, some justification for intervention by the Protecting Power (or in its absence the International Committee of the Red

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[1] See *International Committee of the Red Cross, Report on the Meeting of Neutral Members of the Mixed Medical Commissions*, p. 20.

[2] *Ibid.* p. 21.

[3] See *Report on the Work of the Conference of Government Experts*, p. 233.

Cross) in Article 8, paragraph 1, concerning the co-operation of the Protecting Powers in the application of the Convention. The Protecting Powers will necessarily be involved if their territory is used for transit purposes for repatriation convoys, as was the case of Sweden and Switzerland during the Second World War. During that conflict, the International Committee of the Red Cross was also called upon to give practical help in the repatriation of seriously sick and wounded prisoners of war, when the Governments concerned requested it to send delegates to accompany hospital ships and repatriation convoys. Article 126 below gives delegates of the International Committee, as well as delegates of the Protecting Powers, all the requisite prerogatives for exercising the right of supervision, verifying the conditions in which repatriation takes place and receiving any complaints which may be made by prisoners and subsequently transmitting those complaints to the Powers concerned [1]. During the Second World War, however, the International Committee was sometimes asked to take an even more important part and to organize entirely the repatriation of prisoners of war [2].

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[1] The rôle of delegates of the International Committee of the Red Cross in repatriation operations may be summarized as follows :

(1) Request and obtain two copies of the nominal rolls of the prisoners of war.

(2) Travel to the place of assembly of the prisoners of war, attend their embarkation, and verify that all prisoners of war named in the lists were really put on board.

(3) See that all useful measures were taken to carry out the transfer in the best material conditions possible.

(4) Serve as intermediary between those in charge of convoys and the prisoners of war, and if necessary act as interpreter.

(5) Travel with the prisoners of war as far as the point of exchange. Exchange lists with his colleagues accompanying the convoy from the adverse country. Offer his services to the official in charge of the convoy and the authorities of the neutral country where the exchange took place, in order to help forward the practical business of the exchange.

(6) During operations see that all prisoners of war named in the lists were in fact exchanged.

(7) Wire to Geneva as soon as possible all relevant information concerning the number of men exchanged, and give a brief account of the work done.

(8) Accompany the convoy on the return journey and hand over to the official in charge the list of repatriates. Send to Geneva a complete report with the list of repatriates.

(See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pp. 380-381).

[2] *Ibid.*, p. 381.

PARAGRAPH 2. — ACCOMMODATION IN NEUTRAL COUNTRIES

Under Article 68, paragraph 2, of the 1929 Convention, the belligerents could arrange for the accommodation in neutral countries of seriously sick or wounded prisoners of war, but it was never done during the Second World War [1]. This possibility is highly advantageous from the humanitarian point of view, since it can lead to recoveries which would be impossible in captivity; moreover, it ensures that such prisoners of war will not after recovery make any active contribution in their own country to the war effort. During the 1914-1918 war this system yielded excellent results [2].

The wording of this paragraph is in an optional form; it recommends that the belligerent Powers should endeavour to arrange for such accommodation with the co-operation of the neutral Powers concerned, the eligible prisoners of war being defined in Article 110, paragraph 2. Furthermore, it makes provision for the internment in a neutral country of able-bodied prisoners of war who have undergone a long period of captivity, if they cannot be repatriated directly; a similar provision was contained in Article 72 of the 1929 Convention.

Under Article 8, the representatives of the Protecting Powers and delegates of the International Committee of the Red Cross may, of course, offer their assistance to the Powers concerned in arranging for the accommodation of prisoners of war in neutral countries as well as in the case of repatriation, as referred to in paragraph 1.

If the neutral State which accommodates prisoners of war in its territory is a signatory of the Convention, its obligations are governed by Article 12, paragraphs 2 and 3; in other words, they are the same as those of the Detaining Power initiating the transfer. Responsibility for the treatment of the prisoners of war concerned also passes to the neutral State subject to the reservation contained in Article 12, paragraph 3, relating to the case of a State which fails to carry out the provisions of the Convention in any important respect.

If prisoners of war are to be accommodated in the territory of a State not a party to the Convention, recourse must be had to Article 111 below, which makes provision for an agreement between the Powers concerned.

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[1] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pp. 382-385.

[2] See, for instance, *Accord de La Haye entre les Gouvernements anglais et allemand du 2 juillet 1917, Bulletin international des Sociétés de la Croix-Rouge*, 1917, p. 439 ff.

PARAGRAPH 3. — PROHIBITION OF REPATRIATION DURING THE HOSTILITIES WITHOUT THE CONSENT OF THE PRISONERS OF WAR CONCERNED

The insertion of this provision was suggested by the International Committee of the Red Cross to the Conference of Government Experts [1]; it was approved after considerable discussion at the 1949 Diplomatic Conference [2].

The arguments adduced in favour of the proposal were based on the experience of the Second World War, but were accepted by the Conference only after some difficulty. Some delegations were strongly opposed to inserting the principle that a foreigner detained in a country which was not his own could demand to stay there when, under the Convention, he was eligible for repatriation. It was pointed out that this might impose a heavy burden on the Detaining Powers and that the reasons given by prisoners of war might not necessarily be valid. The contrary view finally prevailed, however, because of the risks which might be involved for nationals of States in which political changes had taken place. "By a singular turn of events, it now appears necessary for the international law which was drawn up to preserve the rudiments of civilization even in war-time, to be extended to peace-time conditions and to the nations' internal affairs " [3]. Captivity may therefore enable a prisoner of war to escape prosecution in his own country. Consideration of the wishes of prisoners of war, which is a new feature of the Geneva Conventions, proved of great and unexpected importance at the time of the Korean conflict [4], though in connection with Article 118, not the present provision. It is none the less interesting to see that in the present Article the Convention specifically takes this into account.

Theoretically, this rule applies only to sick and wounded prisoners of war. It is obvious, however, that one cannot infer from it, *a contrario*, that the Detaining Power would be entitled to repatriate against his will, during the hostilities, a prisoner of war who is not wounded or sick [5]. The reason why the present rule mentions only

[1] See *Report on the Work of the Conference of Government Experts*, p. 233.

[2] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 291, 373 and 391.

[3] See J. S. PICTET, *Red Cross Principles*, pp. 28-29.

[4] Although the Conventions were not legally applicable to it.

[5] Moreover, some delegations pressed for the retention of the present provision in order to prevent any recurrence of the practice followed by one Detaining Power during the Second World War ; certain able-bodied prisoners of war

the wounded and sick is that early release under the present Chapter applies only to them ; but the arguments presented by those delegations which requested, and obtained, the insertion of the present clause are of a general nature and apply to able-bodied prisoners of war as well as to those who are wounded or sick.

ARTICLE 110. — CASES OF REPATRIATION AND ACCOMMODATION

The following shall be repatriated direct :

(1) *Incurably wounded and sick whose mental or physical fitness seems to have been gravely diminished.*

(2) *Wounded and sick who, according to medical opinion, are not likely to recover within one year, whose condition requires treatment and whose mental or physical fitness seems to have been gravely diminished.*

(3) *Wounded and sick who have recovered, but whose mental or physical fitness seems to have gravely and permanently diminished.*

The following may be accommodated in a neutral country :

(1) *Wounded and sick whose recovery may be expected within one year of the date of the wound or the beginning of the illness, if treatment in a neutral country might increase the prospects of a more certain and speedy recovery.*

(2) *Prisoners of war whose mental or physical health, according to medical opinion, is seriously threatened by continued captivity, but whose accommodation in a neutral country might remove such a threat.*

The conditions which prisoners of war accommodated in a neutral country must fulfil in order to permit their repatriation shall be fixed, as shall likewise their status, by agreement between the Powers concerned. In general, prisoners of war who have been accommodated in a neutral country, and who belong to the following categories, should be repatriated :

(1) *Those whose state of health has deteriorated so as to fulfil the conditions laid down for direct repatriation ;*

(2) *Those whose mental or physical powers remain, even after treatment, considerably impaired.*

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were included in the lists of sick and wounded to be repatriated to their respective occupied countries and were then forced to collaborate in economic or political connections. See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 291.

If no special agreements are concluded between the Parties to the conflict concerned, to determine the cases of disablement or sickness entailing direct repatriation or accommodation in a neutral country, such cases shall be settled in accordance with the principles laid down in the Model Agreement concerning direct repatriation and accommodation in neutral countries of wounded and sick prisoners of war and in the Regulations concerning Mixed Medical Commissions annexed to the present Convention.

This Article was not included in the 1929 Convention, but its essential features are taken from the Model Draft Agreement annexed to that instrument [1].

The inclusion in the body of the Convention of the guiding principles formerly contained in the Model Draft Agreement annexed to the 1929 Convention is the result of a suggestion by the Government Experts. The International Committee of the Red Cross proposed an additional clause relating to the repatriation of prisoners of war accommodated in neutral countries [2]. These provisions do not preclude the application of the Model Draft Agreement, for its principles have been retained and the text was developed and improved by the drafters of the new Convention, as will be seen in connection with paragraph 4 of the present Article.

PARAGRAPH 1. — DIRECT REPATRIATION

The phrase " shall be repatriated direct " appeared in the 1929 Convention (Article 68, paragraph 2) and was deliberately included

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[1] See *Annex to the Convention of July 27, 1929, relative to the treatment of prisoners of war, Model Draft Agreement for the direct repatriation and accommodation in a neutral country of prisoners of war for reasons of health, Actes de la Conférence Diplomatique de 1929*, pp. 721-724.

Article 68, paragraph 2, of the 1929 Convention, which followed the provision now contained in Article 109, paragraph 1, above (Article 68, paragraph 1, of the 1929 Convention) read as follows :

" Agreements between the belligerents shall therefore determine, as soon as possible, the forms of disablement or sickness requiring direct repatriation and cases which may necessitate accommodation in a neutral country. Pending the conclusion of such agreements, the belligerents may refer to the Model Draft Agreement annexed to the present Convention."

The Draft Agreement was therefore merely a model and during the Second World War it was only applied because the Governments concerned declared at the outbreak of hostilities that they were ready, subject to reciprocity, to apply it without amendment.

See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, p. 374.

[2] See *XVIIth International Red Cross Conference, Draft Revised or New Conventions for the Protection of War Victims*, p. 121.

here ; it implies, in contrast to paragraph 2 below, that repatriation must take place without any intermediate stage of accommodation in a neutral country. Moreover, it will take place before the end of the hostilities ; seriously sick and wounded prisoners of war must be afforded special conditions for speedy transport, or priority over any other convoys which may be organized by the Detaining Power pursuant to an agreement with the Power on which prisoners of war depend.

The present paragraph defines the cases to be considered as seriously sick or wounded.

(1) *Incurable cases :* This category came second on the list in the Model Draft Agreement annexed to the 1929 Convention ; the 1949 Diplomatic Conference thought it preferable to place at the head of the list prisoners of war whose condition was such that there could be no question as to their right to repatriation, provided that the incurability was proved and that the mental or physical fitness of the persons concerned had been diminished to a considerable extent. The main objection raised by the Detaining Power against early repatriation is that repatriated prisoners of war might return to active service. This danger does not exist in the case of wounded and sick in this category.

The decision as to the patient's condition will be taken by the appropriate medical officers : members of the Mixed Medical Commissions or doctors of the Detaining Power [1].

The Model Agreement annexed to the Convention (Annex I) contains in section I.A (1) a list of disabilities which may come within the first category ; this list is given as an indication and does not prevent a more generous interpretation, as the text expressly states. Moreover, it is stated in section II of the Agreement (*General observations*, paragraph (5)), that " The examples quoted ... represent only typical cases. Cases which do not correspond exactly to these provisions shall be judged in the spirit of the provisions of Article 110 of the present Convention, and of the principles embodied in the present Agreement."

This remark applies to all the lists contained in the Agreement.

(2) *Wounded and sick who are not likely to recover within one year :* This provision appeared in almost identical terms in the Model Draft Agreement annexed to the 1929 Convention, in section A (1). During

[1] See *International Committee of the Red Cross, Report on the Meeting of the Sub-Commission for the Revision of the Model Draft Agreement (Annex to the Convention of July 27, 1929, relative to the treatment of prisoners of war)*, Geneva, July 1946, pp. 3-4.

the Second World War, the Mixed Medical Commissions usually considered the time-limit of one year as running from the date when the injury was sustained and not from the date of examination by the Commission [1]. This is specified in paragraph 2, sub-paragraph (1), below, which relates to accommodation in a neutral country. The cases included in this category are listed in Annex I under section (2) for wounded prisoners of war, and (3) for those who are sick. The experts who drafted the Model Agreement considered, however, that in some cases the time-limit of one year was not sufficient [1].

It should be noted that the opinion as to whether " recovery may be expected " will be not only that of the Mixed Medical Commissions provided for in Article 112, paragraph 1, below, but also that of the medical authorities of the Detaining Power. The Model Agreement specifies that in certain cases the decision of the Mixed Medical Commission is to be based to a considerable extent on the records kept by camp physicians and surgeons of the same nationality as the prisoners of war, or on an examination by medical specialists of the Detaining Power [2].

(3) *Wounded and sick who have recovered but whose mental or physical fitness has been gravely and permanently diminished:* This wording is also taken from the Model Draft Agreement annexed to the 1929 Convention (section A (3)) ; the drafters of the new Convention merely added the provision that the impairment must be not only grave but permanent [3].

At the meeting of neutral members of the Mixed Medical Commissions, particular attention was paid to the case of prisoners of war who, after being repatriated following a first decision, appear before the Mixed Medical Commission a second time. During the Second World War, there were several instances where prisoners of war rejoined their national forces in violation of Article 74 of the 1929 Convention (now Article 117) and were recaptured. The Mixed Medical Commissions generally refused to recommend repatriation of such prisoners of war, even if they met the conditions specified in the present paragraph [4]. Such an attitude is understandable but never-

[1] See *Report on the Meeting of Neutral Members of the Mixed Medical Commissions*, p. 18.

[2] See Annex I, section I, A. (3) sub-paragraphs (c), (d), (e), (g), (i) and (k).

[3] See *Report on the Meeting of the Sub-Commission for the Revision of the Model Draft Agreement (Annex to the Convention of July 27, 1929, relative to the treatment of prisoners of war)*, pp. 4-5.

[4] See *Report on the Meeting of Neutral Members of the Mixed Medical Commissions*, pp. 18-19.

theless regrettable, since it makes the prisoner of war bear the full responsibility which is in fact incumbent on the State which permitted him to resume active service [1]. Furthermore, there is no legal justification for such an attitude ; if any breach of the Convention is committed, the State is responsible and not the individual, who may moreover in no case be deprived of the benefits secured to him by the Convention (Article 7). At the very least, one may suppose that it is not the business of the Mixed Medical Commissions to denounce such prisoners of war to the Detaining Power and make them liable to severe penalties.

One possible solution in order to avoid further breaches of this kind might be to apply to such cases not paragraph 1 of the present Article, which relates to direct repatriation, but paragraph 2, which provides for accommodation in a neutral country. Moreover, pursuant to Article 8, this is a matter for co-operation and supervision by the Protecting Powers which must ensure that Article 117 is applied to the letter by the Power of origin of prisoners of war in its own territory.

PARAGRAPH 2. — ACCOMMODATION IN A NEUTRAL COUNTRY

Despite the fact that the clause in the 1929 Convention (Article 72) [2] providing for the accommodation in a neutral country of wounded and sick prisoners of war was never applied during the Second World War, the drafters of the new Convention thought fit, as has been seen in connection with Article 109, paragraph 2, above, to retain the principle in the new Convention. The purpose of the present paragraph is to define the categories of wounded and sick who may benefit by this measure ; they are more extensive than the categories eligible for repatriation, since in accordance with the general wording in Article 109, paragraph 1, repatriation is available for *seriously wounded* and *seriously sick* prisoners of war, while accommodation in a neutral country is provided for *wounded* or *sick* prisoners of war in general.

Unlike paragraph 1 above, which is in the imperative form (" shall be repatriated direct "), the present paragraph is in the nature of a recommendation and merely invites the belligerents to arrange for accommodation in a neutral country ; this corresponds to the wording

[1] See the commentary on Article 117.

[2] See below, p. 739.

of Article 109, paragraph 2 (" Parties to the conflict shall endeavour . . . to make arrangements for the accommodation in neutral countries . . .").

(1) *Wounded and sick whose recovery may be expected within one year :* This notion is similar to that contained in paragraph 1, sub-paragraph (2), above; the period of one year was taken as a basis for judging the condition of a wounded or sick prisoner of war. Whereas sub-paragraph (2) of paragraph 1 applies to wounded or sick prisoners of war not likely to recover within one year, however—and this places them in the category of seriously wounded and seriously sick who are eligible for repatriation—the present provision concerns those whose recovery can be expected within that time. The stipulation that the period of one year is to run from the date of the wound or the beginning of the illness confirms the interpretation given above of paragraph 1, sub-paragraph (2).

Transfer to a neutral country is nevertheless subject to the condition that the treatment which the prisoner of war will receive there is likely to increase the prospects of a more certain and speedy recovery. The interest of the prisoner of war is therefore the determining factor, and in order to respect this condition, accurate information must be available in each individual case as regards the possibilities of treatment and cure offered by the neutral country [1].

As regards the cases which come under this heading, one should refer to the annexed Model Agreement (Annex I), section B.

(2) *Prisoners of war whose mental or physical health is seriously threatened :* This provision corresponds almost exactly to section B (2) of the 1929 Model Agreement. In particular, this category includes cases mentioned under section B (5) of the Model Agreement, that is to say cases of war or captivity neurosis. The Model Agreement also states under " General observations ", paragraph (1), that such cases must be considered in as broad a spirit as possible.

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[1] In the Regulations concerning Mixed Medical Commissions (Annex II), Article 10 mentions, among decisions to be taken by the Commission, only examination with a view to possible repatriation. In our view, however, provided the necessary agreements have been concluded between the Powers concerned, the Commissions should also be responsible for examination with a view to accommodation in a neutral country, since Article 113 provides for examination by the Mixed Medical Commissions of *wounded or sick* prisoners of war in general, and not merely the seriously wounded and seriously sick who, pursuant to Articles 109 and 110, are alone eligible for repatriation during hostilities.

PARAGRAPH 3. — REPATRIATION OF PRISONERS OF WAR ACCOMMODATED IN A NEUTRAL COUNTRY

The state of health of wounded or sick prisoners of war accommodated in a neutral country may deteriorate to such an extent as to make them eligible for consideration as seriously wounded or seriously sick. The present clause makes provision for this possibility and reproduces the text of section C of the Model Draft Agreement annexed to the 1929 Convention.

Repatriation in such cases is, however, subject to agreement between the Powers concerned, and the Convention merely indicates the general rules to be followed by them in concluding such agreements. The question therefore arises whether the neutral Power is entitled of its own accord to send prisoners of war which it has accommodated back to their country of origin, or whether on the contrary it must submit such cases to the former Detaining Power [1].

As regards repatriation of prisoners of war who fulfil the conditions specified in sub-paragraphs (1) to (3) of paragraph 1 above, the answer is obvious : the neutral Power is not only entitled but is obliged to send such prisoners of war back to their own country. Had they fulfilled the conditions specified in paragraph 1 at the time when it was decided that they should be accommodated in a neutral country, they would simply have been declared eligible for repatriation. There is therefore no reason why such a decision should not be taken at a later stage. It would seem that the neutral Power, particularly if it takes on, with regard to the wounded or sick prisoners of war to whom it has offered hospitality, the responsibilities specified in Article 12 which are none other than the responsibilities of the Detaining Power, should be authorized to repatriate those prisoners of war without having to consult the Power which initiated the transfer ; if need be, the neutral Power would refer to the agreement concluded with the transferring Power.

This does not apply to the second category, specified in sub-paragraph (2), that is to say, those whose condition has not been

[1] Here the English text contains an obvious error of translation ; while in the French the wording is the same as that used at the beginning of the paragraph (" *seront rapatriés* "), which is imperative, the English text (" should be repatriated ") corresponds neither to the French nor to the English text as it appears at the beginning of the Article —" shall be repatriated ".

improved by treatment in a neutral country and who remain in a considerably diminished state of health. If such cases are repatriated, there is still a risk that, contrary to the provisions of Article 117, they might resume active service, and the consent of the transferring Power must therefore be obtained before any repatriation.

PARAGRAPH 4. — APPLICATION OF THE MODEL AGREEMENT AND THE REGULATIONS CONCERNING MIXED MEDICAL COMMISSIONS

Article 68, paragraph 2, of the 1929 Convention specified that the Model Draft Agreement annexed to that instrument was for reference purposes. At the beginning of the Second World War, the belligerents declared that they were ready to apply the Model Draft Agreement, and repatriation during hostilities was organized on that basis.

The present provision goes farther than the 1929 text: in the absence of any other agreement, the Model Agreement is to be applicable; moreover, it gives the most authoritative interpretation of paragraphs 1 and 2 of the present Article, and it is to be hoped that the Parties to a conflict will respect the definitions which it contains, even if they supplement them by a special agreement. It is in the interest of the belligerents that the provisions relating to repatriation and accommodation in a neutral country should be applied in the most effective manner possible. Furthermore, the "Report on the Meeting of the Sub-Commission for the Revision of the Model Draft Agreement (Annex to the Prisoners of War Convention of July 27, 1929)" [1] contains a sort of commentary on the very detailed text of the Model Draft Agreement; we shall not consider this in detail here. It should, however, be pointed out that the present text is considerably improved and more comprehensive as compared with the 1929 text. It does not, however, appear to take into account wounds caused by the use of nuclear weapons, or by chemical and bacteriological weapons.

In the absence of any special agreement between the Powers concerned, the Regulations concerning Mixed Medical Commissions (Annex II) are also applicable [2].

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[1] Geneva, June 1946, series I, No. 2, pp. 30-31.

[2] See *Report on the Meeting of Neutral Members of the Mixed Medical Commissions*, series I, No. 1.

ARTICLE 111. — INTERNMENT IN A NEUTRAL COUNTRY

The Detaining Power, the Power on which the prisoners of war depend, and a neutral Power agreed upon by these two Powers, shall endeavour to conclude agreements which will enable prisoners of war to be interned in the territory of the said neutral Power until the close of hostilities.

This provision is not entirely new. In accordance with a practice established during the First World War, Article 72 of the 1929 Convention provided that during the continuance of hostilities, and for humanitarian reasons, belligerents might conclude agreements with a view to the direct repatriation or accommodation in a neutral country of prisoners of war *in good health* who had been in captivity for a long time.

This provision was therefore distinct from Article 68, which referred only to the wounded and sick ; it was nevertheless based on the same humanitarian considerations, since it was intended to mitigate the effects of several years' captivity, which can seriously affect the psychological condition of prisoners of war and make it extremely difficult for them to readapt themselves to normal life [1].

Despite the fact that this provision is placed in Part IV, Section I, entitled " Direct repatriation and accommodation in a neutral country ", the position is very different from that referred to in Articles 109 and 110. As far as neutral countries are concerned, Articles 109 and 110 refer to the *accommodation in a hospital or similar institution* of *wounded or sick* prisoners of war. In such cases, the relevant agreements are concluded between the Detaining Power and the neutral Power concerned, without the intervention of the Power on which the prisoners of war depend.

The present Article is much broader in scope ; it authorizes a general exception from the system of captivity as provided under the

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[1] See *Report on the Work of the Conference of Government Experts*, p. 241. This provision was reinserted in the new Convention by the following amendment submitted by the Canadian Delegation: " If the Detaining Power is not in a position, for any reasons, to conform to certain minimum standards as regards the treatment of prisoners of war as envisaged in the present Convention, special agreements shall be concluded among the Detaining Power, the Power on which the prisoners of war depend and a neutral Power which may be acceptable to the two Powers, which will enable prisoners of war to be detained in future in a neutral territory until the close of hostilities, the whole expense to be borne by the Power on which the prisoners of war depend ". (See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 292).

Convention and makes possible, by means of agreements between the three Powers concerned—the Detaining Power, the neutral Power and the Power on which prisoners of war depend—a system of *internment* in a neutral country.

This would be a special kind of agreement concluded between the Powers concerned in order to establish a new régime applicable to prisoners of war. So long as such agreements and the conditions of internment provided therein do not in any way prejudice the safeguards which the Convention affords to prisoners of war—for this is expressly forbidden by Article 6—it is considered that a neutral country can offer more favourable conditions than the country of detention. In particular, such agreements will be concluded when the Detaining Power is unable to afford to the prisoners in its hands the minimum standards specified by the Convention [1]. Article 111 does not therefore merely authorize the Powers concerned to adopt such a solution —it encourages them to do so (" *shall endeavour to conclude agreements* . . . ")

What is the situation if the neutral Power in question is not a party to the Convention ? Although Article 12 forbids the Detaining Power to transfer prisoners of war to a State which is not a party to the Convention, that does not seem to constitute a valid obstacle to the conclusion of an agreement in the present case. Article 12 relates to decisions taken by the Detaining Power alone (" *Prisoners of war may only be transferred by the Detaining Power* . . . ") and not, as in the present case, to decisions taken jointly by the Detaining Power and the Power of origin of the prisoners of war concerned. The only restriction in the Convention on Article 111 is therefore that contained in Article 6 : no agreement of any kind may adversely affect the situation of prisoners of war, as defined by the Convention, nor restrict the rights which it confers upon them. The conditions afforded to prisoners of war interned in neutral territory pursuant to Article 111 must therefore at least conform to the minimum standards laid down by the Convention [2]. If the neutral Power is not a party to the Convention, it must nevertheless apply it or grant more favourable treatment.

[1] This condition is not essential, since the wording of Article 111 is very general ; but it indicates the spirit in which this Article should be interpreted. See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 365.

[2] During the Second World War some neutral Governments objected to the application in full of the 1929 Convention to military internees who were in their territory as a result of the conflict. This case is not the same as that of Article 111 which requires the agreement of the neutral Power. As regards these objections, see *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, p. 559.

ARTICLE 112. — MIXED MEDICAL COMMISSIONS

Upon the outbreak of hostilities, Mixed Medical Commissions shall be appointed to examine sick and wounded prisoners of war, and to make all appropriate decisions regarding them. The appointment, duties and functioning of these Commissions shall be in conformity with the provisions of the Regulations annexed to the present Convention.

However, prisoners of war who, in the opinion of the medical authorities of the Detaining Power, are manifestly seriously injured or seriously sick, may be repatriated without having to be examined by a Mixed Medical Commission.

General Remarks

Article 69 of the 1929 Convention provided that, in each belligerent country, Mixed Medical Commissions would be appointed to examine sick and wounded prisoners of war and to make decisions regarding their repatriation. The Commissions were to be composed of three members, two of whom were to belong to a neutral country, the third being appointed by the Detaining Power, The Convention did not state, however, which authority was to appoint the neutral members, and in many cases the belligerents laid this task upon the International Committee of the Red Cross. It also occurred that these appointments were made jointly by the International Committee and the Swiss Government, in its capacity as Protecting Power. In other cases, Switzerland alone dealt with the appointment of the neutral members [1].

The 1929 Convention did not in any way define the status of the neutral members of Mixed Medical Commissions, and this situation created real problems. Since they were subordinate to no one, their plan of work was not co-ordinated and the criteria serving as a basis for repatriation were not invariably the same. The International Committee of the Red Cross nevertheless succeeded in achieving some improvements in this matter [2].

At the end of the war, the International Committee of the Red Cross convened a meeting of former neutral members of Mixed Medical Commissions who were in Switzerland. Their suggestions and comments formed the basis for the International Committee's work

[1] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, p. 386.

[2] *Ibid.*, pp. 387-388.

connected with the revision of the 1929 Convention, in regard to the repatriation of seriously wounded and seriously sick prisoners of war, their accommodation in neutral countries and the operation of Mixed Medical Commissions.

PARAGRAPH 1. — RÔLE AND ORGANIZATION OF THE COMMISSIONS

1. *First sentence. — Rôle of the Commissions*

Mixed Medical Commissions must be appointed *upon the outbreak of hostilities ;* this is obviously essential so that they may commence their work as soon as fighting has begun. During the Second World War, and particularly in distant colonies, belligerent States frequently waited until a large number of prisoners of war were in their hands before taking any steps to set up Commissions. The question was therefore raised of fixing a time-limit in the Convention for the appointment of the Mixed Medical Commissions. The neutral members of Mixed Medical Commissions who met at Geneva in September 1945 considered it indispensable to lay down in the Convention that such Commissions should set to work within three to six months after the outbreak of hostilities [1]. This proposal was not adopted but it remained understood that the Commissions should start work as soon as prisoners needed their attention, regardless of the number of the latter. Article 9 of the Regulations annexed to the Convention (Annex II) states that the Commissions must begin their work not more than three months after the date of their appointment and approval by the Parties to the conflict.

The task of the Commission is therefore twofold : to examine wounded or sick prisoners of war, and to make all appropriate decisions regarding them.

With regard to the examination of wounded and sick prisoners of war, it has already been pointed out in connection with Article 110 above that in many cases expressly mentioned in the Model Agreement annexed to the Convention (Annex I), the decisions of the Mixed Medical Commissions will be based to a great extent on the records kept by camp physicians and surgeons of the same nationality as the prisoners of war, or on an examination by medical specialists of the Detaining Power [2]. Apart from those cases which are expressly

[1] See *Report on the Meeting of Neutral Members of the Mixed Medical Commissions*, p. 4.

[2] See above, p. 516 ; see also Annex I, p. 650 ff.

referred to, the text seems to require that the Commission should itself examine the wounded or sick prisoner of war. This provoked criticism during the Second World War, when the prisoners themselves sometimes complained of not being examined by a Mixed Medical Commission, which was content to make decisions after consulting the records presented [1]. The solution is to set up a sufficient number of Commissions so that their members can undertake thorough examinations.

After examining prisoners of war, the Commissions must take *all appropriate decisions* regarding them. In the first place, this means the necessary decisions for the application of Article 110, that is to say decisions relating to repatriation, accommodation in a neutral country or a further examination at a later date.

The phrase *all appropriate decisions*, which was adopted in 1929, has a still broader meaning, however ; for instance, it permits the Mixed Medical Commissions to request the camp commander to move the patient or exempt him from certain work, as well as to make representations to the camp commander concerning requests presented by the camp physician or surgeon, etc.[2]

The categories of wounded and sick prisoners of war who are to be examined by the Mixed Medical Commissions are specified in Articles 113 and 114 below.

2. *Second sentence. — Organization and functioning*

Matters relating to the organization and functioning of Mixed Medical Commissions are governed by annexed Regulations (Annex II), which did not exist in the 1929 Convention.

A. *Appointment.* — This is dealt with by Articles 1 to 6 and 13 of the *Regulations concerning Mixed Medical Commissions* annexed to the Convention (Annex II).

As already provided by the 1929 Convention, the Commissions are to be composed of three members, two of them belonging to a neutral country and the third being appointed by the Detaining

[1] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, p. 390. It sometimes happened that, since time was too short to allow examination of the numerous candidates, the doctors held that the patients' records, the result of a series of observations, offered better surety than a single examination. Such a practice should only be followed, however, in the cases specially indicated in Annex I, Section (3), which are marked with asterisks ; see below, pp. 652-653.

[2] See *Actes de la Conférence de 1929*, p. 502.

Power. The two neutral members will usually belong to the same country [1].

During the Second World War it was sometimes impossible to find on the spot a sufficient number of neutral practitioners qualified to constitute Mixed Medical Commissions [2]. This difficulty is now settled by Article 13 of the Regulations, which provides for co-operation between the Protecting Power and the Detaining Power in the appointment of the members of the Commission.

Article 1 of the Regulations states that one of the neutral members must act as chairman of the Commission ; this appointment will be made by agreement between the members, due regard being paid to seniority, rank, capacity and the preference of the members [3].

During the Second World War the International Committee of the Red Cross was often called upon to constitute Mixed Medical Commissions, and this practice is retained, under Article 2 of the Regulations. As an alternative solution, Article 5 states that Commissions may be appointed by the Protecting Power [4].

Article 3 retains the principle of approval by two States (the Power of origin and the Detaining Power) and this approval must be requested simultaneously. Under Article 4, deputy members must also be appointed to replace the regular members in case the Commission's work is held up because of death, unavailability or resignation of any of the regular members.

Article 6 provides that so far as possible one of the two neutral members shall be a surgeon and the other a physician. At the meeting of neutral members of Mixed Medical Commissions, held in Geneva in 1945, it was also recommended that neutral practitioners resident in their own country should be chosen in preference to those residing in the territory of the Detaining Power, as the former were more likely to be impartial ; exceptions might have to be made in the case of distant countries where this would cause too many practical difficulties [5].

It is also recommended that the medical corps of neutral countries should draw up in advance a list of qualified doctors prepared to

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[1] See *Actes de la Conférence de 1929*, p. 504.

[2] See *Report on the Meeting of Neutral Members of the Mixed Medical Commissions*, p. 3.

[3] *Ibid.*, p. 3 ; see also, as regards the rôle of the Chairman, pp. 13-14.

[4] See *Report on the Work of the Conference of Government Experts*, p. 235.

[5] See *Report on the Meeting of Neutral Members of the Mixed Medical Commissions*, p. 12.

serve on a Mixed Medical Commission, and such lists would be kept available to Protecting Powers and the International Committee of the Red Cross.

B. *Duties.* — Once they have been appointed and approved, the neutral members of Mixed Medical Commissions must begin their work within a period of three months thereafter (Article 9 of the Regulations). It is desirable that the Commissions should begin their work as soon as possible after the commencement of hostilities. Their tasks are defined in Article 10 of the Regulations, which refers to Article 113 of the Convention [1].

After making these examinations the Mixed Medical Commissions will, pursuant to Article 11 of the Regulations, communicate their decisions to the Detaining Power, the Protecting Power and the International Committee of the Red Cross, as well as to each prisoner of war concerned. Furthermore, if the Commission has proposed the repatriation of a prisoner of war, he must be given a certificate similar to the model appended to the Convention (Annex IV. E).

Forms for such certificates will usually be supplied by the Detaining Power and the chairmen of Mixed Medical Commissions would then hand them duly filled in to the prisoners of war entitled to repatriation [2].

The Mixed Medical Commissions will function permanently (Article 14) and visit each camp at intervals of not more than six months.

C. *Functioning.* — The principle that Mixed Medical Commissions must be entirely independent of the Parties to the conflict was never questioned and is confirmed by Article 7 of the Regulations. This independence was, however, accompanied by certain disadvantages during the Second World War ; since the Commissions were subordinate to no one, their plan of work was not co-ordinated and the criteria serving as the basis for repatriation were not invariably the same [3]. This disadvantage was remedied by re-drafting the Model Agreement (Annex I) ; the new text concerning cases eligible for direct repatria-

[1] Mention should also be made of Article 114, which provides that prisoners of war who meet with accidents at work will also be eligible for repatriation or accommodation in a neutral country. Such cases must therefore also be examined by the Mixed Medical Commissions.

[2] See *Report on the Meeting of Neutral Members of the Mixed Medical Commissions*, p. 10.

[3] See above, p. 523.

tion (Section A) includes in sub-paragraphs (1) and (2) details which were not given in the Model Draft Agreement of 1929.

Article 8 of the Regulations states that the terms of service of members of Mixed Medical Commissions will be settled by the International Committee of the Red Cross in agreement with the Detaining Power. This means that their salary, insurance (life, health, accidents), and travel expenses will be paid either by the International Committee of the Red Cross, which will then claim reimbursement from the Detaining Power, or by the Detaining Power itself [1].

Furthermore, members of Mixed Medical Commissions will wear military uniform, after prior notification of the Detaining Power by the International Committee [2].

It is also recognized that the Detaining Power should provide accommodation and maintenance for neutral members on its territory, and should furnish the necessary staff to accompany and assist them in the carrying out of their duties, as well as all necessary records (X-rays, etc.)

PARAGRAPH 2. — PRISONERS OF WAR REPATRIATED WITHOUT EXAMINATION BY A MIXED MEDICAL COMMISSION

This clause provides that prisoners of war who are manifestly seriously injured or seriously sick may be repatriated without having to be examined by a Mixed Medical Commission. It will be particularly useful early in the conflict, before the Commissions have been able to begin their work. The application of this provision may not, however, serve as a pretext for evading the requirement in Article 109, paragraph 3, that no sick or injured prisoner of war may be repatriated against his will [3].

ARTICLE 113. — PRISONERS ENTITLED TO EXAMINATION BY MIXED MEDICAL COMMISSIONS

Besides those who are designated by the medical authorities of the Detaining Power, wounded or sick prisoners of war belonging to the categories listed below shall be entitled to present themselves for examina-

[1] See *Report on the Meeting of Neutral Members of the Mixed Medical Commissions*, pp. 12-13.

[2] *Ibid.*, p. 13.

[3] See above, pp. 512-513.

tion by the Mixed Medical Commissions provided for in the foregoing Article :

(1) *Wounded and sick proposed by a physician or surgeon who is of the same nationality, or a national of a Party to the conflict allied with the Power on which the said prisoners depend, and who exercises his functions in the camp.*

(2) *Wounded and sick proposed by their prisoners' representative.*

(3) *Wounded and sick proposed by the Power on which they depend, or by an organization duly recognized by the said Power and giving assistance to the prisoners.*

Prisoners of war who do not belong to one of the three foregoing categories may nevertheless present themselves for examination by Mixed Medical Commissions, but shall be examined only after those belonging to the said categories.

The physician or surgeon of the same nationality as the prisoners who present themselves for examination by the Mixed Medical Commission, likewise the prisoners' representative of the said prisoners, shall have permission to be present at the examination.

Article 70 of the 1929 Convention stated that in addition to those prisoners of war selected by the medical officer of the camp, Mixed Medical Commissions should also inspect those who so requested or who were presented either by the prisoners' representative or by the Power on which they depended, or again by a duly recognized relief society.

The experience of the Second World War showed that it was essential to revise this provision since the large numbers of prisoners of war who came before the Mixed Medical Commissions led to congestion of work and the Commissions were much hampered thereby [1].

There were two possible solutions : either to provide for an adequate number of Mixed Medical Commissions in every country, or to revise Article 70 of the 1929 Convention so as to diminish the number of candidates. The latter proposal was approved and Article 113 of the present Convention contains the relevant provisions. The basic consideration, however, was the question of the advisability of abolishing the right conferred by the 1929 Convention on all prisoners of war to present themselves for examination by Mixed Medical Commissions. The majority of the experts decided to maintain that

[1] See *Report on the Work of the Conference of Government Experts*, p. 240.

right but to regulate its application so as to establish some method of preliminary selection [1]. These proposals were approved by the 1949 Diplomatic Conference and embodied in the present Article.

PARAGRAPH 1. — CATEGORIES OF PRISONERS OF WAR ENTITLED TO EXAMINATION

The first category of prisoners of war entitled to examination by the Mixed Medical Commissions comprises those designated by the medical authorities of the Detaining Power. This Power is responsible for applying the Convention to the prisoners of war in its hands, and it must therefore take the necessary measures for the repatriation of seriously wounded and seriously sick prisoners (Article 109, paragraph 1, and Article 110, paragraph 1). It does not seem likely that the Detaining Power could be suspected of favouritism towards enemy prisoners of war, and those designated by it will probably be those who most deserve repatriation.

When the Detaining Power is informed of the impending visit of the Mixed Medical Commission, it will prepare a list of wounded or sick prisoners of war who should, in its view, be examined by that Commission with a view either to repatriation or, if appropriate, accommodation in a neutral country.

Besides this first list, three other lists may be prepared :

(1) *Wounded and sick proposed by a physician or a surgeon of the same or an allied nationality :* In accordance with Article 33 of the Convention, the Detaining Power may retain the medical personnel which it needs, without considering them as prisoners of war. Such personnel will continue to exercise their medical functions in the camps for the benefit of prisoners of war, preferably those belonging to the armed forces upon which they depend. This also applies to prisoners of war assigned to similar tasks under Article 32.

These medical officers therefore hold an important position in the camps. Their status is a special one, and they are entitled to present lists of wounded and sick prisoners of war who they consider should be examined by the Mixed Medical Commission. On the other hand, they should also induce prisoners of war whose health is not really affected not to go before the Mixed Medical Commission, in order not to hamper its work for no good reason [1].

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[1] See *Report on the Meeting of Neutral Members of the Mixed Medical Commissions*, p. 24.

(2) *Wounded and sick proposed by their prisoners' representative :* This right of prisoners' representatives was already recognized in Article 70 (b) of the 1929 Convention. A prisoners' representative may know of a prisoner of war who, though ill, does not report sick because of will-power, resignation, or any other sentiment. There were many such cases during the First World War, particularly among officers [1]. Similarly, the prisoners' representative may be familiar with the case of sick prisoners of war who have been unjustly excluded from the list either by the medical authorities of the Detaining Power or by the medical officer of their own nationality.

(3) *Prisoners of war proposed by the Power on which they depend or by a relief organization :* This possibility also existed under the 1929 Convention, Article 70 (c). It relates to recommendations submitted on an official form, such as those used during the First World War [1]. Such recommendations were sent either by the State of origin, or by duly recognized societies which, having learned from correspondence that a prisoner of war was very sick or badly looked after, requested the Commission to examine the case. The Mixed Medical Commissions kept the forms, and recorded their decision on them for communication to the family concerned.

As regards the meaning of the phrase " organization duly recognized by the said Power and giving assistance to the prisoners ", reference should be made to the commentary on Article 125 below.

PARAGRAPH 2. — PRISONERS WHO PRESENT THEMSELVES INDIVIDUALLY

Despite the large numbers of prisoners of war who presented themselves for examination pursuant to Article 70 of the 1929 Convention during the Second World War, the drafters of the new Convention decided not to modify the right of prisoners of war to do so. Those in the categories listed in paragraph 1, or presented by the Detaining Power, will, however, be examined first.

Thus a system of selection was introduced which ensures that the Commissions will not waste valuable time examining prisoners who are not seriously affected, to the detriment of those who are fully eligible for examination by Mixed Medical Commissions. Further-

[1] See *Actes de la Conférence de 1929*, p. 505.

more, it is understood that those who present themselves individually must do so on the grounds of being wounded or sick and for no other reason.

While Mixed Medical Commissions may be hampered in their work by prisoners of war who present themselves without due justification, it may also happen that prisoners who are really affected, and sometimes seriously so, are not presented for examination, as the experience of the Second World War proved [1].

This question is all the more important because long periods sometimes elapse before a Commission again visits the same camp ; Article 14 of the Regulations annexed to the Convention states that visits must take place at intervals of not more than six months, but during the Second World War a year sometimes passed between visits. Any oversight may have very serious consequences.

It was nevertheless considered that, on the basis of Articles 8 and 10, the delegates of the International Committee of the Red Cross and the Protecting Power were responsible for ensuring that all prisoners of war who should be examined by the Commission had actually been able to present themselves.

Moreover, under Article 126 these delegates have access to all places of internment, imprisonment and work. Prisoners of war in labour detachments or working for private employers [2] are often at a great distance from the main camp and it is impossible for a Mixed Medical Commission to reach them. This is therefore the responsibility of the delegates of the International Committee of the Red Cross and the Protecting Powers.

The Protecting Power is not actually mentioned in the present Article but there is nevertheless no doubt that if a medical officer of that Power finds that a prisoner of war who should have been repatriated has been omitted from the lists, through an oversight, he can make representations to the Detaining Power for the error to be put right. Such action comes within the general right of scrutiny which the Convention confers on the Protecting Power. It is also justified by paragraph 1, sub-paragraph (3) above, which authorizes proposals to be made by an organization duly recognized by the Power on which prisoners of war depend.

[1] The International Committee of the Red Cross raised this point during the preparatory work before the 1949 Diplomatic Conference, and proposed the following additional text : " Mixed Medical Commissions and their chairmen are empowered, if necessary, to verify that all prisoners of war due for examination by them appear on the lists drawn up to this effect, and are brought up before the Commissions " (See *Report on the Meeting of Neutral Members of the Mixed Medical Commissions*, pp. 8-9).

[2] See the commentary on Articles 56 and 57, above.

Under Article 114 below, the Mixed Medical Commissions may examine prisoners of war whose injury or illness is the result of accidents, whether at work or elsewhere, in the same way as prisoners in other categories. Article 115 affords the same rights to sick or wounded prisoners of war undergoing detention as a disciplinary punishment and, subject to the consent of the Detaining Power, to those imprisoned as a judicial punishment. In the absence of any agreement to the contrary, the Detaining Power must carry out the decisions of the Commission within three months of being notified of them (Annex II, Article 12).

PARAGRAPH 3. — PRESENCE OF A DOCTOR OF THE SAME NATIONALITY OR THE PRISONERS' REPRESENTATIVE

This provision was not included in the 1929 Convention ; it was inserted mainly because the prisoners' representative and a physician or surgeon of the same nationality as the prisoners of war who know the person concerned can be of great assistance to the Commission. They will be able to give any explanation required as to the reasons why they included a particular person on their lists. They will also make sure that any documentation which might be necessary (X-rays, case-history sheets, etc.) is available to the Commission.

ARTICLE 114. — PRISONERS MEETING WITH ACCIDENTS

Prisoners of war who meet with accidents shall, unless the injury is self-inflicted, have the benefit of the provisions of this Convention as regards repatriation or accommodation in a neutral country.

This provision is the same as that contained in Article 71 of the 1929 Convention, except that the latter referred only to accidents at work. The present text covers all accidents, whatever their nature [1].

During the preparatory work before the 1949 Diplomatic Conference, the International Committee of the Red Cross suggested that it would be helpful if the Detaining Power could give Mixed Medical Commissions all useful information regarding the circumstances of any accidents [2].

[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 365.

[2] See *Report on the Work of the Conference of Government Experts*, p. 241.

An exception is made, for reasons which are easy to understand, in the case of prisoners who wilfully inflict injury on their own person, but the fact of this must be clearly established.

It goes without saying that prisoners with self-inflicted injuries nevertheless receive all the care and attention which their condition requires ; in stating that they will not " have the benefit of the provisions of this Convention ", the present provision merely precludes their examination by a Mixed Medical Commission with a view to repatriation or accommodation in a neutral country. In this way, they will not be encouraged to resort to such practices.

Reference should also be made to Article 54, relating to occupational accidents and diseases.

ARTICLE 115. — PRISONERS SERVING A SENTENCE

No prisoner of war on whom a disciplinary punishment has been imposed and who is eligible for repatriation or for accommodation in a neutral country, may be kept back on the plea that he has not undergone his punishment.

Prisoners of war detained in connection with a judicial prosecution or conviction and who are designated for repatriation or accommodation in a neutral country, may benefit by such measures before the end of the proceedings or the completion of the punishment, if the Detaining Power consents.

Parties to the conflict shall communicate to each other the names of those who will be detained until the end of the proceedings or the completion of the punishment.

Historical Background

Article 53 of the 1929 Convention stated that prisoners of war who fulfilled the conditions laid down for repatriation or accommodation in a neutral country were not to be retained on the ground that they had been awarded a disciplinary punishment.

Under the same provision, the Detaining Power was authorized to retain prisoners of war under prosecution for criminal offences or serving a sentence of imprisonment until the expiry of the sentence.

This rule was similar to that contained in Article 75 of the 1929 Convention and placed wounded or sick prisoners of war who were serv-

ing a judicial sentence, even for a relatively slight offence, in a situation similar to that of able-bodied prisoners of war whose repatriation at the end of the hostilities was delayed because they were serving a sentence of imprisonment.

At the Stockholm Conference it was proposed that the 1929 text should re-drafted in a more liberal form in order to make express provision for the repatriation or accommodation in a neutral country of wounded or sick prisoners of war who were under judicial prosecution or conviction, provided the Detaining Power agreed. A lively discussion took place at the Diplomatic Conference [1], which ultimately adopted the suggestion made by the Stockholm Conference.

PARAGRAPH 1. — PRISONERS OF WAR SERVING A DISCIPLINARY PUNISHMENT

This provision corresponds to Article 53, paragraph 1, of the 1929 Convention, with the insertion by the Diplomatic Conference of the words " or for accommodation in a neutral country " [2]. It therefore applies to all wounded or sick prisoners of war referred to by Article 110 and whom it is decided to repatriate or accommodate in a neutral country during hostilities. *A fortiori*, therefore, it is also applicable to repatriation at the end of hostilities pursuant to Article 118.

This provision was the subject of some discussion at the 1929 Diplomatic Conference, when some delegates expressed the fear that it might, during the last few days before repatriation, deprive camp commanders of all means of maintaining discipline [3]. This does not apply to the present case, however, for it is most unlikely that wounded or sick prisoners of war, whose condition is such that they qualify for inclusion in the categories specified in Article 110, paragraphs 1 and 2, could engage in demonstrations prejudicial to camp discipline.

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[1] The Committee to which this Article had been referred approved the following amendment : " Prisoners of war prosecuted for an offence for which the maximum penalty is not more than ten years or sentenced to less than ten years shall similarly not be kept back ". Further discussion took place in a plenary meeting, however, and after a first vote in which the voting was divided, this amendment was rejected. Apart from a few minor changes, the text of Article 115 therefore corresponds to that contained in the Stockholm draft.

[2] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 335-336.

[3] See *Actes de la Conférence de 1929*, pp. 421-492.

PARAGRAPH 2. — PRISONERS OF WAR DETAINED IN CONNECTION WITH A JUDICIAL PROSECUTION OR CONVICTION [1]

It is for the Detaining Power to decide whether a wounded or sick prisoner of war detained in connection with a judicial prosecution or conviction shall be allowed to benefit by repatriation or accommodation in a neutral country under Article 110, paragraphs 1 and 2. Only after some discussion did the 1949 Diplomatic Conference adopt this provision, which is actually similar in meaning if not in form to the corresponding provision of the 1929 Convention (Article 53, paragraph 2). At most, the wording of the present text is more favourable to the prisoners of war, since it is expressly stated that the Detaining Power may agree to the departure of prisoners of war detained in connection with a judicial prosecution or conviction.

The text nevertheless presents some disadvantages: there is a risk that a prisoner of war whose state of health qualifies him for repatriation, but who is serving a short sentence of imprisonment of not more than three months for a relatively minor offence, might not be repatriated; the present provision also makes it possible to retain a prisoner of war accused of a relatively slight offence during the judicial proceedings and until judgment has been given. If it is not possible to include him in a group of wounded or sick being repatriated during hostilities, he might have to wait a long time for the departure of another convoy and his state of health might be seriously impaired [2].

In this regard, the present provision therefore affords no special privilege to wounded and sick as compared with able-bodied prisoners of war to whom Article 119, paragraph 5, refers, unless the Detaining Power takes a lenient view, as the present provision invites it to do. In accordance with the spirit of the Convention, the Detaining Power should withhold consent only if it has good grounds for doing so and if its refusal would not seriously impair the state of health of the prisoners concerned.

PARAGRAPH 3. — COMMUNICATION OF LISTS

This provision corresponds to Article 53, paragraph 3, of the 1929 Convention, and is designed to ensure that prisoners of war who are

[1] The French text reads: " Prisonniers de guerre poursuivis ou condamnés judiciairement . . . "

[2] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-B, pp. 314-315.

kept back can benefit by Article 110 as soon as possible after their release.

The communication will be made through the intermediary of the Protecting Powers or, if there are none, the International Committee of the Red Cross [1].

ARTICLE 116. — COSTS OF REPATRIATION

The costs of repatriating prisoners of war or of transporting them to a neutral country shall be borne, from the frontiers of the Detaining Power, by the Power on which the said prisoners depend.

The present provision is similar to Article 73 of the 1929 Convention. As has been done wherever it occurred in the 1929 text, however, the expression " Power in whose armed forces prisoners served " has been replaced by the words " Power on which the prisoners depend " in order to take into account the fact that certain military personnel do not necessarily serve in the armed forces of their Power of origin. Certain merchant seamen and civilian air crews are in a similar position [2].

In the case of transport by air, special arrangements must be made unless it is considered that the obligation of the Detaining Power ceases at the airfield in its territory which is nearest to the territory of the Power on which prisoners of war depend, by analogy with the solution provided in Article 118, paragraph 4 (*b*), in the case of transport by sea [3].

ARTICLE 117. — ACTIVITY AFTER REPATRIATION

No repatriated person may be employed on active military service.

This provision reproduces Article 74 of the 1929 Convention, and the same principle had already been expressed in Article 6 of the 1864 Geneva Convention.

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[1] The notification that prisoners of war have been kept back will, if necessary, indicate that action on the decision by the Mixed Medical Commissions —which under Article 12 of the Regulations (Annex II) must be carried out within three months—has been postponed (see below, p. 662).

[2] See *Report on the Work of the Conference of Government Experts*, pp. 241-242.

[3] See below the commentary on Article 118, paragraph 4.

A. *Repatriated persons.* — The Article covers prisoners of war repatriated by the Detaining Power pursuant to Articles 109 and 110, that is to say seriously wounded or seriously sick prisoners of war whom the Detaining Power is required to repatriate regardless of number or rank (Article 109, paragraph 1), prisoners of war accommodated in a neutral country and subsequently repatriated following an agreement between the Powers concerned (Article 110, paragraph 2), and lastly, able-bodied prisoners of war who have undergone a long period of captivity and are repatriated by agreement between the Powers concerned (Article 109, paragraph 2).

B. *Duration and scope of the prohibition.* — The provision that active service may not be resumed obviously applies to the whole duration of the hostilities in the course of which military personnel were captured and subsequently released, but only for the duration of those hostilities. This conclusion is based first on the fact that active military service is inconceivable when no state of hostilities exists, and secondly on the fact that such a restriction is justified only by the security requirements of the Detaining Power. Hostilities cannot be considered as ended until the Parties to the conflict have carried out the terms of Article 118, paragraph 1, which provides for the repatriation of all prisoners of war after the cessation of active hostilities.

Instead of being rendered harmless by internment in the territory of the Detaining Power, prisoners repatriated under Article 109 are still to some extent rendered harmless, but in the territory of the Power on which they depend. One may therefore assume that once the belligerents, by arranging for a general repatriation of prisoners of war, renounce the safeguards afforded by captivity, Article 117 ceases to be applicable.

It is obvious that the Article can be invoked only by the Detaining Power and its allies, and that a third Power cannot avail itself of its provisions.

C. *The concept of " active " military service.* — At the 1949 Diplomatic Conference there was lengthy discussion in the relevant Committee as to whether the word " active " should be deleted. After examining the provisions in this section, the Medical Experts Committee proposed that it should be deleted for several reasons : it would be appropriate to make the text of Article 117 consistent with one of the stipulations of the Model Agreement, which referred only to " military service " ; it was in the interest of repatriated prisoners

of war whose health was seriously impaired to be completely released from military discipline ; lastly, it was preferable to avoid an expression which might give rise to difficulties of interpretation and to adopt a wording covering all forms of service [1].

In interpreting this phrase, the spirit of the Convention rather than national legislation should serve as a guide. It is, of course, difficult to give a precise definition, but the expression may be considered as broadly covering any participation, whether direct or indirect, in armed operations against the former Detaining Power or its allies [2]. In effect, Article 117 forbids any repatriated person to serve in units which form part of the armed forces but does not prevent their enrolment in unarmed military units engaged solely in auxiliary, complementary or similar work.

In concluding agreements pursuant to Articles 109 and 110, the Parties concerned are at liberty to stipulate what is meant by " active " service in the particular case concerned.

D. *Responsibility in case of violation.* — It is generally agreed that the prisoners of war themselves cannot be held responsible for any violation of this rule. A belligerent State would therefore not be entitled to prosecute prisoners of war captured for a second time after a violation of Article 117, since they cannot be held responsible for action by the State whose orders they were obliged to obey [3].

The Protecting Power should be authorized, under Article 8, to verify in the territory of the Power of origin that Article 117 is being respected there.

As already mentioned, the Mixed Medical Commissions were faced with this problem on several occasions during the Second World War, when called upon to deal a second time with prisoners of war who had already been repatriated under an earlier decision [4].

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[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 365 and 374.

[2] See Geneva Convention of 1864, Article 6, paragraph 4 ; " . . . *on condition that they shall not again, for the duration of hostilities, take up arms* ".

[3] In this connection, see BRETONNIÈRE, *op. cit.*, p. 464. See also CHARPENTIER : *La Convention de Genève et le droit nouveau des prisonniers*, thesis, Rennes, 1936, p. 160 ; RASMUSSEN : *Code des prisonniers de guerre*, Copenhagen, 1931, p. 47.

In practice, it is to be feared that the Detaining Power might take action against the prisoner himself. Scheidl therefore suggests that a prisoner released under Article 117 should promise not to resume active service. If the Power of origin obliged him to do so, it would then be for the prisoner to prove that he had acted under compulsion. (See SCHEIDL, *op. cit.*, pp. 482-483.)

[4] See above the commentary on Article 110, paragraph 1, sub-paragraph (3).

SECTION II

RELEASE AND REPATRIATION OF PRISONERS OF WAR AT THE CLOSE OF HOSTILITIES

ARTICLE 118. — RELEASE AND REPATRIATION

Prisoners of war shall be released and repatriated without delay after the cessation of active hostilities.

In the absence of stipulations to the above effect in any agreement concluded between the Parties to the conflict with a view to the cessation of hostilities, or failing any such agreement, each of the Detaining Powers shall itself establish and execute without delay a plan of repatriation in conformity with the principle laid down in the foregoing paragraph.

In either case, the measures adopted shall be brought to the knowledge of the prisoners of war.

The costs of repatriation of prisoners of war shall in all cases be equitably apportioned between the Detaining Power and the Power on which the prisoners depend. This apportionment shall be carried out on the following basis :

(a) *If the two Powers are contiguous, the Power on which the prisoners of war depend shall bear the costs of repatriation from the frontiers of the Detaining Power.*

(b) *If the two Powers are not contiguous, the Detaining Power shall bear the costs of transport of prisoners of war over its own territory as far as its frontier or its port of embarkation nearest to the territory of the Power on which the prisoners of war depend. The Parties concerned shall agree between themselves as to the equitable apportionment of the remaining costs of the repatriation. The conclusion of this agreement shall in no circumstances justify any delay in the repatriation of the prisoners of war.*

This is one of the most important Articles in the Convention and is intended to remedy very unsatisfactory situations. As a result of the changed conditions of modern warfare, the belligerents have on two occasions, and without expressly violating the provisions of the existing Conventions, been able to keep millions of prisoners of war in captivity for no good reason. In our opinion, it was contrary to the spirit of the Conventions to prolong war captivity in this way.

Article 20 of the Hague Regulations of 1907 simply stated that, after the conclusion of peace, the repatriation of prisoners of war should be carried out as quickly as possible. In accordance with this general rule, Article 214 of the Treaty of Versailles, signed on June 28, 1919, read as follows : " The repatriation of prisoners of war and interned civilians shall take place as soon as possible after the coming into force of the present Treaty and shall be carried out with the greatest rapidity." The Treaty entered into force only on January 15, 1920—more than fourteen months after the armistice. Article 75 of the 1929 Convention therefore tried to expedite repatriation by stipulating that it should, if possible, take place as soon as an armistice had been concluded. For many Powers, however, the Second World War ended without either armistice or peace treaty, and it was all the more shocking that captivity should be prolonged. In the case of German prisoners of war, for instance, the elimination of the German State prevented the normal operation of the Convention. Furthermore, in those circumstances there was no danger of any resumption of hostilities.

PARAGRAPH 1. — OBLIGATION AND TIME-LIMIT FOR REPATRIATION

1. *Historical Background*

A. *Obligation to repatriate.* — At the Conference of Government Experts, some delegations pointed out that the Second World War had shown the 1929 text to be inadequate, since hostilities could cease without any peace treaty, or even armistice. It was therefore essential to lay down that repatriation should take place as soon as possible after the end of hostilities, and to make this requirement unilateral so that its implementation would not be hampered by the difficulty of obtaining the consent of both Parties [1].

[1] See *Report on the Work of the Conference of Government Experts*, pp. 243-245.

Further difficulties arose, however, because of the ideological nature of the conflicts, and the International Committee of the Red Cross had to draw the attention of the Conference to the cases of prisoners of war repatriated against their will (which led to many suicides after the Second World War) and of prisoners of war who asked to be sent to a country other than their country of origin. The Conference of Government Experts did not think it possible to make exceptions for special cases, owing particularly to the strict immigration laws of some countries, and decided to maintain the general principle of repatriation of all prisoners of war nationals of a given country [1].

Discussion was resumed at the 1949 Diplomatic Conference, when the Austrian Delegation suggested that the Convention should specify the country to which prisoners of war should be repatriated, and proposed the insertion of a new Article between Articles 118 and 119, reading as follows :

Subject to the provisions of the following paragraph prisoners of war shall be repatriated to the country whose nationals they are at the time of their repatriation.

Prisoners of war, however, shall be entitled to apply for their transfer to any other country which is ready to accept them [2].

In the view of that Delegation, two exceptions should be made to the general rule that prisoners should be sent back to their country of origin : (*a*) where the territories of the country of origin have come under the jurisdiction of a foreign government; (*b*) where the conditions of life have so changed that the prisoner no longer wishes to return to his home country if he is able to settle in the territory of another State.

Some delegations, however, were concerned lest prisoners of war might not be able to express themselves with complete freedom while in captivity, and the Austrian amendment was rejected by a large majority [3].

Although in connection with Article 109, which concerns repatriation during the hostilities of seriously wounded and seriously sick prisoners of war, account was taken of the wishes of those men [4], this

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[1] See *Report on the Work of the Conference of Government Experts*, p. 245 ; see also *XVIIth International Red Cross Conference, Draft Revised or New Conventions*, p. 125.

[2] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 324 and 462.

[3] *Ibid.*, p. 462.

[4] See above, pp. 512-513.

question was not dealt with in connection with Article 118 as regards the repatriation of all prisoners of war at the end of hostilities. The discussion of the present Article bore on other aspects of the problem. It was emphasized that at the end of the Second World War a number of States had kept prisoners of war in captivity for a very long time for various reasons. Every effort was therefore made to ensure repatriation as soon as possible after the end of hostilities.

B. *Application of the provision to the Korean conflict.* — At the time of the Korean war, none of the Parties to the conflict had ratified the Convention and it was not therefore legally applicable. It was nevertheless partially applied, since at the beginning of the hostilities the Parties had stated their intention of respecting the " principles " of the Geneva Conventions.

At the end of the hostilities a large number of prisoners were unwilling to be repatriated. The following question therefore arose for the Parties to the conflict : does Article 118, paragraph 1, oblige a Power detaining prisoners of war to repatriate, if need be by force, all the prisoners in its hands ?

Each side gave a different answer to this question. North Korea held that under Article 118, paragraph 1, as supplemented by Article 7, which provides that prisoners of war may in no circumstances renounce in part or in entirety the rights secured to them by the Convention, prisoners of war were unconditionally required to be repatriated, regardless of their desires or preferences.

That interpretation was based on the three following considerations :

(a) the wording of Article 118, paragraph 1, is categorical ;

(b) the 1949 Diplomatic Conference expressly rejected the Austrian amendment which would have given prisoners of war the option of going to a country other than their country of origin if the former was prepared to welcome them [1];

(c) Article 7 forbids prisoners of war to waive the rights secured to them by the Convention ; moreover, Article 109, paragraph 3, may be interpreted *a contrario* as permitting the repatriation of prisoners of war against their will, provided such repatriation takes place after and not during the hostilities.

[1] See above, p. 542.

Those who supported this view also considered that the duties which the Convention laid upon the Detaining Power were duties for which that Power was responsible towards the Power of origin of prisoners of war, but not towards the prisoners themselves. The latter should therefore be repatriated " without consideration of their wishes " [1].

The United Command of the Western Powers, basing themselves on the general spirit of the Convention, held the contrary view.

At its Seventh Session, the United Nations General Assembly adopted a Resolution on December 3, 1952, which gives an interpretation diametrically opposed to that of the Democratic People's Republic of Korea [2].

That Resolution stated :

The General Assembly . . .

1. Affirms that the release and repatriation of prisoners of war shall be effected in accordance with the Geneva Convention relative to the Treatment of Prisoners of War, dated 12 August 1949, the well-established principles and practice of international law and the relevant provisions of the draft armistice agreement ;

2. Affirms that force shall not be used against prisoners of war to prevent or effect their return to their homelands, and that they shall at all times be treated humanely in accordance with the specific provisions of the Geneva Convention and with the general spirit of the Convention . . .

(Force shall not be used against the prisoners of war to prevent or effect their return to their homelands, and no violence to their persons or affront to their dignity or self-respect shall be permitted in any manner or for any purpose whatsoever. This duty is enjoined on and entrusted to the Repatriation Commission and each of its members. Prisoners of war shall at all times be treated humanely in accordance with the specific provisions of the Geneva Convention and with the general spirit of that Convention . . .

After classification, prisoners of war shall be free to return to their homelands forthwith, and their speedy return shall be facilitated by all parties concerned.)

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[1] See speeches by Mr. Vyshinsky before the First Committee of the United Nations General Assembly, 521st and 529th meetings (November 10 and November 24, 1952). (U.S./A.C. 1/2540 and U.S./A.C.1/2543).

[2] See *United Nations, General Assembly, Official Records of the Seventh Session, Supplement No. 20* (A/2361).

In 1950, Article 118 had been interpreted in the same spirit by the United Nations General Assembly when the latter proposed, subject to the respect of recognized international standards in the matter, that it should be so interpreted that " all prisoners should . . . be given an unrestricted opportunity of repatriation " [1]. Although the rôle of the General Assembly of the United Nations as interpreter of the Convention is nowhere defined, one author has pointed out, this construction is so much in line with the spirit of the Convention, that its quasi-authoritative character cannot be doubted [2].

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[1] *United Nations Year Book 1950*, pp. 568-569. Resolution 427 (V), December 14, 1950.

[2] See J. MAYDA : " The Korean repatriation problem and international law ", *The American Journal of International Law*, July 1953, Vol. 47, No. 3, p. 436.

The various views expressed may be found also in the records of the Seventh Session of the United Nations General Assembly, and in particular the Indian proposal of November 17, 1952, the statement by Mr. Acheson, United States representative, on November 24, 1952, before the First Committee (Political and Security Questions), the reply by Mr. Vychinsky, representative of the USSR, on October 29, 1952, before the same Committee, and the drafts submitted by Mexico and Peru. One should also note the four points raised by Mr. Eden, representing the United Kingdom, before the General Assembly (393rd plenary meeting) : " 1. Every prisoner of war has the right, on the conclusion of an armistice, to be released ; 2. every prisoner of war has the right to be speedily repatriated ; 3. there is a duty on the detaining side to provide facilities for repatriation ; 4. the detaining side has no right to use force in connection with the disposal of prisoners of war."

The following documentation is also relevant : *United Nations, General Assembly, Official Records of the Seventh Session, Supplement No. 20 (A/2361)* and *First Committee* (A/C.1/SR.512) ; *Documentation française, Notes et études documentaires*, Nos. 1677, 1791 and 2494 (November 1952, June and October 1953), " Les négociations d'armistice et les camps de prisonniers de guerre en Corée. — Le livre blanc britannique de juin 1952 — Texte de l'accord sur les prisonniers de guerre en Corée — Documents relatifs à l'armistice de Corée " ; *Department of State Bulletin*, April and June 1953 : " Talks on repatriation of sick and wounded prisoners. Text of agreement on prisoners of war " ; see also the following authors : R. R. BAXTER : " Asylum to prisoners of war ", *British Year Book of International Law, 1953*, pp. 489-498 ; D. BINDSCHEDLER-ROBERT : " Les Commissions neutres instituées par l'armistice de Corée ", *Schweizerisches Jahrbuch für internationales Recht, 1953*, pp. 89-130 : CHAMATZ and WIT : " Repatriation of prisoners of war and the 1949 Geneva Conventions ", *The Yale Law Journal*, 62, 1953, p. 39 ff. ; P. H. DOUGLAS : " The Korean prisoner of war issue ", *Vital Speeches of the Day*, July 19, 1953, pp. 568-570 ; GUTTERIDGE : " The Repatriation of Prisoners of War ", *International and Comparative Law Quarterly*, 2, 1953, p. 207 ff. ; H. KRUSE : " Das Prinzip der freiwilligen Repatrierung-Völkerrecht und Politik in Korea ", *Aussenpolitik*, January 1954, pp. 36-42 ; W. H. JUDD : " Korean unification and prisoner of war issue " *Vital Speeches of the Day*, July 1953, pp. 578-585 ; LUNDIN : " Repatriation of Prisoners of War : The Legal and Political Aspects " *American Bar Association Journal, 1953*, p. 559 ff. ; SCHAPIRO : " Repatriation of Deserters ", *British Year Book of International Law, 1952*, p. 310 ff.

See also *Korea* No. 1 (1953), British Government, Cmd. 8793 ; Department of State Publication 4771 (1952), *The Problem of Peace in Hostilities* ; U.N. Library, New York 1952.

Without passing judgment on the decisions taken by the United Nations or by the Armistice Commission, it should be pointed out that the Korean war must not in any way be considered as a precedent for the application of Article 118. The Convention, which was not binding upon the Parties to that conflict, was only partially applied, in particular as regards scrutiny. The International Committee of the Red Cross had access to the camps set up by the United Nations, but was never in a position to make similar verifications in North Korea. The Protecting Powers never took up their duties, on either side. Moreover, the prisoners of war were never able to correspond with their families or to receive parcels from them.

Thus, the essential provisions of the Convention were not applied and the application of Article 118 was considerably affected thereby. The Convention constitutes a whole and if some of its essential provisions are neglected, the whole of it is jeopardized.

The decisions taken with regard to repatriation after the Korean conflict must therefore be considered as makeshift solutions adapted to the special circumstances of a conflict between two Parties of a single country. One cannot draw any valid conclusions for the future from them. In the case of the Suez conflict, repatriation was carried out normally and speedily.

C. *Interpretation of the provision.* — It is understood that the following rules presuppose that the Convention as a whole has been applied to the letter and in spirit by the belligerents, particularly as regards the co-operation of the Protecting Powers and scrutiny by them, in accordance with Articles 8 and 10 of the Convention. On this basis, Article 118, paragraph 1, may be interpreted as follows:

1. *Prisoners of war have an inalienable right to be repatriated once active hostilities have ceased. In parallel, and subject to the remarks below (sub-paragraph 3), it is the duty of the Detaining Power to carry out repatriation and to provide the necessary means for it to take place.*

In calling for the general repatriation of all prisoners of war once active hostilities have ceased, the 1949 Diplomatic Conference took account of the experience of the Second World War. It recognized that captivity is a painful situation which must be ended as soon as possible, and was anxious that repatriation should take place rapidly and that prisoners of war should not be retained in captivity on various pretexts. In time of war, the internment of captives is justified by a

legitimate concern—to prevent military personnel from taking up arms once more against the captor State. That reason no longer exists once the fighting is over.

The right to repatriation is based on the general assumption that for the prisoner of war, repatriation constitutes a return to a normal situation and that, in almost every case, it is his own wish to be repatriated. Furthermore, by specifying in Article 7 that prisoners of war may not renounce the rights secured to them, the Diplomatic Conference obviously wished to protect them from themselves, that is to say from the temptation to accept offers by the Detaining Power which might at the time seem advantageous. Moreover, a member of the armed forces who becomes a prisoner of war in enemy hands remains a member of the armed forces of his country. Account must therefore be taken of the duty of allegiance which binds a prisoner of war to those armed forces.

In parallel to the inalienable right of prisoners of war to be repatriated there is an inescapable obligation for the Detaining Power. There is no need to attempt to determine whether repatriation is a separate operation from release, under the terms of Article 118 ; at most, one may consider that release without repatriation may occur when prisoners of war are detained on the territory of their own country which is occupied. In general, however, the two operations are closely linked and must take place simultaneously. Moreover, release and repatriation are in most cases the re-establishment of prisoners of war in the situation which they enjoyed when they were captured ; in other words, having been released and repatriated, prisoners of war come once again under the orders of the military authority on which they depended at the time of capture.

2. *No exception may be made to this rule unless there are serious reasons for fearing that a prisoner of war who is himself opposed to being repatriated may, after his repatriation, be the subject of unjust measures affecting his life or liberty, especially on grounds of race, social class, religion or political views, and that consequently repatriation would be contrary to the general principles of international law for the protection of the human being. Each case must be examined individually.*

Apart from Articles 188 and 7, the Convention, especially in Articles 13 and 14, expresses very general principles prescribing humane treatment and respect for the person in all circumstances. For this reason, where the repatriation of a prisoner of war would be

manifestly contrary to the general principles of international law for the protection of the human being, the Detaining Power may, so to speak, grant him asylum.

Cases of this kind should be exceptional in normal circumstances ; they might be more numerous if, during the period of captivity, an important political change took place in a prisoner's country of origin and, as a consequence of that change, certain groups of people were persecuted. Such a system corresponds to the general tendency which has become apparent since the Second World War against allowing anyone to be sent or returned to a country when he has good reason to fear that measures affecting his life and liberty would be taken against him there. This tendency is reflected, for instance, in Article 45 of the Fourth Geneva Convention of 1949, which forbids the transfer of a protected person to a country where he or she may have reason to fear persecution for his or her political opinions or religious beliefs. It is also reflected in the Resolution of the United Nations General Assembly calling for release and repatriation to be effected in accordance with the Geneva Convention and with the well-established principles and practice of international law.

While recognizing the possibility of recourse to general humanitarian rules, one should nevertheless make a rather strict appraisal of each case, since the Third Geneva Convention has certainly not established a system under which repatriation depends solely on the wishes of the prisoner of war concerned. Each case must therefore be dealt with individually, on its own merits. A decision against repatriation must be reserved for exceptional cases where the dangers involved for the person concerned seems manifestly unjust and grave.

3. *No propaganda or pressure may be directed at prisoners of war with a view to persuading them to object to repatriation.*

4. *The supervisory bodies must be able to satisfy themselves without any hindrance that the requests have been made absolutely freely and in all sincerity, and to give prisoners of war any information which may set at rest groundless fears.*

In the case mentioned above, the prisoner of war concerned must spontaneously and of his own accord have expressed his unwillingness to be repatriated. It would therefore be an abuse if beforehand the Detaining Power were to offer him the opportunity of not being repatriated or, by insidious propaganda, induce him to refuse repatriation. For a member of the armed forces, patriotic allegiance is an essential part of his mental make-up, and the treatment which he

receives from the enemy should not tend systematically to destroy this feeling for which the Convention endeavours to ensure respect.

It is therefore essential that the supervisory bodies—and in particular the representatives of the Protecting Power—should be able to visit prisoners of war regularly, receive their complaints and give them all information which may clarify the situation. Moreover, the Protecting Power will thus be able to vouch for the sincerity of a prisoner of war who refuses repatriation *vis-à-vis* the Power whose interests it safeguards.

5. *The rules under 1, 2, 3 and 4 above do not apply to prisoners of war who have been illegally enrolled in the armed forces of the enemy State (for instance, the inhabitants of occupied territories who have been forced to enlist in the army of the occupying Power) or to deserters who go over to the enemy side.*

Enemy military personnel who have been illegally enrolled in the armed forces cannot be treated on the same basis as other prisoners of war, nor can those who go over to the other side. Although many countries, for instance Great Britain, treated the latter as prisoners of war, this does not mean that they are entitled to that status. The Detaining Power is under no obligation to repatriate persons who have deserted to the other side. Similarly, their names are not usually notified to their country of origin. It should, however, be noted that the status of a deserter who has gone over to the other side must be determined by the way in which he surrendered or by his statements during initial questioning. A prisoner of war does not become a deserter merely because he makes a statement in the course of captivity.

6. *The rules given under 1, 2, 3 and 4 above do not prevent the conclusion of agreements between the belligerents pursuant to Article 6 of the Convention in order to meet the requests of prisoners of war who object to being repatriated.*

Apart from cases in which the Detaining Power grants requests for non-repatriation for imperative humanitarian reasons, prisoners of war may ask to be sent to a country other than their country of origin because of economic or family considerations or even simply reasons of personal convenience. In such cases the belligerents may reach agreement, under Article 6, in order to seek a solution consistent with the wishes expressed by the prisoners of war concerned.

2. *Time-limit for repatriation*

The text as finally adopted states that the repatriation must take place " without delay after the cessation of active hostilities ".

This requirement does not, of course, affect the practical arrangements which must be made so that repatriation may take place in conditions consistent with humanitarian rules and the requirements of the Convention, as defined in Article 119, paragraph 1, below, which refers to Articles 46 to 48 (relating to transfer).

PARAGRAPH 2. — ESTABLISHMENT OF A REPATRIATION PLAN

Article 75, paragraph 1, of the 1929 Convention stated : " When belligerents conclude an armistice convention, they shall normally cause to be included therein provisions concerning the repatriation of prisoners of war. It it has not been possible to insert in that Convention such stipulations, the belligerents shall, nevertheless, enter into communication with each other on the question as soon as possible. In any case, the repatriation of prisoners shall be effected as soon as possible after the conclusion of peace."

The Conference of Government Experts, held in 1947, recommended a similar clause and the definitive text of this provision was drawn up by the XVIIth International Conference of the Red Cross, which met at Stockholm in 1948 ; it provides for repatriation on a unilateral basis, without requiring the consent of the Power on which prisoners of war depend. It is true that this solution is only a subsidiary aspect, preference being given to the traditional solution already recognized by Article 76, paragraph 1, of the 1929 Convention, if it can be carried out within the time allowed. Otherwise, the necessary steps will be taken in the territory of the Power on which prisoners of war depend by the authorities provisionally replacing the government authorites there, that is to say, if need be by the Detaining Power itself or its allies.

Some order of priority for repatriation will be included in the plan, if possible. Seriously wounded and seriously sick prisoners of war whom it has not been possible to release earlier under Article 109 will have priority on two counts : not only will they be repatriated first, but they will be evacuated by the shortest route and the quickest means with a minimum of stops on the way. For this category of prisoners of war more than any other, arrangements must be made not only for their travel but also for arrival in their own country, so that they are sure of receiving the care which they need. If these

conditions cannot be met, the repatriation of this category of prisoners of war should be postponed for a short time. The same will apply to wounded and sick prisoners of war who should have been accommodated in a neutral country in accordance with Article 109, paragraph 2, and Article 110, paragraph 2.

Thirdly, the Detaining Power should endeavour to repatriate able-bodied prisoners of war who have been in captivity for the longest period (pursuant to the last sentence of Article 109, paragraph 2).

Other categories may be classified on the basis of Article 16, with particular regard to sex and age, priority being given to women and the oldest prisoners of war.

In no case may a Detaining Power make any discrimination based on race, nationality, religious belief or political opinions of prisoners of war or " on similar criteria ". This rule was not always respected during the Second World War [1].

If repatriation is organized quickly and on a large scale, it is not essential to respect priorities and repatriation should not be held up unduly in order to respect those provisions. This will not be the case if repatriation is staged over a considerable period of time.

Paragraph 3. — Notification of prisoners of war

Prisoners of war must be informed of the measures adopted by the Detaining Power or of the conclusion of an agreement with a view to their repatriation ; this requirement is new and was introduced at the request of the International Committee of the Red Cross [2]. It also applies to any modifications to the agreement or to the initial plan. Notification will usually be made by means of notices posted in the camps in accordance with Article 41, paragraphs 1 and 2. Pursuant to the same provision, the prisoners' representatives will receive a copy so that they may inform the prisoners whom they represent.

Paragraph 4. — Apportionment of costs

With the exception of Article 73 [3], which was included in the section relating to direct repatriation and accommodation in a neutral

[1] See *Report on the Work of the Conference of Government Experts*, pp. 244-245.

[2] *Ibid.*, p. 244.

[3] See below, p. 743.

country of wounded and sick prisoners of war—and which refers mainly, if not exclusively, to this category of prisoners of war—the 1929 Convention did not contain any clause relating to the apportionment of the costs of repatriating prisoners of war at the end of hostilities. This matter was the subject of lengthy discussion at the 1949 Diplomatic Conference.

A. *General principle of equitable apportionment.* — The first sentence sets forth a general principle which dominates the provision as a whole and is moreover reiterated in sub-paragraph (*b*) of the present paragraph. It states categorically and with no exception the principle that the costs must be " equitably " apportioned. In other words, if as a result of the strict application of the principles set forth under sub-paragraphs (*a*) and (*b*) below the apportionment of costs were not equitable, it would have to be revised in order to make it consistent with that principle ; for it is for this very purpose that the principle was set forth, as is clear from the phrase " à cet effet " at the beginning of the second sentence in the French text.

B. *The case of two contiguous Powers (sub-paragraph (a)).* — The solution provided here—that the costs are to be borne by the Powers concerned on their respective territories—is expressly considered to be equitable in the case of two contiguous Powers ; the victorious Power is therefore not authorized to bring pressure to bear on the conquered Power during negotiations, in order to impose any other solution which would be to the detriment of the latter Power.

C. *The case of two Powers which are not contiguous (sub-paragraph (b)).* — This clause was the subject of considerable discussion at the 1949 Diplomatic Conference [1].

No difficulty arises from the first sentence, which provides that if the two Powers are not contiguous, the costs of transport shall be borne by the Detaining Power as far as its frontier or its port of embarkation nearest to the territory of the Power on which prisoners of war depend. In the case of air transport, it is reasonable to assume that the same rule will apply as far as the acrodrome in the territory of the Detaining Power which is nearest to the territory of the Power on which prisoners of war depend. It should be noted that, in accordance with the general character of the present provision, the rule

[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. III, p. 88 ; Vol. II-A, pp. 295, 450-452, 453-454, 526-527 ; Vol. II-B, pp. 316-318.

does not merely refer to a frontier, port or aerodrome in metropolitan territory, but also to those situated outside metropolitan territory provided they are under the authority of the Detaining Power; the requirement is that prisoners of war must be taken to the nearest possible point to the territory of the Power on which the prisoners depend.

The second sentence repeats the terms of the first part of the paragraph and calls for an equitable appointment of the remaining costs, by agreement between the Powers concerned. This wording does not therefore mean that the Detaining Power will not participate in the costs relating to the remaining part of the journey. The apportionment must however be "equitable", which implies that, where appropriate, account must be taken of the costs already borne by the Detaining Power.

The third sentence, which is extremely important, was inserted on a proposal by the Swiss Delegation to the 1949 Diplomatic Conference [1]. It protects the interests of prisoners of war, whose repatriation must not be delayed if the negotiations initiated under the second sentence above are not rapidly concluded. The settlement of accounts is a matter for the Governments concerned and does not affect the position of prisoners of war, provided their repatriation is not delayed.

ARTICLE 119. — DETAILS OF PROCEDURE

Repatriation shall be effected in conditions similar to those laid down in Articles 46 to 48 inclusive of the present Convention for the transfer of prisoners of war, having regard to the provisions of Article 118 and to those of the following paragraphs.

On repatriation, any articles of value impounded from prisoners of war under Article 18, and any foreign currency which has not been converted into the currency of the Detaining Power, shall be restored to them. Articles of value and foreign currency which, for any reason whatever, are not restored to prisoners of war on repatriation, shall be despatched to the Information Bureau set up under Article 122.

Prisoners of war shall be allowed to take with them their personal effects, and any correspondence and parcels which have arrived for them.

[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 451.

The weight of such baggage may be limited, if the conditions of repatriation so require, to what each prisoner can reasonably carry. Each prisoner shall in all cases be authorized to carry at least twenty-five kilograms.

The other personal effects of the repatriated prisoner shall be left in the charge of the Detaining Power which shall have them forwarded to him as soon as it has concluded an agreement to this effect, regulating the conditions of transport and the payment of the costs involved, with the Power on which the prisoner depends.

Prisoners of war against whom criminal proceedings for an indictable offence are pending may be detained until the end of such proceedings, and, if necessary, until the completion of the punishment. The same shall apply to prisoners of war already convicted for an indictable offence.

Parties to the conflict shall communicate to each other the names of any prisoners of war who are detained until the end of proceedings or until punishment has been completed.

By agreement between the Parties to the conflict, commissions shall be established for the purpose of searching for dispersed prisoners of war and of assuring their repatriation with the least possible delay.

The 1929 Convention did not contain any detailed provisions concerning the procedure for repatriating prisoners of war and Article 75, paragraphs 2 and 3, referred only to prisoners of war who, at the time of repatriation, were subject to criminal proceedings, and also to the commissions instituted to search for scattered prisoners and ensure their repatriation.

The Stockholm Conference recommended that those provisions should be supplemented by new clauses concerning the actual conditions in which repatriation takes place and also the order of priority for the repatriation plan.

The 1949 Diplomatic Conference agreed with those recommendations and added additional provisions concerning the personal effects of prisoners of war (paragraphs 2 to 4 of the present Article).

PARAGRAPH 1. — CONDITIONS OF REPATRIATION

At the 1949 Diplomatic Conference some objections were made to the application in full of Articles 46 to 48 as it was felt that rather serious difficulties might ensue. For instance, Article 48, paragraph 1, states that prisoners of war must be able to inform their next of kin.

There may be cases, however, in which this requirement cannot be met because families have moved as a result of war events [1].

The 1949 Conference added to the Stockholm text the reservation at the end of the paragraph that regard must be had to the provisions of Article 118 and to those of the following paragraphs of the present Article [2].

The reference to Article 118 relates especially to the requirement of repatriation *without delay* after the cessation of active hostilities. A reservation therefore applies to measures provided under Articles 46 to 48 which, while being in the interest of prisoners of war, might result in undue delay in repatriation.

The Conference was opposed to any excessively detailed order of priority for repatriation, as it might result in complicating and thereby delaying repatriation [3]. In our opinion, however, the Detaining Power must grant priority to wounded and sick prisoners of war, in accordance with the general spirit of the Convention. It is clear from Section I of Part IV, which relates to the repatriation of such prisoners of war during the hostilities, that they must receive privileged treatment.

PARAGRAPH 2. — RETURN OF ARTICLES OF VALUE AND FOREIGN CURRENCY

Under Article 18, paragraph 4, sums of money carried by prisoners of war at the time of capture and which are not in the currency of the Detaining Power, or are not converted into such currency, must be recorded in a special register. Paragraph 6 of the same Article provides that such sums must be returned to the prisoners of war concerned at the end of captivity, together with any articles of value withdrawn under Article 18, paragraph 5.

The first sentence of the present paragraph therefore confirms those provisions by specifying the time at which these items must be restored, that is to say upon repatriation.

The second sentence merely confirms the provisions of Article 122, paragraph 9 below. In the confusion which may reign at the time of repatriation of prisoners of war, it is quite likely that sums of money and articles of value impounded from them at the time of capture

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[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 296.

[2] *Ibid.*, Vol. II-A, p. 338.

[3] *Ibid.*, Vol. II-B, p. 320.

cannot be restored to them with all desirable guarantees. Since it would be unfortunate if repatriation was delayed because of this, the Convention provides that in such cases the Information Bureau provided for in Article 122 may be used as an intermediary.

PARAGRAPHS 3 AND 4. — BAGGAGE AND PERSONAL EFFECTS

This provision reproduces the text of Article 48, paragraph 2, of the Convention which concerns the procedure for transferring prisoners of war from one camp to another.

There is, however, a difference as regards the weight of the baggage which prisoners of war are permitted to take with them. Whereas Article 48, paragraph 2, states that the authorized weight " shall in no case be more than twenty-five kilograms per head ", the present provision permits " at least " twenty-five kilograms to be carried [1]. It may well be that during captivity prisoners of war accumulate a large quantity of objects which they would wish to take with them.

Paragraph 4 of the present Article as finally adopted provides that the other personal effects of the repatriated prisoner are to be left in the charge of the Detaining Power which must forward them to him as soon as it has concluded an agreement with the Power on which he depends as regards the conditions of transport and payment of the costs involved [2].

PARAGRAPH 5. — PRISONERS OF WAR UNDER PROSECUTION OR CONVICTION FOR AN INDICTABLE OFFENCE

This provision is based on Article 75, paragraph 2, of the 1929 Convention.

The Conference retained that provision, but replaced the phrase " a crime or offence at common law " by " an indictable offence " [3].

This amendment was considered necessary since it was not the intention of the drafters of the Convention that a prisoner should be detained because preceedings were being taken against him or because he was summoned to appear before court for neglect of some obligation in civil law ; they were thinking only of prisoners of war subject to criminal proceedings [4].

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[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A pp. 452-453.

[2] *Ibid.*, Vol. II-A, pp. 296-297, 339 and 455.

[3] *Ibid.*, Vol. II-A, p. 455.

[4] *Ibid.*, Vol. II-B, p. 318 ; see also Vol. II-A, pp. 455-456.

It should also be noted that the present provision does not oblige the Detaining Power to detain prisoners under such prosecution or conviction; it is a step which the Detaining Power may take if it wishes. In accordance with the practice followed by certain Powers at the end of the Second World War, the records of prisoners of war undergoing prosecution or conviction who have been repatriated may, where appropriate, be transmitted to the Power to whose territory they have been repatriated.

Paragraph 6. — Communication of the names of detained prisoners of war

This is a new provision which will eliminate any uncertainty as to the fate of the prisoners of war concerned and enable their next of kin to be informed. Although the text does not expressly say so, this communication should be made through the intermediary of the Information Bureau (Article 122) and the Central Prisoners of War Agency (Article 123).

Paragraph 7. — Commissions to search for prisoners of war

Although its wording is more imperative, this provision corresponds to Article 75, paragraph 3, of the 1929 Convention ; it was adopted without difficulty by the 1949 Diplomatic Conference, which merely inserted a phrase stating that the repatriation of such prisoners of war must be assured with the least possible delay [1].

[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 339-340 and 457.

SECTION III

DEATH OF PRISONERS OF WAR

Part IV, Section III, groups all the provisions which refer to the death of prisoners of war. It corresponds to Article 76 of the 1929 Convention, but goes into more detail. In particular, Article 120 provides additional safeguards concerning burial ; to correspond to a provision in the Convention for the Amelioration of the Condition of the Wounded and Sick, it requires the Detaining Power to establish a Graves Registration Service. In the light of the experience of the Second World War, Article 121 affords special guarantees in cases where the cause of death is uncertain.

ARTICLE 120. — WILLS, DEATH CERTIFICATES, BURIAL, CREMATION

Wills of prisoners of war shall be drawn up so as to satisfy the conditions of validity required by the legislation of their country of origin, which will take steps to inform the Detaining Power of its requirements in this respect. At the request of the prisoner of war and, in all cases, after death, the will shall be transmitted without delay to the Protecting Power ; a certified copy shall be sent to the Central Agency.

Death certificates, in the form annexed to the present Convention, or lists certified by a responsible officer, of all persons who die as prisoners of war shall be forwarded as rapidly as possible to the Prisoner of War Information Bureau established in accordance with Article 122. The death certificates or certified lists shall show particulars of identity as set out in the third paragraph of Article 17, and also the date and place of death, the cause of death, the date and place of burial and all particulars necessary to identify the graves.

The burial or cremation of a prisoner of war shall be preceded by a medical examination of the body with a view to confirming death and enabling a report to be made and, where necessary, establishing identity.

The detaining authorities shall ensure that prisoners of war who have died in captivity are honourably buried, if possible according to the rites of the religion to which they belonged, and that their graves are respected, suitably maintained and marked so as to be found at any time. Wherever possible, deceased prisoners of war who depended on the same Power shall be interred in the same place.

Deceased prisoners of war shall be buried in individual graves unless unavoidable circumstances require the use of collective graves. Bodies may be cremated only for imperative reasons of hygiene, on account of the religion of the deceased or in accordance with his express wish to this effect. In case of cremation, the fact shall be stated and the reasons given in the death certificate of the deceased.

In order that graves may always be found, all particulars of burials and graves shall be recorded with a Graves Registration Service established by the Detaining Power. Lists of graves and particulars of the prisoners of war interred in cemeteries and elsewhere shall be transmitted to the Power on which such prisoners of war depended. Responsibility for the care of these graves and for records of any subsequent moves of the bodies shall rest on the Power controlling the territory, if a party to the present Convention. These provisions shall also apply to the ashes which shall be kept by the Graves Registration Service until proper disposal thereof in accordance with the wishes of the home country.

The provisions of the present Section should be compared with others in the Convention, i.e. Article 66 (winding-up of accounts in case of death), Article 77 (preparation, execution and transmission of legal documents) and Article 122 (paragraphs 5, 7 and 9), which refers to enquiries and transmission of information to the national Information Bureau in case of death as well as safe-keeping of articles of value.

PARAGRAPH 1. — DRAWING-UP AND TRANSMISSION OF WILLS

1. *First sentence. — Conditions of validity*

The present paragraph acknowledges the right of every prisoner of war to make a will, pursuant to the general principle set forth in Article 14, paragraph 3, that a prisoner of war shall retain his full civil capacity. This right is undisputed but it was still necessary to establish a procedure for its application. Wills cannot be regulated

by the Convention ; they must satisfy the conditions of validity required by the legislation of the country in which they take effect.

This is a departure from the text of previous Conventions. The present provision refers expressly to " the conditions of validity required by the legislation of their country of origin ", while Article 76, paragraph 1, of the 1929 Convention which corresponded to Article 19 of the Hague Regulations, read as follows : " The wills of prisoners of war shall be received and drawn up under the same conditions as for soldiers of the national armed forces."

During the preparatory work for the 1949 Diplomatic Conference, this provision was kept without amendment [1]. As the wording was rather vague, however, some delegates to the Confeence of Government Experts proposed that the principle of *locus regit actum* should apply to this particular case. In the end no amendment was proposed and unanimous agreement was reached on the principle that the Convention could not do more than authorize a prisoner of war to draw up a will in the form provided for members of the armed forces of the Detaining Power.

At the 1949 Diplomatic Conference, several objections were raised in connection with the 1929 text. Some delegations considered it superfluous, as its contents were covered by Article 77, which requires the Detaining Power to provide all facilities for the preparation and execution of legal documents by prisoners of war [2]. Moreover, the wording seemed unsatisfactory and likely to shed doubt on the principle that, as regards their content, wills must meet the conditions required by the legislation of the country of origin of prisoners of war, the application of the legislation of the country of detention being strictly limited to the form. The following text was then drawn up :

> The wills of prisoners of war shall be drawn up in the form required by the law of the Detaining Power and must satisfy the conditions of validity required by the legislation of their country of origin, which will take steps to inform the Detaining Power of its requirements in this respect [3].

This wording took account of the two considerations mentioned above and although it was not unanimously approved by the delega-

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[1] See *Report on the Work of the Conference of Government Experts*, p. 246 ; and *XVIIth International Red Cross Conference, Draft Revised or New Conventions for the Protection of War Victims*, p. 126.

[2] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 297.

[3] *Ibid.*, p. 600.

tions represented in Committee II [1], the text was submitted to a plenary session where discussion was resumed.

How should one consider the text of the present paragraph as adopted by the drafters of the Convention ? Was it their intention to make the drawing up of wills subject to the law of the country of origin as regards both form and content ? Is the traditional rule *locus regit actum*, which is generally acknowledged by international private law as well as by earlier international conventions relative to prisoners of war, no longer applicable ?

Such a conclusion would certainly be incorrect. In referring to " the conditions of validity required by the legislation of their country of origin ", the Convention does not reject the rule of *locus regit actum*, but refers to national legislation for the application of that rule.

With regard to form, most national legislations provide certain facilities for members of the armed forces. Apart from the holographic form, a verbal form is usually permitted in case of need. In practice, however, the latter form of will would frequently be inappropriate for prisoners of war, at least for those interned in camps for other ranks, for it usually requires the presence of officers qualified to receive a will [2], and this condition can rarely be fulfilled [3].

Holograph wills will therefore be the usual case. A prisoner of war can make a will in due legal form only if his national legislation permits him to make one according to the form required in the detaining country. In that case he may, if he wishes, have his will drawn up in the required form, since Article 77, paragraph 2, specifies that prisoners of war must be allowed to consult a lawyer in connection with the preparation and execution of legal documents.

The last part of the first sentence of the present paragraph, which requires the country of origin to take steps to inform the Detaining Power of the conditions in which prisoners of war must draw up wills, is a necessary corollary of the solution finally adopted.

Article 77 requires the Detaining Power to allow prisoners of war to prepare and execute all necessary legal documents ; in order to fulfil this obligation, it is essential that the Detaining Power be fully informed of the conditions for the drawing up of such documents.

This information will be transmitted either through the Protecting Power, or through the Central Agency provided under Article 123.

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[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 375-377.

[2] See in Swiss law Articles 506 to 509 of the Civil Code ; in French law, Article 981 and following of the Civil Code.

[3] See in this connection Ferdinand CHARON, *op. cit.*, pp. 66-67.

2. *Second sentence. — Transmission of wills*

Article 77, which relates to the transmission of legal documents, expressly refers to wills. This is confirmed in the present provision, but in an imperative form ; the Detaining Power is no longer required to " provide all facilities " but to transmit the will " without delay ".

This provision is applicable in two cases : on a request by a prisoner of war (which may be transmitted through the intermediary of the prisoners' representative in accordance with Article 79, paragraph 1), or upon the death of the testator. The First Geneva Convention for the Amelioration of the Condition of Wounded and Sick also provides, in Article 16, paragraphs 3 and 4, that the Information Bureau described in Article 122 of the present Convention must forward the last wills of deceased persons through the intermediary of the Protecting Powers and the Central Agency. The present provision specifies that the Protecting Power will receive the original document, a certified copy being sent to the Central Agency.

PARAGRAPH 2. — DEATH CERTIFICATES

During the Second World War the procedure for the preparation and transmission of death certificates varied from country to country. In Germany, for instance, the usual practice was to draw up lists to be considered as collective death certificates ; a signature and official seal together with a note stating that the information was based on reports by the competent military authorities gave this document an official character. In Great Britain, death certificates were drawn up by the responsible civil authorities and were transmitted in the normal way.

The International Committee of the Red Cross suggested during the Second World War that the belligerents should adopt a standard form and several States fell in with this suggestion [1].

Article 76, paragraph 2, of the 1929 Convention, which corresponded to Article 19, paragraph 2, of the Hague Regulations, provided that the same rules as in the case of wills should be followed as regards the documents relative to the certification of death, that is to say the rules applicable to members of the armed forces of the Detaining Power. Instead of this provision, the International Com-

[1] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, pp. 300-302. See also Vol. II, pp. 49-50.

mittee made a recommendation that the belligerents should use a standard form and this proposal was approved by the Conference of Government Experts and by the 1949 Diplomatic Conference [1].

The new Convention therefore improves the conditions for the transmission of death certificates, and apart from the psychological effect, this improvement may have important legal implications for the next of kin of the deceased. The belligerents are required to inform the Information Bureau, established in accordance with Article 122, of the names of all prisoners of war who die during captivity, and as rapidly as possible. This information may be communicated in the form of certificates, either individual or collective [2].

These certificates must contain at least certain specified data which, in addition to particulars of identity (surname, first names and rank, date of birth, and army, regimental, personal or serial number), must at least include in all cases the following items :

1. Place of death
2. Date of death
3. Cause of death
4. Place of burial
5. Date of burial
6. All particulars necessary to identify the grave.

In case of cremation, the list should also state the reasons why the body was cremated and not buried (for reasons of health, religion, or the deceased's own wishes), in accordance with the third sentence of paragraph 4 of the present Article.

A model death certificate is given in Annex IV. D to the Convention ; it was prepared by the Central Prisoners of War Agency on the basis of its experience and has proved to be most useful. In addition to the information specified in the present Article, it provides for certain indications which may be particularly valuable for the family of the deceased : a reference to the disposal of personal effects and certain details concerning the last moments of the deceased, to be given by an actual witness. It is therefore desirable that this model death certificate should be adopted by as many Information Bureaux as possible, or at least that these two additional items should also be recorded on the documents issued by them.

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[1] See *Report on the Work of the Conference of Government Experts*, pp. 246-247 ; *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 375-377.

[2] See *Report on the Work of the Conference of Government Experts*, p. 247.

PARAGRAPH 3. — MEDICAL EXAMINATION BEFORE BURIAL OR CREMATION

As already mentioned, the provisions of paragraphs 3 to 6 of the present Article, based on Article 17 of the First Convention, originated in an amendment submitted by the United Kingdom Delegation to the 1949 Diplomatic Conference which was agreed to by the other delegations [1]. Although in fact the corresponding provision in the 1929 Convention was generally respected during the Second World War [2], it merely stated that prisoners of war who died in captivity must be honourably buried, and that their graves must bear the necessary indications, be treated with respect and be suitably maintained (Article 76, paragraph 3). Certain other points are, however, of great importance : medical examination of the body before burial, registration of graves for purposes of identification, exchange of information regarding graves, maintenance of a record of cremations, custody of ashes. The amendment was therefore approved without difficulty [3].

Before a body is cremated (subject to the conditions specified in paragraph 5) or buried, it must be carefully examined by a doctor with a view to making certain that death has taken place and, where necessary, establishing the identity of the deceased. On the basis of this examination a report will be drawn up with regard to the following main points :

A. *Determination of death.* — In the first place a thorough medical examination must be made in order to make sure that no trace of life remains, to determine the exact cause of death and, if possible, the time of death, if this cannot be established by any other means (eye-witness accounts).

B. *Identification.* — This will normally be less important in the case of prisoners of war than in that of men who have fallen on the battlefield. If, however, a prisoner's identity remains in doubt (for

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[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. III, pp. 89-90.

[2] Except when the International Committee of the Red Cross had to make representations in order to ensure that the religious rites of deceased prisoners of war were respected.

[3] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 297. As most of the questions to which the present and following paragraphs refer are drawn from Article 17 of the First Convention, we shall refer, in examining them, to the Commentary on that Convention. *Commentary I*, pp. 175-183.

instance, if he has not yet been questioned as provided in Article 17), the doctor will follow the same procedure as for those who have fallen on the battlefield: examination of papers found in the clothing of the dead man, questioning of his comrades or, if that is not possible, other methods must be adopted in order to enable the adverse Party to establish his identity, e.g. measurement and description of the body and its physical features, examination of the teeth, finger-prints, photograph, etc. [1].

C. *Establishment of the report.* — The report on the medical examination must contain all the necessary data for preparing the individual or collective certificates referred to in paragraph 2 of the present Article. It should therefore mention the cause, date and place of death and all necessary information to facilitate accurate identification in each case.

Although these items are similar to those mentioned in Article 17, paragraph 1, of the First Convention, the latter contains an additional requirement which is curiously lacking in the present Convention— that one half of the double identity disc, or the identity disc itself if it is a single disc, should remain on the body. This was probably an oversight on the part of the drafters of the Third Convention and by analogy, one may assume that the Detaining Power should follow the same procedure in the case of deceased prisoners of war [2].

PARAGRAPH 4. — BURIAL

Except for a few details of drafting, this provision corresponds to the first sentence of Article 17, paragraph 3, of the First Convention.

A. *Nature of the obligation.* — The rule contained in Article 76, paragraph 3 of the 1929 Convention appears here once more and it implies an obligation. The importance of this task is emphasized by the fact that the detaining authorities must ensure that it is carried out [3].

B. *Observance of rites.* — The reference to the observance of rites was introduced by the Conference of Government Experts [4]. It is not mandatory since the rites required by certain religions are sometimes difficult to observe [5].

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[1] See *Commentary I*, p. 177.
[2] *Ibid.*, p. 178.
[3] *Ibid.*, pp. 176-177.
[4] See *Report on the Work of the Conference of Government Experts*, p. 248.
[5] For instance, in the case of animal sacrifice or the use of rare substances.

C. *Respect.* — The grave, once closed, must be respected. The obligation in this case is not merely a passive one ; it implies active measures of protection. The Graves Registration Service established in accordance with paragraph 6 of the present Article is the body primarily responsible for preventing violations of graves and sacrileges of all kinds, but the obligation rests on everybody. The principle of unqualified respect for fallen enemies holds good even after death.

D. *Marking.* — Graves must also be properly maintained and must be marked in such a way that they can be found at any time. The question of marking calls for some comment, as the brief reference to the matter in the Convention gives no exact indication of what the marking should be. The essential point is that it should always be possible to find the grave of any combatant. A mere number or group of symbols corresponding to the particulars in the record is hardly enough for the purpose, for the record may be destroyed. Most certainly the reference number in the record can, and should, appear on the grave stone or cross ; but it is essential that the name and first names and, if possible, the date of birth should also figure in the inscription, and should be inscribed indelibly. This is all the more essential in the case of collective graves (paragraph 5).

E. *Grouping.* — Graves are further to be grouped, if possible according to the allegiance of the deceased to one Power or another. This requirement was inserted in the First Convention by the Conference of Government Experts, in order to avoid hasty burials by the roadside which so frequently occurred in recent conflicts [1]. Grouping in this manner will make it possible for a country to pay collective tribute to its dead at a later date.

PARAGRAPH 5. — INDIVIDUAL GRAVES AND CREMATION

Unlike the corresponding provision in the First Convention (Article 17, paragraph 1, first sentence), the requirement of individual and not collective graves is mentioned only in the case of burial and not in that of cremation. On the basis of the above-mentioned provision of the First Convention, however, we consider that the present

[1] This grouping is intended in the same spirit as Article 22, paragraph 3, which states that prisoners of war should not, in principle, be separated from others belonging to the armed forces with which they were serving.

provision should be interpreted as applying also to cremation. This rule, proposed by the XVIIth International Red Cross Conference, is happily conceived, for the idea of a common grave conflicts with the sentiment of respect for the dead ; moreover, it makes any subsequent exhumation impossible or very difficult. Because of circumstances, climate or military requirements, burial in collective graves may be unavoidable, but this must always be an exceptional measure.

The provisions concerning cremation were first proposed during the preparatory work on the First Convention, at the meeting of experts in March 1947 [1], and were later endorsed by all subsequent conferences of experts. The cremation of bodies is therefore forbidden except for imperative reasons of hygiene or for reasons connected with the religion of the deceased. In case of cremation, the circumstances and reasons for it should be stated in the death certificate (in accordance with Article 17, paragraph 2, of the First Convention).

Quite apart from other reasons for objecting to cremation (in particular fear of a repetition of certain criminal occurrences), the very strong opposition of certain peoples to cremation from motives of custom or religion [2] led the Diplomatic Conference to adopt the proposal. It was also necessary, however, to provide an exception for prisoners of war who expressed a wish for cremation for personal reasons, and this is contained at the end of the second sentence of the present paragraph.

Paragraph 6. — Graves Registration Service

In order to ensure that paragraph 4 of the present Article is applied, a Graves Registration Service must be established at the outbreak of hostilities. Such a service was already provided under the 1929 Convention (Article 4, paragraph 6), and it is responsible for keeping an up-to-date list of graves, marking clearly any graves which have not yet been marked or have been marked inadequately, maintaining them and grouping them if possible, as indicated above, where this has not already been done. It must also keep track of any change or transfer, so as to allow of subsequent exhumation at any time and to ensure the identification of bodies, whatever the site of graves.

[1] This meeting, which was convened in Geneva by the International Committee of the Red Cross, was attended by representatives of the various associations assisting prisoners of war.

[2] With the exception of those religions which advocate cremation.

A. *Transmission of information.* — The 1929 Convention stipulated that this exchange of information was to take place at the end of hostilities, whereas Article 17, paragraph 4, of the First Convention of 1949 states that it must be effected " as soon as circumstances permit ". This wording is in keeping with the practice followed during the Second World War, when such information was generally communicated during the hostilities—sometimes even by telegram whenever the slowness of ordinary mails and the remote situation of places of internment justified such a course [1].

There is, however, no reason why the communication of these particulars should take the form of an exchange in the strict sense of the word. There would not appear to be any necessity for them to be communicated simultaneously by the two Parties.

B. *Obligation for the Occupying Power.* — An important provision is contained in the third sentence of the present paragraph, which requires the Power controlling the territory, if it is a party to the Convention, to take care of existing graves of deceased prisoners of war and to keep a record of any subsequent moves of the bodies. The Occupying Power must therefore take over responsibility for these tasks, whatever the nationality of the prisoners of war or the Power in whose armed forces they served.

C. *Ashes.* — Ashes are to be held by the Graves Registration Service until the country of origin makes known its final decision in regard to them. It is obvious—and follows, incidentally, from the words " These provisions shall also apply... "—that ashes must also be identifiable at all times. They must, therefore, be collected, preferably in urns, which should be clearly marked with all the particulars for which provision is made in the case of graves. The urns are to be kept in a suitable spot and protected against sacrilege of any kind.

Lastly, let us consider the actual organization of the Graves Registration Service. As a rule, its task may be entrusted to a service which already exists. The majority of States have permanent military graves services which are responsible in peace-time for the maintenance of the graves of nationals who have fallen in battle. These services are very well equipped, and are in a position on the outbreak of hostilities to take over the maintenance and listing of enemy graves, if need be by forming a special section for the purpose. In view of the specialized nature of the duties involved, the military

[1] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, p. 301.

authorities will be well advised to entrust the work to individuals or organizations familiar with it rather than set up a new service which may not have the desired experience or competence [1].

ARTICLE 121. — PRISONERS KILLED OR INJURED IN SPECIAL CIRCUMSTANCES

Every death or serious injury of a prisoner of war caused or suspected to have been caused by a sentry, another prisoner of war, or any other person, as well as any death the cause of which is unknown, shall be immediately followed by an official enquiry by the Detaining Power.

A communication on this subject shall be sent immediately to the Protecting Power. Statements shall be taken from witnesses, especially from those who are prisoners of war, and a report including such statements shall be forwarded to the Protecting Power.

If the enquiry indicates the guilt of one or more persons, the Detaining Power shall take all measures for the prosecution of the person or persons responsible.

During the Second World War there were a considerable number of cases of violent death of prisoners of war and some of the Governments concerned then agreed on special procedures to punish the guilty persons. It was particularly desirable to render sentries less hasty by the threat of penalties. The Conference of Government Experts agreed with a proposal to insert a provision to this effect in the Convention [2], and it was subsequently accepted without difficulty by the 1949 Diplomatic Conference [3].

The Conference already contains a large number of provisions to safeguard prisoners of war and prohibiting any attack on their physical integrity or their health. The purpose of the present Article is therefore not to reiterate a general rule such as that contained in Article 13, which requires the Detaining Power to treat prisoners of war humanely, but to punish any attack on the physical integrity of prisoners of war, whoever the guilty person may be. It therefore concerns not

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[1] For the study of the present paragraph, see *Commentary I*, pp. 180-183.

[2] See *Report on the Work of the Conference of Government Experts*, p. 249.

[3] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 400.

only relations between prisoners of war and the Detaining Power but also those between prisoners of war themselves.

PARAGRAPH 1. — OFFICIAL ENQUIRY

What is meant by " serious injury " ? At the 1949 Diplomatic Conference one delegation suggested that it should be made clear that the term referred to an injury " as a result of which the prisoner requires in-patient treatment in a hospital or infirmary " ; this definition was not approved, however [1], and it might indeed have made the application of the Article too rigid. An injury may be not at all serious and nevertheless require treatment in the infirmary. Furthermore, it would have been dangerous to make the opening of an enquiry depend on whether or not the patient had been admitted to hospital for treatment. The two things must remain quite separate.

Prisoners of war must be protected not only against the deeds of representatives of the Detaining Power (guards or sentries), but also against violence by civilians of any nationality and by fellow-prisoners. The present Article therefore enables the Detaining Power to repress any disturbances which might arise in the camps for political or other reasons, not only in order to maintain order and discipline, but also to protect the life and limb of those who would be endangered.

An enquiry will also be opened in any case of death from unknown causes. This may refer to illness as well as to violent death. There is no reference to injuries since the injured person can as a rule determine the cause of the injury. This may not always be the case, however, and in that event an enquiry may also be opened to determine the guilty person or persons.

What should the enquiry comprise ? Its object is to establish the circumstances of death and discover who was responsible. The victim must therefore be thoroughly examined, if necessary by an expert in forensic medicine and all witnesses must be heard as well as the person who made the attack, if any. The enquiry will generally be conducted by the camp authorities. The term " official enquiry " may, however, also refer to action by a superior authority with specialized responsibilities, that is to say the military judicial authorities, who will institute an investigation similar to that which is customary in cases occurring in the national armed forces. This procedure is all the more desirable since the responsibility of the military command may well be involved.

[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, p. 298.

PARAGRAPH 2. — COMMUNICATION OF THE RESULTS OF THE ENQUIRY

The present paragraph provides that once the enquiry is completed, the Protecting Power must receive " a communication on this subject ". The wording is brief and does not imply that the relevant files must be sent to the Protecting Power. It seems proper, however, that the communication should not merely consist of a statement that the enquiry has been held ; it should also indicate the authority which conducted it, together with the date, circumstances, and should include a detailed report on the findings. The evidence given by other prisoners of war should also be communicated.

On the basis of this report, the Protecting Power will notify the Power of origin of the victims and will also ensure that the person or persons responsible are prosecuted (paragraph 3). In addition, it will make representations to the Detaining Power if it considers that the enquiry was not sufficiently thorough or that the conclusions reached require further comment.

PARAGRAPH 3. — PUNISHMENT OF THE PERSONS RESPONSIBLE

If the persons responsible are not prisoners of war, the Detaining Power will apply its domestic legislation to them. If they are prisoners of war, the laws in force in the armed forces of the Detaining Power will be applicable, pursuant to Article 82, paragraph 1 [1].

[1] For further comments reference should be made to the commentary on Article 82 and following.

PART V

INFORMATION BUREAUX AND RELIEF SOCIETIES FOR PRISONERS OF WAR

ARTICLE 122. — NATIONAL BUREAUX

Upon the outbreak of a conflict and in all cases of occupation, each of the Parties to the conflict shall institute an official Information Bureau for prisoners of war who are in its power. Neutral or non-belligerent Powers who may have received within their territory persons belonging to one of the categories referred to in Article 4, shall take the same action with respect to such persons. The Power concerned shall ensure that the Prisoners of War Information Bureau is provided with the necessary accommodation, equipment and staff to ensure its efficient working. It shall be at liberty to employ prisoners of war in such a Bureau under the conditions laid down in the Section of the present Convention dealing with work by prisoners of war.

Within the shortest possible period, each of the Parties to the conflict shall give its Bureau the information referred to in the fourth, fifth, and sixth paragraphs of this Article regarding any enemy person belonging to one of the categories referred to in Article 4, who has fallen into its power. Neutral or non-belligerent Powers shall take the same action with regard to persons belonging to such categories whom they have received within their territory.

The Bureau shall immediately forward such information by the most rapid means to the Powers concerned through the intermediary of the Protecting Powers and likewise of the Central Agency provided for in Article 123.

This information shall make it possible quickly to advise the next of kin concerned. Subject to the provisions of Article 17, the information shall include, in so far as available to the Information Bureau, in respect of each prisoner of war, his surname, first names, rank, army, regimental,

personal or serial number, place and full date of birth, indication of the Power on which he depends, first name of the father and maiden name of the mother, name and address of the person to be informed and the address to which correspondence for the prisoner may be sent.

The Information Bureau shall receive from the various departments concerned information regarding transfers, releases, repatriations, escapes, admissions to hospital, and deaths, and shall transmit such information in the manner described in the third paragraph above.

Likewise, information regarding the state of health of prisoners of war who are seriously ill or seriously wounded shall be supplied regularly, every week if possible.

The Information Bureau shall also be responsible for replying to all enquiries sent to it concerning prisoners of war, including those who have died in captivity ; it will make any enquiries necessary to obtain the information which is asked for if this is not in its possession.

All written communications made by the Bureau shall be authenticated by a signature or a seal.

The Information Bureau shall furthermore be charged with collecting all personal valuables, including sums in currencies other than that of the Detaining Power and documents of importance to the next of kin, left by prisoners of war who have been repatriated or released, or who have escaped or died, and shall forward the said valuables to the Powers concerned. Such articles shall be sent by the Bureau in sealed packets which shall be accompanied by statements giving clear and full particulars of the identity of the person to whom the articles belonged, and by a complete list of the contents of the parcel. Other personal effects of such prisoners of war shall be transmitted under arrangements agreed upon between the Parties to the conflict concerned.

General Background

Although the reference was rather brief, Article 14 of the Hague Regulations contained a provision calling for the institution of enquiry offices by the belligerent States and neutral countries. The main task of these offices, which proved most valuable during the First World War, was to answer enquiries addressed to them and, for this purpose, to receive all information concerning prisoners of war (internment, transfer, release on parole, exchange, escape, admission to

hospital, death). An individual card had to be established for each prisoner of war, containing detailed information, and had to be transmitted to the prisoner's Power of origin once peace had been re-established. The Article also specified that all objects of personal use, valuables, etc. must be collected and forwarded to those concerned.

This provision proved valuable during the First World War; it was redrafted in 1929 and at the 1949 Diplomatic Conference additional details were inserted in it, pertaining mainly to the duties of the Information Bureaux, the recruitment of staff and the identity particulars which they are required to furnish.

Paragraph 1. — Establishment of the Bureaux

At the Preliminary Conference of National Red Cross Societies, held at Geneva in 1946, the majority of the participants recommended that the Societies should undertake the work defined in the present paragraph. The Conference of Government Experts, however, did not think it advisable to make any stipulation in this regard and preferred to leave the Governments free to select an organization to be responsible for establishing Information Bureaux [1].

Neutral Powers which have interned nationals of one of the belligerent States in their territory are also required to establish Information Bureaux.

The Detaining Power may employ prisoners of war in its Information Bureau, provided it respects the conditions laid down in the Convention regarding work by prisoners of war (Articles 49-57); this practice has been followed in the past and proved most satisfactory and of great assistance to the belligerents. Prisoners of war so employed must be repatriated in the same way as other prisoners at the end of the hostilities.

Paragraph 2. — Centralization of information

While the Convention specifies that the Bureau must be given information " within the shortest possible period ", it leaves the De-

[1] See *Report on the Work of the Conference of Government Experts*, pp. 249-250; see also *XVIIth International Conference of the Red Cross, Draft Revised or New Conventions for the Protection of War Victims*, p. 54: " The expression ' fallen in the hands of ' . . . has a wider sense and covers also the case of members of forces falling into the power of the enemy without fighting, for instance as the result of a surrender ".

taining Power free to choose the method by which the information will be transmitted by the military authorities. The same is true in the case of neutral or non-belligerent Powers [1].

PARAGRAPH 3. — TRANSMISSION OF INFORMATION

This paragraph is almost identical to Article 77, paragraph 3, of the 1929 Convention, with the additional requirement that the Bureau must use " the most rapid means " for forwarding the relevant information to the Powers concerned.

During the Second World War, information concerning prisoners of war was generally sent by post ; in order to remedy certain delays, however, the Central Agency sometimes used the telegraph service. With the idea that this system should be made general and even extended to transmission by radio, the Conference of Government Experts recommended the above amendment [2], and it was adopted by the Diplomatic Conference. Each country must therefore endeavour, according to its own state of technical progress, to enable the Agency to use the most up-to-date methods (radio, microfilms, photostats, etc.). The use of these means can be made easier by granting Information Bureaux total or partial exemption from charges on their telegrams, in addition to exemption from postal charges, pursuant to Article 124 [2].

Lastly, as regards the means by which each national Bureau is to forward information to the Bureau of the adverse party, the present clause merely provides for the same procedure as already existed in the 1929 text and proved completely satisfactory—namely transmission through the Protecting Power as well as the Central Agency.

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[1] The 1929 Convention (Article 77, paragraph 2) already required each belligerent Power to inform its Information Bureau as soon as possible of all captures of prisoners ; unlike the present text, however, it did not specify what that information should comprise.

[2] See *Report on the Work of the Conference of Government Experts*, p. 251.

[3] See *Report on the Work of the Conference of Government Experts*, pp. 251-252. During the Second World War, the Central Agency received information from the national Bureaux in the most varied forms. (See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. II, p. 33 ff.). It therefore proposed the adoption of a uniform identity card, comprising four identical sections, which would fit into a card-index.

The drafters of the new Convention considered, however, that the organization of the Information Bureau was a matter wholly within the competence of each individual Government; they therefore deleted the reference in the 1929 text to an individual record for each prisoner of war. It is nevertheless desirable that the work of the national Bureaux should be organized on a standard basis.

PARAGRAPH 4. — IDENTITY PARTICULARS

1. *First sentence. — General definition*

At first sight, this clause might seem to imply if not an obligation, at least a recommendation that the belligerents should advise the next of kin of prisoners of war through the intermediary of the organizations referred to in the preceding paragraph. It is unlikely, however, that the drafters of the Convention can have intended to deal in this way with matters which are solely within the purview of the Power on which prisoners of war depend. Moreover, the second sentence, which lists the particulars to be obtained wherever possible, gives a more accurate indication of the scope of the whole provision. The first sentence should therefore be regarded as a general indication as to the nature of the information which should in the first place be collected and transmitted in order that the next of kin may be informed. It will, however, be noted that this indicates the purpose of the system, which is established primarily in the interest of the next of kin, although also useful to the State : " . . . shall make it possible quickly to advise the next of kin concerned "—this wording constitutes a recommendation that families should be informed, and rapidly so.

It is most desirable that all the particulars listed should be furnished, as the risk of error in recording and transcribing information is considerable because of differences of language, similarity of names [1] and technical inadequacies.

2. *Second sentence. — Purpose of the information*

As is emphasized by the reference to Article 17 [2] and the phrase " in so far available to the Information Bureau ", the furnishing of this information does not depend entirely on the Detaining Power. The latter must, however, endeavour to obtain the particulars listed, with a view to forwarding them.

While the Detaining Power is under an obligation to try to obtain all the particulars listed in the present paragraph, the prisoner is not

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[1] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. II, p. 100 ff. During the Second World War, cases often arose of prisoners of war bearing the same surname and first name ; it was therefore essential to have additional particulars, the most important being the army number.

[2] Which relates to the questioning of prisoners of war.

bound to supply them all ; in accordance with Article 17, he must give at least the following information : surname and first names, rank, date of birth and army, regimental, personal or serial number, or failing this, equivalent information [1]. In the light of some unfortunate and painful occurrences in the past, it was considered that additional information might constitute a source of danger, as the Detaining Power had sometimes made use of it in order to subject the families of certain prisoners of war to reprisals. Those are exceptional cases, however, and concern only prisoners of war whose country of origin is occupied by the Detaining Power, or who are nationals of the latter. As a general rule, it would be preferable if members of the armed forces were requested and even instructed to give all the particulars referred to in the present Article in case of capture, in order to facilitate the work of the Information Bureaux.

Article 77, paragraph 5, of the 1929 Convention also mentioned that the prisoner's unit as well as wounds and the date and place of capture, wounds or death should, where appropriate, be recorded. All these particulars were maintained in the present Convention and are referred to in the following paragraphs, with the exception of the unit in which the prisoner served. During the Second World War, some of the belligerents tended to consider that the latter item was of military significance and should therefore not be divulged, despite its very great value for the Central Prisoners of War Agency[2].

PARAGRAPH 5. — INFORMATION REGARDING TRANSFERS, ETC.

Unlike identity particulars, which can be furnished only by the prisoner of war concerned, all the information mentioned in the present paragraph (transfer, release, etc.) is known to the Detaining Power, and there can be no excuse for the latter not transmitting it.

Furthermore, the Detaining Power must ensure that a notification is made in respect of any of the changes listed, and by the most rapid means, in accordance with paragraph 3.

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[1] It should also be noted that Article 17, paragraph 3, requires each belligerent Power to furnish the persons under its jurisdiction who are liable to become prisoners of war with an identity card showing at least these five items of information.

[2] The Agency adopted a system of enquiries " by evidence " or " regimental enquiries " which furnished very good results. See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. II, p. 49 ff.

This provision replaces paragraph 4 of the 1929 text, which required an up-to-date individual record to be kept for each prisoner of war, containing a reference to internment, release on parole, repatriation, escape, hospital treatment, etc. The Conference of Government Experts considered that the establishment of individual records was a matter to be determined by the Powers concerned [1].

PARAGRAPH 6. — INFORMATION REGARDING STATE OF HEALTH

Article 77, paragraph 6, of the 1929 Convention provided for the transmission of this information. During the last war, however, this was not usually carried out and the Central Agency took to approaching the national Bureaux directly for any information it needed.

At the Conference of Government Experts, however, emphasis was laid on the need for regular information about the state of health of wounded or sick prisoners of war, and this concern was shared by the 1949 Diplomatic Conference. Such information must be transmitted in respect of seriously ill or seriously injured prisoners of war [2]. Although it is not very easy to define this phrase exactly, one may assume that it refers at least to all wounded and sick prisoners of war whose life is in danger, for as long as the danger persists.

PARAGRAPH 7. — OTHER INFORMATION

A satisfactory reply can be given to requests for information only after careful search. The Information Bureau is therefore required, if it does not have the information requested, to " make any enquiries necessary to obtain the information which is asked for ".

There is no standard method for making enquiries. Each national service encounters special problems which must be solved according to circumstances. An indication may be given, however, of a few general rules applied by all the sections of the Central Agency during the Second World War.

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[1] See *Report on the Work of the Conference of Government Experts*, p. 252; *XVIIth International Red Cross Conference, Draft Revised or New Conventions for the Protection of War Victims*, p. 129. No reference will be made here to the very important question of death certificates which has already been considered in connection with Article 120.

[2] See *Report on the Work of the Conference of Government Experts*, p. 253.

All particulars of the successive stages of an application, the subsequent enquiry and the details obtained are concisely added to the application card (date of application, date of opening the enquiry, its nature, results, date of reply, particulars of the applicant, and of the individual or bodies asked for information). Thus, at any moment it is possible to see at a glance how the enquiry is proceeding, without getting out the records. In addition to keeping application cards up to date, most of the sections enter the positive replies on information cards ; this is the rule when the reply gives the notification of a death.

The national sections also keep chronological indexes in order to carry on enquiries more easily and to take the necessary " follow-up " action.

Printed forms, which considerably simplify the handling of applications, should also be used for enquiries and lead to more speedy and accurate results. For such enquiries, the national sections will apply to the most varied sources. Any public or private organization or individual likely to give useful information may be approached —official Bureaux, institutions, municipal authorities, national Red Cross Societies, delegates of the International Committee of the Red Cross, prisoners' representatives and camp commanders, chaplains and doctors, prisoners of war, repatriated or shipwrecked prisoners or war, escaped prisoners of war, refugees and so forth.

These enquiries are often of a delicate nature and their success frequently depends on the initiative and perseverance of those responsible [1].

Although a suggestion to the contrary was presented, the Diplomatic Conference did not specify who the applicants should be. Most of the enquiries received by the Information Bureaux will be either from an official organization, and in particular the Central Agency, or from a non-official body. It is clear, however, from the fact that nothing is specified in this respect that the intention was to enable private individuals, wherever they might be, to apply directly to the official Bureaux for information concerning prisoners of war whose fate was of interest to them.

Paragraph 8. — Authentication

Authentication by a seal or signature is possible only in the case of written communications. In the case of those in other forms—for

[1] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. II, pp. 45-46.

instance communications by radio or telephone—it may be possible to establish a code if exceptional circumstances so require.

PARAGRAPH 9. — FORWARDING OF PERSONAL VALUABLES

In this respect, the main task of the Bureau will be to transmit personal effects. The Detaining Power must be careful to take all necessary measures to ensure that the administrative services of its armed forces which deal with prisoners of war collect such articles and forward them to the Information Bureau.

The present text makes several improvements in the 1929 Convention. In the first place, as regards the articles referred to, the term " personal valuables " must be interpreted broadly; thus a wedding ring, though of little intrinsic worth, must nevertheless be collected because of its sentimental value for the next of kin. Another and more important innovation which was proved necessary by experience is that the Information Bureau is required to send such articles in sealed packets, and to attach a full inventory together with particulars of the identity of the prisoner concerned.

It is clear from the last sentence of the paragraph that the obligations of the Bureau in this respect refer mainly to articles and documents which are not voluminous and can be sent in packages exempt from postal charges. The forwarding of other personal effects such as clothing, books, musical instruments, works of art, etc. might involve rather high transport costs. It is therefore stated that such effects will be transmitted " under arrangements agreed upon between the Parties to the conflict concerned " ; such arrangements will probably relate to the means of transport and to payment of the expenditure involved [1].

It should be added that the duties of the Information Bureaux referred to in the present paragraph are not limited to prisoners of war, but relate also to those who have fallen in battle (First Convention, Article 16), as well as the shipwrecked (Second Convention, Article 19) [2].

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[1] This provision corresponds, in a less explicit form, to the principle contained in Article 119, paragraph 4, concerning personal effects which repatriated prisoners of war are obliged to leave behind in a camp because of limitations on the maximum weight of baggage allowed.

[2] See *Commentary I*, p. 158 ff.

ARTICLE 123. — CENTRAL AGENCY

A Central Prisoners of War Information Agency shall be created in a neutral country. The International Committee of the Red Cross shall, if it deems necessary, propose to the Powers concerned the organization of such an Agency.

The function of the Agency shall be to collect all the information it may obtain through official or private channels respecting prisoners of war, and to transmit it as rapidly as possible to the country of origin of the prisoners of war or to the Power on which they depend. It shall receive from the Parties to the conflict all facilities for effecting such transmissions.

The High Contracting Parties, and in particular those whose nationals benefit by the services of the Central Agency, are requested to give the said Agency the financial aid it may require.

The foregoing provisions shall in no way be interpreted as restricting the humanitarian activities of the International Committee of the Red Cross, or of the relief societies provided for in Article 125.

General Remarks and Historical Survey

The Central Agency dates back to 1870 [1]. During the Franco-German war, the International Committee of the Red Cross first took the initiative of opening in Basle an official agency concerned with wounded and sick soldiers and soon after added an office for collecting and forwarding all possible information concerning prisoners of war. The same thing was done in 1877 at Trieste and in 1912 at Belgrade. It was in 1914, however, that the establishment of an international Prisoners of War Agency faced the International Committee with all the complexities of the vast problem of collecting and forwarding information concerning wounded, sick or deceased prisoners as well as civilians. A year after its establishment, the Agency was already employing 1,200 persons and had taken on considerable importance. The 1929 Conference took account of the experience gained, and Article 79 of the 1929 Convention therefore gave the legal basis to

[1] For further information, see *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. II : The Central Agency for Prisoners of War, Geneva 1948.

the International Committee which in 1939 enabled it to open in Geneva the Central Prisoners of War Agency, whose activities are well known: in premises with a total working area of 11,000 sq. metres worked 2,585 people, of whom 1,676 gave their services free; whereas at the end of the First World War the card indexes of the International Agency contained 7 million cards, those of the Central Agency contained 36 million at the end of June 1947, between 6 and 7 million of them concerning civilians.

The 1949 Diplomatic Conference was therefore careful not to interfere with the structure and legal basis of the Agency, which it confirmed in the present Convention and repeated in identical terms in the Fourth (Article 140), merely adding in both cases a request to the High Contracting Parties to give the Central Agency any financial aid it might require.

PARAGRAPH 1. — ESTABLISHMENT — ORGANIZATION

Some delegates to the 1949 Diplomatic Conference, emphasizing that the Agency was a necessity, wondered whether the 1929 text should not be amended in order to make it clear that the International Committee of the Red Cross must organize the Agency. They were, however, the first to recognize the correctness of the International Committee's viewpoint when it pointed out that the 1929 wording was much to be preferred and ought to be left unchanged. Its very flexibility, indeed, made it possible for the International Committee to meet any sort of situation, by not setting up an Agency, for instance, when the brevity of a conflict did not justify it, or—as it had already had occasion to do [1]—by transferring the Agency or some of its sections to a country more easily accessible to the belligerents [2].

Furthermore, provision must be made for cases where the International Committee might consider that other bodies or a national Red Cross Society would be better fitted in the circumstances to carry out the task. It may, moreover, be forced by events to cease activities; it is then important that the possibility should remain of others taking over all or part of those activities, and especially the establishment of the Agency.

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[1] For instance, during the Balkans war, in 1912.

[2] The XVIIth International Red Cross Conference adopted a Resolution (No. XVII) inviting the Governments to grant the International Committee of the Red Cross every facility in cases where transfers of this kind were necessary.

The International Committee is not, therefore, obliged itself to organize the Central Agency. It is merely to " propose " its establishment to the Powers concerned " if it deems necessary ". Do these words, which date from the 1929 Convention, mean that the Powers could reject the suggestion ? They do, but the Powers would then have to agree to the establishment somehow of a Central Information Agency in a neutral country, for its establishment is obligatory.

Another point is also left to the discretion of the International Committee of the Red Cross : whether to separate the Agency concerned with civilians from that to be set up under the present provision for the benefit of the wounded and sick and prisoners of war. The circumstances prevailing at the time may indeed lead it to prefer two separate Agencies, in different countries. Such circumstances will, of course, be exceptional, since the advantages of combining the two Agencies into a single body are many and obvious—the same working methods, the same skilled staff, the same machines, etc [1].

Only one obligation arises under this paragraph, i.e. that the Central Agency " shall be created in a neutral country ". The Agency must indeed be neutral if it is to work. As an intermediary between two or more belligerents, it cannot accomplish its humanitarian task, which requires absolute confidence on their part, except by observing complete impartiality in its methods of work and in the attitude of its staff. Furthermore, the Agency must be in almost continuous contact with the belligerent Parties and such contact can be maintained only if it has its headquarters in a neutral country.

A conflict might conceivably break out, however, in which there were no more neutral countries or at least which left neutral only countries unfitted for or opposed to the establishment of the Agency on their territory. It would then be for the belligerents themselves to come to a direct agreement to entrust the establishment of an Agency to an institution of their own choice, such as a Red Cross Society in one of the belligerent countries, or to agree on a certain amount of postal traffic for the exchange, which is obligatory, of information concerning their nationals.

In 1939, the International Committee of the Red Cross opened a Central Agency for the needs of the Second World War, and it has continued in existence ever since. Whenever a conflict has occurred since the Second World War, the International Committee has placed the Agency at the disposal of the belligerents, and the latter have accepted its services.

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[1] See Fourth Convention, Article 140.

An administrative body of a permanent nature therefore exists, which is still dealing with enquiries relating not only to the Second World War, but even to the First, and there is thus no need to open an Agency anew each time the occasion arises. It should be emphasized, once more, that the operation of a Central Information Agency is obligatory whenever a conflict occurs.

PARAGRAPH 2. — TASKS OF THE AGENCY

1. *Collection and nature of information*

The first task of the Agency is to collect all possible information concerning prisoners of war. It will obtain that information first of all from the national Information Bureaux as provided in Article 122 ; this represents the " official channel ". It may, however, also resort to " private channels ".

This concentration of information, and the fact that the Agency brings together items of information from all the belligerent countries, gives its work considerable value, particularly when war-torn countries are disorganized and their archives scattered.

Another task—perhaps the most important—is that of transmitting to the various national Bureaux, safe-keeping and filing information, documents and articles which the Powers themselves are obliged to send to the Agency under various provisions of the Convention. The obligations which Article 122 lays on the belligerents and on neutral countries have already been examined at length, but there are other Articles which must also be borne in mind [1] :

Article 30, paragraph 4, which provides that duplicates of medical certificates issued to prisoners of war must be sent to the Central Agency ;

Article 54, paragraph 2, which contains a similar provision relating to medical certificates for prisoners of war who sustain accidents at work ;

Article 68, paragraph 2, which stipulates that the Detaining Power must forward, through the intermediary of the Central Agency, a copy of the statement issued to prisoners of war regarding impounded valuables or sums of money which have not been returned to them ;

Article 77, paragraph 1, which provides for the transmission, through the intermediary of the Central Agency or the Detaining

[1] See above p. 106, note 1.

Power, of legal documents concerning prisoners of war, especially powers of attorney ;

Article 120, paragraph 1, which provides that whenever a will is transmitted to the Protecting Power, at the request or after the death of a prisoner of war, a certified copy must be sent to the Central Agency.

One activity of the Agency which is now officially confirmed by the new Convention is concerned with the receipt and filing of capture cards and the transmission of the information contained in them. This has been commented upon at length in connection with Article 70.

The very title " Central Information Agency " indicates the size of the task of replying to enquiries sent from all sides in times of conflict and the investigations made necessary by those enquiries. In this respect, it should be noted that its work would be greatly assisted if all information and requests for enquiry or search were sent to it on cards of a uniform type and of the same dimensions as the capture cards (10.5 × 15 cm) [1], which the national Red Cross Societies, for example, could draw up and make available to enquirers.

For a more detailed and precise account of all the Agency's tasks, reference should be made to the *Report of the International Committee of the Red Cross on its activities during the Second World War*, (Vol. II, Geneva, May 1948).

2. *Facilities for transmission*

One of the essential factors determining the effectiveness of the Central Agency is the rapidity with which it can transmit information, particularly to the national Information Bureaux. In this respect the paragraph is explicit : the Agency must transmit " as rapidly as possible " to the Powers concerned the information it receives.

The slowness of postal communications or the great distances involved have often obliged the Agency to use the telegraph but this

[1] It should be noted in this connection that the internment card as suggested in the specimen annexed to the Fourth Convention (Annex III) measures 10 × 15 cm. This slight difference in width is doubtless the result of a mistake, for there is no reason to make these cards of different sizes, far from it. It would therefore be advisable for the Powers, when drawing up capture and internment cards, to keep to one of the two sizes for both sorts of cards. A width of 10 cm would seem to be preferable ; on the other hand, it is important that they should not be more than 15 cm long, otherwise they would not fit in the present card-indexes of the Agency. It should further be noted that if this size should appear inadequate, it would always be possible to draw up a folding card of double size (20 × 15 cm), also accepted by postal authorities.

was financially very burdensome and the expenditure which the Agency had to claim from the States concerned was often only reimbursed with great reluctance. Henceforth, the use of telegrams will be made easier by Article 124, which provides that the Agency must, so far as possible, be given the benefit of partial or total exemption from telegraphic charges.

However, the clause which seems likely to have the greatest importance for the Central Agency is that which refers to " all facilities for effecting such transmissions ".

Since exemption from charges and financial help for the Agency are expressly provided for in Article 124, it may be deduced that the facilities mentioned here are not financial. The statement implies that the Central Agency will be able to request a certain priority for its communications, both in postal and telegraphic traffic, a priority which will, of course, have to make due allowance for the requirements of the war effort. The Convention mentions only the Parties to the conflict, but the non-belligerents, who are not subject to those requirements, should also be obliged to an even greater extent to grant priorities of this kind.

This stipulation is of still greater value in respect of a means of communication which the Agency was led to develop at the end of the war for the most varied purposes, i.e. broadcasting. This method is likely to play a useful part in the receipt and transmission of information, in so far as the names of the persons concerned are not distorted, and provided account is taken of the legitimate desire of the belligerents that the information given may not be exploited for military or propaganda purposes.

Therefore, at the request of the International Committee of the Red Cross, supported by the national Red Cross Societies, the International High Frequency Broadcasting Conference held in Mexico City in 1947 decided to allocate to the International Committee, through the Swiss Confederation, a certain number of broadcasting times and frequencies which might, in case of need, be allocated wholly or in part to the Agency. This is the first application of the provision examined above.

The provision goes further : it implies an obligation on the States party to the Convention to " respect " the broadcasts of the Central Agency for humanitarian purposes—i.e. not only to refrain from jamming them, but also to put their broadcasting services at the disposal of representatives or departments of the Agency abroad, in

order to enable them to establish rapid contact with Geneva or any other place where the Agency might be situated [1].

Another " facility " which might be granted to assist the Agency arises from Article 75 of the Convention, concerning the means of transport which might be provided by the Protecting Powers, the International Committee of the Red Cross or any other authorized body, in order to ensure the forwarding of the consignments mentioned in Articles 70, 71, 72 and 77. These means of transport could, in case of need, also be used by the Central Agency for forwarding the correspondence, lists and reports which it exchanges with the national Bureaux.

PARAGRAPH 3. — FINANCIAL SUPPORT

During the preparatory work for the revision of the Convention, the attention of Governments was drawn to the question of the expenditure incurred in the operation of the Central Agency, a matter which the 1929 Convention did not regulate.

The International Committee of the Red Cross, which is responsible for proposing the organization of the Agency, has always drawn on the funds at its disposal for the means necessary for the Agency to operate. It may happen, however, and did during the last World War, that the Agency's activities suddenly expand to an unexpected extent, so that the funds available to the Committee, which are always restricted and are needed for many other tasks, may prove inadequate. During the First World War, an appreciable part of the Agency's resources consisted of sums of money which families sent in spontaneously, often by enclosing a banknote in their letters. The restrictions imposed on currency transfers during the Second World War because of the shortage of foreign exchange deprived the Central Agency of this source of revenue during the last conflict. Now, the Agency must be able to operate uninterruptedly. It was therefore natural that the Powers concerned should seek to ensure that it receives the necessary funds.

For that purpose, the XVIIth International Red Cross Conference made provision for an apportionment of expenses among the belli-

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[1] The wavelength allocated to the International Committee of the Red Cross is 41.61 m., 7,210 kcl. ; see also *Revue internationale de la Croix-Rouge*, 1956, pp. 30-41.

gerents *pro rata* to the services the Agency rendered to their nationals [1]. However, the insistence on proportional payment, apart from the difficulties of accountancy which it might entail, failed to take into account two facts : on the one hand, any step taken by the Agency in behalf of a prisoner or an internee is not only to the advantage of the State of which he is a national but also indirectly, and to a certain degree, to the advantage of the Detaining Power ; on the other hand, prisoners of war may no longer have a Government to meet these expenses and yet they need the services of the Agency at least as much as if not more than others.

With these facts in mind the Diplomatic Conference finally abandoned the principle of proportionality and adopted the present provision. Despite the fact that the wording is less imperative than that of the Stockholm draft, it was considered suitable for emphasizing the fact that the operation of the Agency, in view of its importance, must in no case be hindered and for calling the attention not only of the belligerent Powers but of all States party to the Convention to this matter, since they all implicitly recognize the usefulness and universality of the Central Information Agency.

Paragraph 4. — Other humanitarian activities

In the 1929 Convention, the only specific activities of the International Committee of the Red Cross to receive express mention were the right to carry out its humanitarian work (Article 88) and the organization of the Central Agency. It was necessary, therefore, to state clearly that the mention of those activities was not intended to exclude action by the International Committee in other domains in behalf of prisoners.

The 1949 Conventions provide expressly for the other specific activities of the International Committee, apart from those falling within the competence of the Agency (relief, camp visits, etc.). The last paragraph of the 1929 text was nevertheless repeated, and for this there can be no explanation unless an entirely general sense is henceforth given to the clause. It is, it seems, in the nature of a reservation which might be added to any of the clauses of the Conventions entrusting a task to the Committee and which means that

[1] This proposal read as follows : " The costs of operating the Central Information Agency shall be borne proportionately by the belligerents whose nationals have the benefit of its services ". See *Diplomatic Conference for the Establishment of International Conventions for the Protection of War Victims, Working Document No. 3*, p. 57.

none of them must restrict the manifold activities which the Committee may be led to undertake, partly with the assistance of the national Red Cross Societies, to meet the requirements of prisoners of war.

Paragraph 3 of the 1929 Article is reproduced, however, with a small addition in order also to cover the activities of the relief societies provided for in Article 125.

At first sight, the connection between these phrases and what goes before is not very clear. In fact, the situation which they are intended to cover is very different from that envisaged at the beginning of the paragraph and there would have been some advantage, it would seem, in embodying the provision, more explicitly, in another Article, for example that relating to relief societies. Perhaps, however, the addition is to be explained by a wish not to attach too much importance to what is merely a contingency.

It might happen, indeed, and has done in the past, that an organization for assistance to prisoners of war and civilian internees, approved by the Powers concerned, may successfully develop activities connected with the transmission and collection of information concerning prisoners and internees, although such activities are not explicitly mentioned among the tasks listed in the Article on relief societies as being among their functions. In such a case, it would be regrettable if activities of that kind, which might be useful to a great number of war victims, were to be rejected by a belligerent on the pretext that the Central Agency has a monopoly in the matter. In humanitarian activities, such a pretext is inadmissible and the addition to the paragraph is intended to make that point clear.

It should be noted, however, that if a belligerent Power approved the activities of a relief society in this sphere and agreed to supply it with information concerning protected persons, whether members of the armed forces or civilians, held in detention, it would nevertheless still be obliged to communicate periodically to the Central Agency, in accordance with the provisions of the Conventions, information concerning those persons. A sharp distinction must be drawn between the basic, universal and obligatory character of the Agency's activities as far as States are concerned and the probably more restricted and optional character of activities which might be developed by a relief society for the same purposes. Nothing must be done to whittle down the requirements of the Conventions ; centralization in a single department, neutral from every point of view, of all information concerning protected persons, whether members of the armed forces or civilians, as the only method of enabling the greatest

advantage to be drawn from such information for the persons themselves, a fact proved by the experience of the two world wars and well understood by the Diplomatic Conferences of 1929 and 1949.

The Agency's activities are not, however, limited to prisoners of war. Since the end of the Second World War, the " civilians " department of the Agency has been constantly engaged in re-uniting families. Between 1951 and 1955, more than 100,000 children and adults, who had been dispersed by the war and its direct consequences, benefited from the family reunion programme undertaken through the Agency services with the participation of nineteen countries and the national Red Cross Societies.

ARTICLE 124. — EXEMPTION FROM CHARGES

The national Information Bureaux and the Central Information Agency shall enjoy free postage for mail, likewise all the exemptions provided for in Article 74, and further, so far as possible, exemption from telegraphic charges or, at least, greatly reduced rates.

As early as 1899, the need was recognized to grant prisoners of war and national Information Bureaux free postage for incoming and outgoing correspondence. Article 16 of the Hague Regulations of 1899 and 1907 embodied that principle, which was stated again in Article 80 of the 1929 Convention relative to the Treatment of Prisoners of War. The postal Conventions concluded later, particularly that of 1906, confirmed the principle and made it fully effective.

At the beginning of the Second World War, the International Committee of the Red Cross asked the belligerents to extend exemption from postal charges to the Central Prisoners of War Agency in Geneva, and the request was granted without difficulty. Treatment of the Agency in the same way as a national Bureau in regard to postal charges was considered most appropriate by all the conferences of experts held to discuss the revision of the Conventions, and the Diplomatic Conference of 1949 accepted it without hesitation, all the more willingly in that it had recognized in the preceding Article that the Agency should receive from the Powers concerned all reasonable facilities with regard to the transmission of information and, if possible, some financial aid. Now the exemption from postal and other charges granted to the Agency and the Bureaux does more than merely emphasize the strictly humanitarian character of their activities ; it reduces their expenses to a very considerable extent, a

particularly important factor for the Agency, since its financing depends mainly on the goodwill of the Parties to the conflict.

The exemptions granted are of three kinds: exemption from postal charges, exemption from transport charges and customs dues, and exemption from telegraphic charges.

1. *Exemption from postal charges*

The provision concerning exemption from postal charges merely lays down a principle; it is for the States to take steps through their postal authorities to confirm that principle and embody it in law under the ægis of the Universal Postal Union. Indeed, for the post offices, exemption arises not from the Geneva Conventions, but from the postal Conventions. It is in the latter, therefore, that the nature and scope of the exemption granted to Information Bureaux and the Central Agency must be sought.

The new Universal Postal Convention, which gave effect to the provisions of the 1949 Geneva Conventions, was drawn up in Brussels in 1952. Bearing the date July 11, 1952, it entered into force on July 1, 1953 [1].

In connection with this Article, it should be noted that the list in paragraph 3 of cases where free postage is granted is exhaustive. Free postage applies only to items of correspondence, i.e. cards, letters or similar objects, letters and boxes with a declared value, postal parcels of 5 kgs.—10 kgs. if the contents are indivisible—and postal orders sent to or despatched by the national Bureaux of the Agency.

2. *Exemption from transport and customs charges*

In order not to make the Article unduly long, the Diplomatic Conference, having laid down the principle of free postage, merely referred to Article 74, which gives details of all the other exemptions to be granted for correspondence and packages sent or received and of which the national Bureaux and the Agency are also to have the benefit.

Article 74, in the commentary on which all the details will be found, provides in addition to exemption from postal dues, to a certain extent, and exemption from telegraphic charges, which will be dealt with below:

[1] For the text see the commentary on Article 74 above, p. 363, note 1.

(a) exemption from import, customs and other dues (paragraph 1) ;

(b) exemption from transport costs (paragraphs 3 and 4).

The latter exemption refers to the cost of transporting consignments which by reason of their weight or any other cause cannot be sent by post. Such charges are to be borne by the Detaining Power in all the territories under its control and by other Powers party to the Convention in their respective territories. Costs connected with transport not covered by these paragraphs will be charged to the senders.

3. *Exemption from telegraphic charges*

All the provisions concerning national Bureaux and the Agency insist, has we have seen, on the speed with which information must be be collected and transmitted. Thus the use of telegrams, exceptional during the First World War, was common practice during the Second. By June 30, 1947, the Central Prisoners of War Agency had received 347,982 telegrams and had despatched 219,169, some of them—especially those consisting of nominal lists of prisoners of war—containing several thousand words.

While the sending of telegrams scarcely raises any financial problems for the national Bureaux, which generally depend directly on the State, they are, on the other hand, very expensive for the Central Agency, which has not been able to use this form of communication until assured of reimbursement by the State concerned. Therefore, all the Conferences held in preparation for the revision of the Conventions expressed the wish that both the national Bureaux and the Agency should have the benefit of free telegraphic services in both directions.

The Diplomatic Conference agreed but could not make the provision obligatory, since in many countries the organization and operation of the telegraph system are in the hands of private companies. It did, however, make a strong recommendation : so far as possible, exemption from telegraphic charges or at least considerable reductions in those charges should be granted.

It should be recalled in this connection that the International Telecommunication Conference (Buenos Aires, 1952) adopted a resolution (No. 3) which recommended :

" (1) to consider sympathetically whether, and to what extent, the telegraph franking privileges and the reductions in telegraph charges

envisaged in the Geneva Conventions mentioned above could be accorded ;

(2) to make any necessary modifications to the International Telegraph Regulations." [1]

ARTICLE 125. — RELIEF SOCIETIES AND OTHER ORGANIZATIONS

Subject to the measures which the Detaining Powers may consider essential to ensure their security or to meet any other reasonable need, the representatives of religious organizations, relief societies, or any other organization assisting prisoners of war, shall receive from the said Powers, for themselves and their duly accredited agents, all necessary facilities for visiting the prisoners, distributing relief supplies and material, from any source, intended for religious, educational or recreative purposes, and for assisting them in organizing their leisure time within the camps. Such societies or organizations may be constituted in the territory of the Detaining Power or in any other country, or they may have an international character.

The Detaining Power may limit the number of societies and organizations whose delegates are allowed to carry out their activities in its territory and under its supervision, on condition, however, that such limitation shall not hinder the effective operation of adequate relief to all prisoners of war.

The special position of the International Committee of the Red Cross in this field shall be recognized and respected at all times.

As soon as relief supplies or material intended for the above-mentioned purposes are handed over to prisoners of war, or very shortly afterwards, receipts for each consignment, signed by the prisoners' representative, shall be forwarded to the relief society or organization making the shipment. At the same time, receipts for these consignments shall be supplied by the administrative authorities responsible for guarding the prisoners.

GENERAL REMARKS AND HISTORICAL SURVEY

When the Franco-German war of 1870 involved the internment in Germany of a large number of French prisoners, committees were founded, including one at Basle and one in Brussels, to bring relief

[1] See above, p. 367, note 1. See also Supplement to the *Revue Internationale de la Croix-Rouge*, February 1959, pp. 22-33.

to them. Certain liberal-minded persons tried to have a clause concerning such committees inserted in the Brussels Declaration of 1874 in order to provide a basis in international law for their activities. The proposal was rejected. It was repeated in identical terms, however, and this time with success, at the Hague Conferences of 1899 and 1907. As Article 15 of the Hague Regulations, and Article 78 of the 1929 Convention, it served during two world wars as a legal basis for the relief activities of charitable societies, particularly national Red Cross Societies and the International Committee of the Red Cross.

During the preparations for revising the Conventions, the societies covered by the provision expressed the wish that its wording should be brought up to date without altering its spirit ; that basic principle therefore retains all its value and upholds direct voluntary assistance given by individuals to the victims of conflicts. Of course, this assistance has had to take organized shape and be subjected to certain conditions before embodiment in the Conventions. Nevertheless, it has remained intact in the 1949 Conventions and it is that which makes this Article so valuable for relief societies in particular and for the whole Red Cross movement.

PARAGRAPH 1. — DESCRIPTION AND TASKS OF RELIEF SOCIETIES

1. *First sentence. — Description of relief societies — Obligations of Detaining Powers*

A. *Description of relief societies.* — Article 78 of the 1929 Convention [1] did not make clear to what societies it was to apply. It might have seemed difficult to apply it to international relief organizations, since it had first been inspired by the activities of purely national relief committees, set up on neutral territory.

How could the activities of the various relief societies, and particularly the Red Cross, in behalf of war victims be covered ? The 1912 International Red Cross Conference had proposed one solution : the activity of a national society in behalf of prisoners would consist in collecting relief and forwarding it to the International Committee of the Red Cross for distribution to prisoners belonging to the same country as the society. According to that idea, it was primarily to the International Committee that the Article concerning relief societies should apply ; although that interpretation was never disputed, it

[1] See below, pp. 750-751.

was stated on several occasions that the clause should be made more precise when the Conventions were revised.

The increasingly important part played by public institutions in the national life resulted in the appearance, during the last world war, of institutions for relief to war victims which were of a public or semi-public character, but could in no way be called relief societies.

It was therefore necessary to extend the scope of the traditional expression but not to abandon it. For that reason, the phrase " or any other organization assisting prisoners of war " was added to the first sentence of the paragraph. The wording was designed to be applicable to bodies whose principal and continuing purpose was not assistance to prisoners of war, but which during a conflict might include such assistance among their tasks ; the humanitarian character of the organization may therefore be temporary. On the other hand, mere sporadic activities on the part of an organization could not be considered as conferring on it the standing and privileges of a relief society.

The national Red Cross Societies at one time wondered whether they would not be justified in claiming special mention among the relief societies, and they are in fact mentioned in Article 26 of the First (Wounded and Sick) Convention of 1949. Realizing, however, that other institutions had also made what was often a very considerable contribution to relief for the victims of conflicts, and anxious to avoid any competition, the Red Cross itself gave up the idea of being thus mentioned in the 1949 Conventions [1].

The expression " relief " includes spiritual assistance. During the Second World War, certain religious bodies were able to carry on activities in behalf of war victims on the basis of the Article relative to relief societies. They therefore wished this point to be mentioned expressly in the new Conventions and the Diplomatic Conference complied by referring to them in the first sentence of paragraph 1 [2].

Although the mention of religious bodies precedes that of " relief societies or any other organizations ", that does not mean that the facilities envisaged must necessarily and always be granted primarily to religious organizations. The order in the list is simply based on the idea that spiritual matters should have precedence in an enumeration.

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[1] See *Report on the Work of the Conference of Government Experts*, pp. 254-255.

[2] Not, however, without considerable opposition from some delegations. See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 300-302 ; Vol. II-B, pp. 322-323.

B. *Attitude and obligations of the Detaining Powers.* — The paragraph begins with a reservation of the rights of the Detaining Powers.

While the Convention obliges the Detaining Power to treat the relief societies correctly and thus gives the most important humanitarian right to private societies, even foreign societies in most cases, to enter its territory—i.e. the territory of a belligerent—it would not be reasonable to expect this to be done unless solid guarantees were given to the Power concerned. Even the old Article on relief societies [1] placed certain limits on their activities : overriding military necessity, the need for their delegates to obtain a permit from the military authorities and to observe the routine and police regulations prescribed.

The new Convention formulates all these restrictions in general terms in the opening sentence of the present paragraph.

On the other hand, Article 125 omits the requirement that such relief societies must be properly established according to the law of their country. Quite apart from the fact that international organizations sometimes find it difficult to fulfil this condition, it is, when all is said and done, of no interest to the Detaining Power and cannot be allowed to serve as a pretext for refusal.

The Detaining Power, therefore, can only base opposition to the activities of a relief society on the reservation mentioned above and on condition that the reservation is invoked in good faith. It is probable that a belligerent will only grant the right to carry out charitable work in behalf of prisoners of war in its territory to organizations whose traditions, constitution and quality of work inspire confidence.

Finally, in addition to the permission granted to the societies themselves, the Convention provides, as did the 1929 Convention, that delegates may carry out their duties in the territory of the Detaining Power or in a country it has occupied only if they have been duly accredited to that Power. This means that permission must be granted twice, once for the relief society and the second time for its delegates.

2. *Second sentence. — Tasks of the relief societies*

The 1929 Convention referred to the activities of the relief societies in a very general way as " their humane task ". It added, however, that representatives of the societies should " be permitted to distribute relief ". Experience showed that this wording was inadequate ; the

[1] Article 78 of the 1929 Convention ; see below, pp. 750-751.

new Article gives more details, but those details need not be taken as setting limits on the activities of relief societies.

In particular, the new Convention lays down three main tasks of the societies allowed to operate in the territory of the Detaining Power or in territory occupied by that Power:

A. *Camp visits.* — All organizations which meet the conditions laid down are entitled to visit the camps, and not merely the religious organizations as provided in the draft Convention; this therefore applies also to national Red Cross Societies.

Visits by representatives of relief societies to prisoners of war form an essential part of their charitable activities, and will aim at providing the material and spiritual aid required by the prisoners and assisting them in organizing their leisure—a point dealt with later. If, however unwittingly, those visits were to touch on other aspects of the life of prisoners of war, they would become to a certain extent a check on the application of the Conventions. Now that is a task which was deliberately entrusted by the Diplomatic Conference to the representatives of the Protecting Power or its substitutes; to this end, the Conference deliberately deleted the reference to relief societies which, in the draft Convention, also appeared in the Article on supervision [1]. Would the belligerents tolerate such activities on the part of relief societies and would they not ultimately, out of mistrust, refuse them permission to operate? If the relief societies wish their right to visit prisoners to remain worth while and effective, they must therefore use it with circumspection and prudence.

Visits to camps will enable the relief societies not only to give spiritual comfort to prisoners of war, but also to prepare relief action by making all necessary enquiries, to assist in distribution and to check the use of relief supplies distributed.

B. *Distribution of relief supplies and material.* — This phrase should be understood in a wide sense. In general, distribution will consist in apportioning relief supplies between the various places of internment rather than between individuals, although individual distribution might occur in certain circumstances. While the phrase does not mean that distribution must perforce be carried out by the representatives of relief societies in person, the spirit of the Convention implies that the rôle of the Societies should not be limited to the mere sending of relief; they should be able to participate personally in their charitable work in behalf of prisoners of war.

[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 302 and 379.

The relief which may be distributed to prisoners of war under the present Article is the same as that mentioned in Article 72. The wording of Article 125 in this connection corresponds in the main to that of Article 72, paragraph 1. Relief may come from any source, so that the Detaining Power would not be justified in refusing it on grounds of origin. That is an embodiment of the principle of the Red Cross movement that assistance to victims should not only be given without distinction, but should also be accepted whatever its source, provided it is disinterested.

C. *Assistance to prisoners of war in organizing their leisure.* — This assistance can be given particularly through the despatch and distribution of books, musical instruments and all articles used for recreational, educational or artistic purposes as provided in Article 72.

The wording of Article 125 shows that the representatives of relief societies are called upon to take a still more direct part in this matter, and even to assist prisoners of war in organizing their recreational activities. This provision may be compared with Article 38, which obliges the Detaining Power to encourage activities of this kind, while respecting the individual preferences of every prisoner. The reservation was intended to prevent propaganda being made in the guise of recreational activities; the permission henceforth given to relief societies themselves to inaugurate or organize these activities will only reinforce, in the eyes of the prisoners of war concerned, the guarantees of impartiality which are desirable.

D. *Facilities.* — The activities of the relief societies having been defined, the Detaining Power must still grant these societies " all necessary facilities " for carrying out their mission.

Although it is impossible to say in advance what those facilities will be, one may mention in particular the issue of " laissez-passer " and facilities for forwarding to their destination relief supplies for distribution to those in need. These supplies, of course, must be transported free by the Detaining Power under Article 74; it is also desirable that it should make available to the representatives of relief societies the necessary means of transport to enable them to carry out their distribution schemes in the best possible conditions.

One may assume that these facilities will be granted subject to the reservations listed at the beginning of paragraph 1. Although in this respect the relationship between the two sentences is not very clearly stated, it does, however, follow from the general spirit of the provision.

3. *Third sentence. — Headquarters of relief societies*

The 1912 International Red Cross Conference had already considered the possibility of a national Society acting in behalf of enemy aliens. That idea, which the experience of two world wars has not generally supported, was taken up again in a Resolution of the International Red Cross Conference in 1948 [1]. It was necessary, therefore, to make provision for it when revising the Convention.

The new Article 125 is in keeping with these different requirements : relief societies may be constituted " in the territory of the Detaining Power, or in any other country, or they may have an international character ".

The expression " in any other country " also covers relief societies in occupied countries.

The societies of " an international character " will be essentially international federations made up of several national societies pursuing the same aims. During the Second World War, there were many instances of relief societies of various kinds combining their efforts in a search for greater efficiency and establishing international organizations to co-ordinate their activities and to collect and forward their consignments. It is such federations as well as essentially international societies which are referred to here.

PARAGRAPH 2. — LIMITATION OF THE NUMBER OF DELEGATES

In the course of the very first attempts at drafting, it was perceived that the Powers could not be obliged to accept the idea that any organizations which wished to come to the assistance of war victims had a legal right, under the Convention, to move about freely in the territory of the Detaining Power. Thus, at the very beginning, provision was made for the Powers to be authorized to restrict the number of societies whose delegates would be approved. A Government may indeed feel that it cannot repose any trust in a particular national or alien society or several such societies, or that it would prefer to refuse the offers of some of them, either because the offers received are too numerous or because it wishes to give a single society the task of collecting at a central point and distributing the consignments destined for prisoners of war in its hands.

[1] The Resolution reads : " The XVIIth International Red Cross Conference recommends that national Societies contribute to the relief of enemy prisoners of war and civilian internees, which should be afforded on the basis of the most complete impartiality."

This possibility is immediately modified, however, by a formal condition : " such limitation shall not hinder the effective operation of adequate relief to all prisoners of war ". The notion of " effective operation of adequate relief " may, of course, be interpreted in various ways. For that reason, it should not be left to the Detaining Power to decide that a restriction on the number of relief societies would have undesirable repercussions on the effectiveness of the assistance needed by those concerned. It seems, at first glance, that this comes within the competence of the Protecting Powers whose task it is to supervise the application of the Convention, and of the institution which has always worked to meet the needs of war victims : the International Committee of the Red Cross.

It would often be advisable, of course, for the societies concerned to co-ordinate their relief activities and to entrust the practical work on the spot to one of their number or to a body specially set up. Experience has shown that such a concentration of effort almost always leads to better co-ordination and greater effectiveness in relief actions.

Paragraph 3. — Special position of the International Committee of the Red Cross

The Convention mentions explicitly the various specific tasks of the International Committee of the Red Cross, particularly the establishment of the Agency (Article 123) and the visiting of prisoners of war wherever they are (Article 126). It was therefore natural, in the Article on relief societies, to make special mention of the International Committee, since its activities in this sphere during the Second World War, still more than in the First, assumed enormous proportions [1].

Such was certainly the idea of the delegation which, at the Conference of Government Experts in 1947, proposed that the special position of the International Committee of the Red Cross should be recognized and respected at all times. At the Diplomatic Conference, two delegations wondered whether the provision was necessary. To have deleted it, however, while explicitly mentioning the other activities of the International Committee, could possibly have been interpreted as meaning that the latter's relief activities were considered

[1] See *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. III.

of lesser importance. That was actually not the intention of the delegations which had raised the question, but the majority of the others wished, on the contrary, to underline by this paragraph their belief that restrictions on the activities of relief societies could not, in principle, be applied to the International Committee of the Red Cross or at least that the Committee was the last body to which they should be applied. It was therefore finally decided unanimously to retain this paragraph [1].

The special position of the International Committee, which is at one and the same time a relief society and an information agency, arises not only from its traditional neutrality and impartiality, which are the basis for its unique position as neutral intermediary, but also from the relief activities in behalf of war victims which it has carried out over a very long period.

PARAGRAPH 4. — RECEIPTS ISSUED ON DELIVERY OF RELIEF SUPPLIES

It has already been noted, in the commentary on Article 72, that a receipt signed by prisoners of war is no longer necessary. As regards collective relief especially, the prisoners' representatives and the authorities responsible for supervising the application of the Convention have certain duties to perform, and this fact provides adequate guarantees for the donors that the consignments reach their proper destination.

These guarantees may seem unnecessary when representatives of the donor societies take part in the distribution of the supplies. As has already been pointed out, however, those representatives cannot be present at every distribution; furthermore, in the course of their work, they might depart from the intentions of the donors or even fail to appreciate the interests of the beneficiaries. It therefore seemed necessary to provide, even in the case of relief supplies distributed in this way, a safeguard in the form of receipts signed by the prisoners' representative and by the administrative authorities responsible for guarding the prisoners of war. It is clear from the present paragraph that the receipt signed by the prisoners' representative is the more important from the point of view of the donors, and it must be sent to the relief society concerned, not merely to the representative of the latter.

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[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-A, pp. 300-302 and 341-342. See also above, p. 110, note 1.

PART VI

EXECUTION OF THE CONVENTION

SECTION I

GENERAL PROVISIONS

ARTICLE 126. — SUPERVISION

Representatives or delegates of the Protecting Powers shall have permission to go to all places where prisoners of war may be, particularly to places of internment, imprisonment and labour, and shall have access to all premises occupied by prisoners of war ; they shall also be allowed to go to the places of departure, passage and arrival of prisoners who are being transferred. They shall be able to interview the prisoners, and in particular the prisoners' representatives, without witnesses, either personally or through an interpreter.

Representatives and delegates of the Protecting Powers shall have full liberty to select the places they wish to visit. The duration and frequency of these visits shall not be restricted. Visits may not be prohibited except for reasons of imperative military necessity, and then only as an exceptional and temporary measure.

The Detaining Power and the Power on which the said prisoners of war depend may agree, if necessary, that compatriots of these prisoners of war be permitted to participate in the visits.

The delegates of the International Committee of the Red Cross shall enjoy the same prerogatives. The appointment of such delegates shall be submitted to the approval of the Power detaining the prisoners of war to be visited.

General Comments and Historical Survey

The 1929 Convention, in Article 86, recognized the rôle of the Protecting Powers in guaranteeing the application of the provisions of the Conventions. It not only embodied that principle, but also provided clauses to ensure its practical application. These provisions were so widely applied during the Second World War that they were accepted without discussion by the 1949 Diplomatic Conference, which strengthened and extended them. The statement of the principle itself (" The present Convention shall be applied with the co-operation and under the scrutiny of the Protecting Powers ") was placed among the provisions common to all four Conventions because of its altogether general character. It is contained in Article 8 to which reference has already been made above. On the other hand, the clauses of application concerning the carrying out of such supervision are contained in the present Article. Article 126 should therefore be read in conjunction with Article 8, of which it is the logical extension.

It should be emphasized that visits to prisoners of war are not the only method of supervising the application of the principle mentioned in Article 8. Of course, the inspection of places of detention and internment, and interviews with prisoners of war are the best means available to the Protecting Powers for really effective supervision, but it would be illogical to restrict to those activities alone the obligation laid on those Powers to assist in the application of the Convention and subject it to scrutiny, as must be done wherever it is applicable. Thus, the Protecting Power in carrying out each of its tasks under the Convention will, in so far as it is itself a party to the Convention, be under the additional obligation of exercising a degree of supervision based not on the mandate it has received from the Power of origin, but on a higher mandate given to Protecting Powers in general by all of the States party to the Convention. Furthermore, a number of provisions in the Convention provide explicitly for supervision by the Protecting Power, and the reader is referred to the commentary on them [1].

Nevertheless, the Convention will find application mainly in places of internment and detention. It is therefore essentially by visits to those places that the Protecting Power will be able to fulfill its general task most effectively. It is for that reason that the present Article

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[1] The commentary on Article 8 (p. 98, note 2) contains a full list of the provisions of the Convention which require action by the Protecting Power.

has received the marginal title " Supervision " although the actual principle of supervision must be sought in Article 8 [1].

The present Article also contains a new feature : the International Committee of the Red Cross will now act side by side with the Protecting Power.

The International Committee of the Red Cross does not, in fact, exercise and has never exercised real supervision in the legal sense of the term. The humanitarian purposes for which it exists have led it to make every effort to ensure that the victims of war are treated without unnecessary harshness. Acting in the first place on a purely empirical basis, it later successfully urged the adoption of legal rules in this matter. These rules, contained in the Geneva Conventions, represent general standards of humane conduct. However, its activities in behalf of the victims of war are in some ways far beyond the actual supervision of the application of the Conventions. Those activities, which can be termed " factual supervision ", are carried out on the Committee's own initiative and in the name of the rights of the human individual.

The 1929 Convention, in assigning duties to the Protecting Powers, also sanctioned what has become the traditional right of the International Committee to take the initiative [2]. This enabled the Committee from 1939 onwards to renew and extend the factual supervision it had carried out so successfully during the First World War. It did not take the place of supervision by the Protecting Powers, but merely supplemented it and led to numerous improvements being made in the conditions of prisoners of war during the Second World war. It is almost beyond doubt that the 1929 Convention would not have been applied as it was and that many infringements of it would have occurred if the Protecting Powers had not conscientiously visited the camps from the very beginning and if the International Committee had not once more sent delegates to almost all the belligerent countries. In this connection, however, particular attention should be given to the wording of the present provision : " *places of departure, passage and arrival...* " ; although access to the camps was usually granted to delegates of the International Committee, they sometimes found it very difficult to visit prisoners of war immediately after capture or during transfer, that is to say, at the times when it was more difficult for the Detaining Powers to afford prisoners of war

[1] It should be recalled that the titles in the margin, used in this commentary as titles for the Articles, have no legal force. They were not adopted by the Conference but drafted afterwards by the secretariat.

[2] See Article 88 of the 1929 Convention, p. 686 below.

all the benefits provided by the Convention. Supervision should also be possible during the period of questioning.

This factual supervision was not given full legal sanction by the Diplomatic Conference of 1949 and no request had been made for such sanction. The International Committee, a private body with strictly humanitarian ends, will not always be suitable or even equipped for exercising in every case complete supervision of the application of the Conventions. Such supervision would go beyond its competence and the tasks assigned to it by the Conventions themselves. The Committee might jeopardize its reputation for independence and neutrality by carrying out tasks which are in fact of a somewhat political nature and thus fall within the purview of the Protecting Power. On the other hand, factual supervision is implied in Article 9/9/9/10 common to the four Conventions, concerning the International Committee's right of initiative, an Article which reproduces Article 88 of the 1929 Convention. Finally, it is almost explicitly recognized in the last paragraph of Article 126 : " The delegates of the International Committee of the Red Cross shall enjoy the same prerogatives ". Stated in this form, at once more flexible and less official, supervision is left to the Committee's initiative and may be carried out freely according to circumstances prevailing.

Visits to camps call for a few general comments.

The inspection of places where prisoners of war are detained, at the same time as the distribution of relief, is one of the activities which the International Committee of the Red Cross has undertaken from the very beginning of its existence. It was as long ago as 1864, during the Prusso-Danish War, that the first delegates of the International Committee began to visit prisoner-of-war camps. Since then, such visits have become one of the essential tasks carried out by the Committee during each conflict, which it was often alone in performing. These activities were given legal sanction in the Hague Regulations of 1899, which authorized relief societies to visit the places of internment of prisoners. It was during the First World War that the representatives of the Protecting Powers, given a mandate to that effect by the Powers of origin of the prisoners, were also authorized to inspect camps.

Carried out in parallel, and often by very similar methods, these visits, far from duplicating each other, were complementary. In the use made of the findings, however, appreciable differences very often appeared. The Protecting Powers acted under the mandate given by the Powers of origin, and the reports drawn up by their delegates were communicated only to those Powers. It was then for

the Power of origin to ask the Protecting Power to request the enemy to cease any malpractice which had been discovered. Supervision by the Protecting Powers was exercised only on behalf of the Powers which had appointed them their agents. The position of the International Committee was different. Its camp visits applied to all the occupants without regard to nationality, solely on the basis of the fact that they were prisoners. The Committee carried out these inspections, not on behalf of a particular Power, but in the name of humanity. Thus the reports made by the delegates after each of their visits were immediately transmitted to the Power responsible for the place of detention visited, with comments drawing attention to any improvements which might be desirable. Moreover, the International Committee was the only institution able to visit in the same way and at the same time prisoner-of-war camps in almost all the belligerent countries [1], while the Protecting Powers could usually visit the prisoners and internees of only one nationality and in only one country. The Committee thus obtained very full information which enabled it to compare the situation of those detained in the various camps and to make representations, where necessary, with a view to reciprocal treatment.

Under Articles 8 and 126 of the present Convention, the Protecting Powers will in future carry out supervision on behalf of all the States party to the Convention, and they are required to " co-operate " in the application of the Conventions. They will therefore be able henceforth to make direct to the Detaining Powers any criticism they consider called for ; they will intervene on their own initiative, thus assuming an active instead of a passive rôle, similar to that of the International Committee of the Red Cross.

The part played hitherto by the International Committee remains unchanged and is merely confirmed by these provisions. The International Committee, however, will retain the advantage over the Protecting Powers of being able to go to some degree automatically into all camps and places of detention, whatever the nationality of the inmates and in the national or occupied territories of all the belligerents.

[1] During the Second World War, the delegates of the International Committee paid more than 11,000 visits to prisoner-of-war and civilian internee camps.

PARAGRAPH 1. — VISITS. INTERVIEWS WITHOUT WITNESSES

1. *First sentence. — Visits to places of internment, imprisonment and labour*

The Article begins with a general rule : all places without exception where prisoners of war are shall be open to inspection. This rule is based on the second paragraph of Article 86 of the 1929 Convention.

Those acting as inspectors will be representatives or delegates of the Protecting Powers or of the International Committee of the Red Cross. The fact that the whole Article speaks of Protecting Powers and only at the end mentions that the International Committee's delegates will enjoy the same prerogatives does not give the representatives of the Protecting Power any priority.

The distinction made here between representatives and delegates of the Protecting Powers is explained by Article 8. The representatives will be members of the diplomatic or consular staff of those Powers. As they will already be serving in the country, they will need no special approval in order to carry out the task entrusted to them by their Government in fulfilment of its protective mission. The delegates will be persons recruited by the Protecting Power sometimes in the country itself, outside the diplomatic corps and among its own nationals or even nationals of another neutral country. Those delegates, as stated in Article 8, will be subject to the approval of the Power with which they are to carry out their duties, as will the delegates of the International Committee of the Red Cross to whom reference will be made below [1].

The task of inspecting places of internment requires wide general knowledge, experience, tact and a great deal of discretion. It will be necessary in the first place to have a detailed knowledge of the Convention whose application is to be supervised and of the laws, decrees, etc., issued by the Detaining Power and applicable to prisoners of war. Generally speaking, the choice will readily fall on a doctor, since he is usually better able to discern deficiencies from which prisoners of war may be suffering than persons without medical experience. At the very least, a doctor will be attached to a delegation if it consists of several inspectors or will make his visits of inspection alternately with another representative. Furthermore, these inspectors will need to have a good knowledge of the language of the

[1] See below, pp. 612-613.

detaining country and that of the prisoners of war. Of course, the next sentence allows for recourse to an interpreter ; but this is a step which should only be taken in exceptional cases, since it is only by expressing direct in their own language and without witnesses what they wish to say that prisoners of war will be able to make their needs known clearly and freely.

It is not to be expected that camp inspectors should have constantly in their minds a complete list of the many obligations laid on the Detaining Power with regard to prisoners of war. A method is therefore recommended to which several Protecting Powers and the International Committee of the Red Cross resorted during the Second World War, i.e. the drafting of a handbook for delegates. This document listed the various tasks of a delegate, informed him of his rights and duties and, in a chapter devoted to camp visits, gave a complete list in a rational order of the various items which must be looked into and the questions to which a reply must be given [1]. A specimen report on a camp visit was attached. These handbooks were of great service and enabled delegates to make thorough and complete inspections in the shortest possible time.

The words " shall have permission " indicate that the inspectors must request permission to visit the place of detention or internment they have chosen, and that their request must be granted. Only imperative military necessity would allow of such permission being postponed (but never refused), as will be seen in connection with paragraph 2.

The Detaining Powers are therefore obliged to grant permission. They are also obliged to facilitate " to the greatest extent possible " the inspection of places of internment or detention under the terms of Article 8, paragraph 2. If need be, they will arrange for the transport of delegates, give them the necessary visas and passes, furnish guides, an escort, interpreters, etc.

No restriction is imposed in regard to places open to inspection. The agents of the Protecting Powers and of the International Committee must be able to reach all prisoners of war, whether in groups or as isolated individuals, in the territory of the Detaining Power or in occupied territory.

As already noted, this provision differs from the 1929 text in that it mentions three types of place open to inspection : places of internment, imprisonment and labour. This list, of course, does not add

[1] A list of this description is to be found in the *Report of the International Committee of the Red Cross on its activities during the Second World War*, Vol. I, p. 233.

anything new to the rule formulated at the beginning of the paragraph. It is, however, useful since it mentions expressly the three types of place in which the Convention will find its widest application, and where, as a result, wider supervision must be exercised. Furthermore, it is intended to prevent the Detaining Power from restricting visits to the main camp only.

Places of imprisonment will include detention quarters situated in the camps in which prisoners of war serve disciplinary sentences, as well as penitentiaries where prisoners serve sentences awarded by courts. In this connection, attention should be drawn to Article 87, paragraphs 3 and 4, Article 88, Article 98, and Article 108, which set forth the essential safeguards to be afforded to prisoners of war undergoing confinement.

Places of work will mean in most cases those occupied by labour detachments, which are the subject of Article 56 ; that Article makes express provision, in paragraph 3, for visits by delegates of the Protecting Powers and the International Committee of the Red Cross.

In all places where there are prisoners of war, all the premises which they use either permanently or temporarily will be visited : dormitories, canteens, sanitary installations, infirmaries, etc. The same will apply to premises not used directly by them but devoted to their needs, such as warehouses and other storage places. Indeed, the delegates have the right to check on the food supply of prisoners of war and particularly the distribution of relief (Article 73, paragraph 3). The regulations relating to collective relief which are annexed to the Convention (Annex III) illustrate the importance of such supervision.

2. *Second sentence. — Interviews without witnesses*

Interviews without witnesses with prisoners of war were authorized for the first time by the 1929 Convention (Article 86), but in the form of a recommendation. The restriction was abolished in 1949 [1]. The importance of such interviews for obtaining a knowledge of actual conditions needs no emphasis. It is a striking fact that during the First World War it was in the very countries where the application of the Convention left most to be desired that most obstacles were put in the way of interviews without witnesses. In the very first revised

[1] See *Report on the Work of the Conference of Government Experts*, p. 264.

drafts, this provision was therefore given the character of an absolute right conferred on the agents of the Protecting Powers and the International Committee, and the Diplomatic Conference accepted it in its new form without any discussion. Henceforth, therefore, the authorities responsible for prisoners of war are obliged to allow the inspecting delegates or representatives to interview any prisoner of war without witnesses and for the necessary length of time. The provision is addressed particularly to camp commanders, prison governors and certain military authorities in occupied territories who, in the past and often on their own initiative, have shown the greatest opposition to such interviews.

It has already been stated how desirable it is that delegates should know the language of the prisoners of war they are visiting; recourse to interpreters, although authorized here, must therefore be avoided as much as possible. If it cannot be avoided, the Detaining Power must, on request, supply the delegates with the necessary interpreters. This service is, indeed, one of the facilities which the Detaining Power is bound to give to delegates under Article 8, paragraph 2. It would be preferable, however, for the interpreters themselves to form part of the staff of the Protecting Power or the International Committee of the Red Cross in order to avoid any suspicion of tendentious interpreting. It will also be possible to choose them from among the prisoners themselves.

PARAGRAPH 2. — SELECTION OF PLACES TO BE VISITED. RESERVATION FOR REASONS OF MILITARY NECESSITY

1. *First sentence. — Selection of places to be visited*

The selection of places to be visited is left entirely to the judgment of the Protecting Powers and the International Committee of the Red Cross. It will depend on many circumstances: complaints received, special requests from country of origin, date of the previous inspection, etc. Visits may also take place at the request of one or more prisoners of war.

Once visits have been authorized to places where prisoners of war are, no obstacle must be placed in their way. The frequency and duration of visits are left to the judgment of those who make them. Experience has shown that in the case of internment camps, two or three visits per year can generally be considered as a minimum;

visits should be more frequent if closer inspection becomes necessary because of unsatisfactory conditions in a camp [1].

2. *Second sentence. — Reservation for reasons of military necessity*

This reservation, which did not form part of the corresponding text of 1929, was proposed by the International Committee of the Red Cross. The Committee considered, indeed, that it was impossible to increase the number and activities of the delegates of the Protecting Powers and International Committee and to extend the scope of their work and powers without giving the Detaining Powers the countervailing permission to restrict such activities temporarily if military necessity so demanded. Otherwise, those Powers would sometimes have been put in a position where they were faced with the choice of either violating the Conventions or harming their own military position. Here as elsewhere, humanitarian principles must take into account actual facts if they are to be applicable. This clause was accepted without discussion by the 1949 Diplomatic Conference.

If they are to justify the prohibition of visits, military necessities must be imperative. Whether they are or not is a matter for the Detaining Power alone to decide and the right of supervision of the Protecting Powers is restricted by this exercise of sovereignty. Such a decision must not be lightly taken, however, and any prohibition of visits must be an exceptional measure.

Furthermore, the prohibition will be temporary. The Protecting Powers and the International Committee will have the right to bring the temporary nature of the prohibition to the notice of the Detaining Power and, after a certain length of time, to request it to raise all restrictions. Moreover, the Protecting Power will be able to check afterwards whether the prohibition of visits has been used by the Detaining Power to violate the Convention. In any case, it is not in the interests of the Detaining Power to misuse this reservation, because it would very soon be suspected of deliberately violating the Convention by evading supervision by qualified witnesses.

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[1] Article 86 of the 1929 Convention also provided that the military authorities responsible for places of internment should be informed of visits. The International Committee of the Red Cross, which was subsequently supported by the 1949 Diplomatic Conference, was not in favour of this, considering that this principle might be considered as an essential condition of such visits or even, as occurred on some occasions, constitute a means of delaying the visits until they had lost all value. See *XVIIth International Red Cross Conference, Draft Revised or New Conventions for the Protection of War Victims*, p. 133.

PARAGRAPH 3. — VISITS BY COMPATRIOTS

Article 86, paragraph 3, of the 1929 Convention already provided that persons of the same nationality as prisoners of war would be allowed to take part in visits to camps. During the Second World War, this possibility was rarely utilized ; in view of its obvious humanitarian character, however, the provision was nevertheless repeated in the present Convention.

Article 125 above, in paragraph 1, already authorizes representatives of religious organizations and relief societies to visit prisoners of war. The term " compatriot " used here includes both relatives and delegates of the national relief societies. Furthermore, the Protecting Powers themselves or the International Committee of the Red Cross may consider it expedient to have their delegates accompanied by some compatriots of the persons visited, either for humanitarian motives or to allay certain fears, or again to check certain matters.

In accordance with the Convention, such visits must nevertheless be the subject of a prior agreement between those concerned, i.e. the Detaining Power on the one hand, and the Power of origin of the prisoners of war, on the other. The latter Power, in particular, could obviously not permit its citizens to go into enemy territory without its authorization.

PARAGRAPH 4. — ACTIVITIES OF DELEGATES OF THE INTERNATIONAL COMMITTEE OF THE RED CROSS

The International Committee's delegates had not been able to carry out their activities before except under special agreements concluded in advance with each of the Powers concerned. Now, however, those activities become to some degree automatic.

The representatives and delegates of the Protecting Powers and those of the International Committee are henceforth placed on a completely equal footing. Their rights and duties are the same if allowance is made for their different spheres of action. This applies not only to camp visits proper but to visits to all places of every kind where prisoners of war may be found, and to interviews held with them without witnesses.

This task, entrusted to the International Committee, must not, of course, be taken as restricting its other activities in behalf of prisoners of war. Article 9 is definite on this matter. The Committee

remains free to take any humanitarian initiative it may consider necessary in regard to camp visits or outside camps, whereas the Protecting Powers, even in supervising the Convention, will always be restricted by the provisions of the Conventions themselves and, in a general way, by the contract they will have concluded with the mandator Power.

The approval which must be given to the appointment of delegates of the International Committee, and which the Committee has in any case always requested, places them in the same position as the delegates of the Protecting Powers. It is normal that the Party to the conflict which is going to welcome them in its own territory or in territory occupied by it, should receive certain guarantees [1].

This agreement will be asked for once only for every delegate. It will not therefore have to be obtained anew for every single journey [2].

ARTICLE 127. — DISSEMINATION OF THE CONVENTION [3]

The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to all their armed forces and to the entire population.

Any military or other authorities, who in time of war assume responsibilities in respect of prisoners of war, must possess the text of the Convention and be specially instructed as to its provisions.

In subscribing to Article 1, the Powers undertook to respect and ensure respect for the Convention in all circumstances. If a Convention is to be properly applied, however, a thorough knowledge of it is necessary.

It was important, therefore, that the Contracting Parties should be required to disseminate the text of the Convention as widely as possible in their respective countries. This is the purpose of the present Article, which is worded in almost identical terms in all four Conventions.

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[1] Such guarantees are also requested from the delegates of relief societies authorized under Article 125 to enter its territory.

[2] See *Report on the Work of the Conference of Government Experts*, p. 266.

[3] Article common to all four Conventions. See First Convention, Article 47 ; Second Convention, Article 48 ; Fourth Convention, Article 144.

The 1929 Convention did not contain any provision resembling the present Article. It merely stated, in Article 84, that the text of the Convention must be posted so that it might be consulted by all prisoners of war.

PARAGRAPH 1. — GENERAL PRINCIPLES

In the first place, the Convention should be known to those who will be called upon to apply it ; the latter may have to render an account of their deeds or shortcomings before the courts, and in some cases they may even benefit by the provisions of the Convention. The study of the Conventions must therefore be included in the training programmes of the armed forces, the instruction given being adapted to the rank of those for whom it is intended.

In case of mobilization, the essential points must be gone through again so that they are fresh in the minds of those concerned [1].

Many Governments have already taken action in this respect by distributing to most military commanders as well as to other officers—such as adjutants, intelligence officers, medical officers and chaplains—the text of the Conventions, either in full or in the form of extracts which are sometimes accompanied by other texts concerning the conduct of war. In the armed forces of some Powers, courses have been organized to instruct certain ranks—and sometimes all service men—in the essential rules of the Conventions [2].

The Convention must also be widely disseminated among the population. It is possible to go even further and to say that men must be trained from childhood in the great principles of humanity and civilization. Provision has therefore been made for the inclusion of the study of the Convention in syllabuses of civil instruction.

This requirement is, however, optional. It is not that the 1949 Diplomatic Conference thought it any less imperative to instruct civilians than to teach the military, but in certain countries with a federal structure public education is the responsibility of the individual

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[1] In 1951, the International Committee of the Red Cross issued for the use of military personnel and the public a summary of the Conventions of Geneva of 1949, in the form of a booklet in French, English and Spanish.

[2] At the 1949 Diplomatic Conference, it was suggested that such courses should be organized. See J. de PREUX, *The Dissemination of the Geneva Conventions of 1949, Revue internationale de la Croix-Rouge*, Supplement, April 1955, pp. 59-60. See also *Report on the Work of the Conference of Government Experts*, pp. 261-262.

federative States and not the central authorities. Some delegations, therefore, having a scrupulous regard for constitutional niceties which may be thought unfounded, considered that they must safeguard the freedom of decision of the regional authorities [1].

Action should be taken first by the national Red Cross Societies, which must train a staff with specialized knowledge of the Conventions [2].

The general public can be informed by extracts or summaries of the Conventions, articles in the press, radio talks and so forth.

In addition to the study of the basic principles of the Geneva Conventions, the attention of the general public can be drawn to them in connection with topical events. In these days, internal conflicts occur all too frequently, and at such times a courageous and independent press has an opportunity to speak in the name of humanity and in a manner devoid of all partiality.

Lastly, it would be most advantageous to introduce the study of humanitarian law, of which the Geneva Conventions are now part, into the syllabuses of faculties of law, and this has already been done in some universities.

PARAGRAPH 2. — DISSEMINATION IN WAR-TIME

In war-time, the Conventions must be applied and the competent authorities must not content themselves with giving general instruction: the text of the Conventions must be in the possession of camp commanders and subordinate officers, and the higher authorities responsible for supervising arrangements in camps and the treatment of prisoners of war; this text must be issued in the language of the prisoners concerned. Each State which is a party to the Conventions must in good time prepare any translations which may be necessary and organize courses for the instruction and training of those responsible for carrying out the provisions of the Conventions.

ARTICLE 128. — TRANSLATIONS. RULES OF APPLICATION [1]

The High Contracting Parties shall communicate to one another through the Swiss Federal Council and, during hostilities, through the Protecting Powers, the official translations of the present Convention,

[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-B, pp. 70 and 112.

[2] See DE PREUX, *op. cit.*, p. 60 ff.

[3] Article common to all four Conventions. See First Convention Article 48; Second Convention, Article 49; Fourth Convention, Article 145.

as well as the laws and regulations which they may adopt to ensure the application thereof.

The " official translations " of the Convention are those drawn up by the executive authorities in a country under the terms of their own law. Countries with more than one national language may, therefore, communicate several translations. The versions in French, English, Spanish and Russian should be excluded, however, since the first two are the authentic texts of the Convention, while the last two have been officially prepared by the Swiss Federal Council under the terms of Article 133. At the time of publication of the present commentary, the translations made by Governments have added to these four texts official versions in Arabic, Czech, Danish, Dutch, Finnish, German, Greek, Hebrew, Hungarian, Indonesian, Italian, Japanese, Norwegian, Persian, Polish, Rumanian, Serbo-Croat, Swedish and Thai.

The widest possible interpretation should be given to the expression " laws and regulations ", which are also to be communicated. This means all legal documents issued by the executive and the legislative authorities connected in any way with the application of the Convention. Thus, the States will have to communicate to one another laws passed in application of Articles of the Convention. The Articles concerned are : Article 4 : definition of protected persons (particularly a determination of those considered as members of the armed forces) ; Article 17 : identity cards for members of the armed forces ; Article 21 : laws and regulations concerning release on parole ; Article 43 : establishment of a list of titles and ranks ; Articles 69 to 71 : measures to be taken with regard to the correspondence of prisoners of war (in particular the preparation of correspondence forms) ; Articles 74 and 124 : exemption from postal, customs and transport charges (especially the adaptation of postal regulations) ; Article 120 : establishment of a Graves Registration Service ; Article 122 : establishment of a national Information Bureau ; Article 127 : dissemination of the Convention ; Articles 129 to 131 : repression of abuses and infractions. Furthermore, Chapter III, relating to penal and disciplinary sanctions, requires the Detaining Power to adapt its legislation, where necessary, to the provisions of the Convention (Article 82, paragraph 1). Other provisions of the Convention may also require the national legislation or administrative regulations to be amended or revised, either in regard to the general conditions of internment or to special problems such as the working conditions of prisoners of war (Part III, Section III), their financial resources and transfers of funds (Part III, Section

IV), the sending and receipt of relief supplies (Articles 72 and 73), etc. It is important that the parties to the Convention should be informed of such laws and regulations and the most expeditious procedure for this purpose is to use as intermediary the Swiss Federal Council, which is the depositary of the Geneva Conventions.

PENAL SANCTIONS

(ARTICLES 129 TO 131)

HISTORICAL BACKGROUND

The Geneva Conventions form part of what are generally known as the laws and customs of war, violations of which are commonly called " war crimes ".

The punishment of breaches of the laws and customs of war is not new. Ever since the XVIIIth century there have been examples of the trial and punishment of offences of this nature; but such instances were few and far between and could hardly be said to form a body of precedent. Nor did the codification of the laws of war at The Hague in 1899 and 1907 result in the establishment of international rules in this particular connection.

It is true that the Fourth Hague Convention of 1907 respecting the laws and customs of war on land had stipulated, in Article 3, that a belligerent party which violated the provisions of the Regulations annexed to that Convention should be liable to pay compensation, and should be responsible for all acts committed by persons forming part of its armed forces. The responsibility thus imposed on the belligerent State was, however, purely pecuniary. States were left entirely free to punish or not acts committed by their own troops against the enemy, or again, acts committed by enemy troops, in violation of the laws and customs of war. In other words, repression depended solely on the existence or non-existence of national laws repressing the acts in question.

When the First World War ended, however, this system was felt to be unsatisfactory, and provision was made in the Treaty of Versailles for punishing nationals of the conquered countries who had committed acts against the Allied troops which were contrary to the laws and customs of war. The Leipzig judgments were the sequel to those provisions.

It was chiefly during the Second World War and the years that followed that the problem of punishing war criminals arose. The numerous violations committed in the course of the war had made the question a burning one in which public opinion and the authorities in the different countries were intensely interested.

The absence of international regulations and the meagre character of domestic legislation on the subject led the majority of States to promulgate special laws for the repression of crimes committed by the enemy against their civilian population and troops. Although in most cases public opinion thought it natural and just that those convicted under this *ad hoc* legislation should be punished, there remains nevertheless a certain element of doubt as to whether the verdicts given were lawful or not. Furthermore, the various penal systems are not based on the same principles. In the Anglo-Saxon countries, the violation of a rule of international law, whether explicit or customary, and even if that rule does not make provision for penal sanctions, entitles national tribunals to pass sentence. In other countries, on the other hand, and in particular in the countries of the European Continent, penal law, if it is to be applicable, must include not only formal regulations but also provisions determining the nature and severity of the penalty. In these latter countries, the maxim *nulla poena sine lege* remains fully valid [1].

THE 1949 CONVENTION AND THE WORK IN PREPARATION FOR IT

The events of the Second World War convinced the International Committee of the Red Cross that any future international Convention on the laws and customs of war must necessarily include a separate chapter on the repression of violations of its provisions. This conviction was strengthened by the numerous appeals which it received for intervention on behalf of prisoners of war who were accused of war crimes and tried (as has been pointed out) in the absence of any appropriate legislation duly drawn up before the outbreak of hostilities. On the other hand, the International Committee could not remain indifferent to the argument that complete and loyal respect for the Conventions must be based on the application of effective penalties.

Accordingly, the International Committee felt bound to draw the attention of the Conferences of Experts which met at Geneva in 1946

[1] Whatever one's views may be on the repressive action taken after the Second World War, it would have been preferable to base it on existing rules without being obliged to have recourse to retroactive measures.

and 1947 to this important issue. Those Conferences asked the Committee to make a more thorough study of the question.

In 1948, the International Committee submitted the following draft article to the XVIIth International Red Cross Conference :

> The legislation of the Contracting Parties shall prohibit all acts contrary to the stipulations of the present Convention.
>
> Each Contracting Party shall be under obligation to search for the persons alleged to be guilty of breaches of the present Convention, whatever their nationality, and in accordance with its own laws or with the conventions prohibiting acts that may be considered as war crimes, to indict such persons before its own tribunals, or to hand them over for judgment to another Contracting Party. [1]

The proposed text was based on the principle *aut dedere aut punire*, often used as the basis for extradition. In submitting its proposal to the Conference, the International Committee stated that its studies of the question of penalties were still incomplete. It proposed to pursue them, especially in view of the development of punishment for war crimes by a whole series of different countries and by the United Nations itself.

The XVIIth International Conference requested the International Committee to continue its work on the question and submit the results to a later Conference.

In response to this request, the International Committee invited four international experts to meet at Geneva at the beginning of December 1948, and made with them a thorough study of the question. The outcome was a draft of four new Articles to be included in each of the four Geneva Conventions, concerning the penalties applicable to persons guilty of violating the provisions of the Conventions [2].

The experts recognized the necessity of punishing breaches of the Geneva Conventions and considered that each contracting State should be required to promulgate the necessary legislation within two years. In their opinion, universality of jurisdiction in cases of grave breaches would justify the hope that such offences would not remain unpunished. Moreover, the effect of the existence of orders from a superior or of an official law or regulation on the responsibility of the author of the offence committed was expressly provided for and stated. Lastly, the experts agreed that, despite the censure that such

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[1] See *XVIIth International Conference of the Red Cross, Draft Revised or New Conventions for the Protection of War Victims*, p. 134.

[2] A brief statement on the considerations which led the International Committee to submit these draft Articles may be found in the booklet *Remarks and Proposals*, pp. 18-23.

acts occasioned, accused persons must have the full benefit of jurisdictional and procedural guarantees. The International Committee had had the opportunity of informing the experts of its own experience in this connection.

At the Diplomatic Conference of 1949, the problem of penal sanctions was entrusted to the Joint Committee appointed to consider the provisions common to the four Conventions. It had not been possible for the draft texts prepared by the International Committee of the Red Cross to reach the Governments until just before the opening of the Conference, and consequently certain delegations opposed their being taken as a basis for discussion. The Netherlands Delegation, however, submitted them as its own, so that they came officially before the Conference [1].

ARTICLE 129. — PENAL SANCTIONS: I. GENERAL OBSERVATIONS [2]

The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie *case.*

Each Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.

In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following of the present Convention.

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[1] Reference should be made here to the large amount of preparatory work which took place outside the Conference and for which Mr. Justice M. W. Mouton, a member of the Netherlands delegation, was mainly responsible. In this connection, see *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. III, p. 42.

[2] Article common to all four Conventions. See First Convention, Article 49 ; Second Convention, Article 50 ; Fourth Convention, Article 146.

PARAGRAPH 1. — SPECIAL LEGISLATION

It is desirable that States which have ratified the Convention or acceded to it should take without delay the necessary steps to fulfil their obligations under Article 129 [1]. This task of implementing the Conventions in penal matters is certainly a complex one and will often require long and thorough study.

For that reason, the International Committee, when the four Geneva Conventions of 1949 were adopted, expressed the wish to draw up a model law on which the national legislation in various countries could be based and which would also have the advantage of creating a certain uniformity of legislation [2].

The present provision is one of those which must be put into effect in peace-time in anticipation of the situations listed in Article 2. The

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[1] A number of States which have ratified this Convention have already fulfilled this obligation. Switzerland is an example where the Military Penal Code has been partially revised by the addition of a new general provision (Article 109), under which an offender against the provisions of the international Conventions relative to the waging of war or the protection of war victims will be punished for breaches of his military duties, unless more severe provisions of the Military Penal Code are applicable. Similarly, Yugoslavia has modified its Penal Code and adapted it to the new Geneva Conventions. A penal law dated February 27, 1951, introduces into the new Penal Code all the grave breaches defined in the Geneva Conventions. Article 125 covers war crimes committed against the civilian population ; indeed, the list of punishable offences is considerably larger than that in Article 147 of the Fourth Convention. The Netherlands issued a series of laws on May 19, 1954, which embody in domestic criminal law the provisions of the four Geneva Conventions for the repression of breaches of the Conventions. Article 8 of the law punishes with imprisonment up to ten years those who are guilty of violations of the laws and customs of war ; if there are aggravating circumstances, a sentence of as much as fifteen years' imprisonment may be imposed, or even, in certain cases, the death penalty or life imprisonment, or imprisonment for twenty years.

The majority of the other countries which have ratified the Geneva Conventions should also adapt their penal legislation since it will be impossible in most cases to make do with the legislation already existing.

[2] The Sixth International Congress of Penal Law, held at Rome in 1953, had on its agenda the repression through penal law of breaches of the international humanitarian Conventions. Reports were submitted to the Congress from various countries and a general report was presented by Mr. Claude Pilloud, Head of the Legal Department of the International Committee. The Congress laid the basis for what might become a model law for the repression of breaches of the Geneva Conventions (see *Revue internationale de Droit pénal*, 1953, Nos. 1, 2 and 3).

Since then, work on drawing up a model law has been continued by the International Committee of the Red Cross and other bodies. As the discussions at the Sixth International Congress of Penal Law showed, it is above all in the definition of breaches that uniformity must be sought ; the fixing of the sentence and the procedure to be followed are thought to be matters for national legislation in each country.

laws to be enacted on the basis of this paragraph should, in our opinion, fix the nature and duration of the punishment for each offence, on the principle of making the punishment fit the crime. It should not merely be left to the discretion of the judge [1].

Paragraph 1 refers to Article 130, which lists the breaches considered as grave. That list will be discussed in the commentary on Article 130.

The penal sanctions to be provided will be applicable to persons who have committed or ordered to be committed a grave breach of the Convention, thus establishing the joint responsibility of the author of an act and the man who ordered it to be done. It will be possible to prosecute them both as accomplices. There is no mention, however, of the responsibility which may be incurred by persons who do not intervene to prevent or to put an end to a breach of the Convention. In several cases of each type, the Allied courts brought in a verdict of guilty. In view of the Convention's silence on this point, it will have to be determined under national legislation either by the enactment of special provisions or by the application of the general clauses which may occur in the penal codes.

In the proposals it submitted to the Diplomatic Conference on the basis of the advice of the experts it had consulted, the International Committee of the Red Cross had put forward a special Article dealing with the effect of having acted under superior orders on the guilt of a person who has committed a criminal offence. The Diplomatic Conference did not approve the proposal and it was left to national legislation to deal with the matter. Many military penal codes contain clauses on the subject, but there are some which do not. In any case, it is to be hoped that a person committing an offence under orders or in application of general instructions will be treated in the same manner, whether he is an enemy alien or a national of the country concerned. The International Law Commission of the United Nations, which considered the problem when it was drawing up its draft Code of Offences against the Peace and Security of Mankind, after long discussion first evolved the following principle: " The fact that a person charged with an offence defined in this Code acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was

[1] The Anglo-Saxon system, which was followed by the International Military Tribunal at Nuremberg and formed the basis of several national legislations after the Second World War, seems rather unsatisfactory. That system is illustrated by a statement in the " Oppenheim-Lauterpacht Manual " according to which all war crimes, whatever their seriousness, may be punished by the death penalty (6th edition, Volume II, p. 456).

in fact possible to him " (Report of the International Law Commission covering its Third Session). Later, on the basis of comments by Governments, the Commission changed this wording to provide that the accused would be responsible under international law only if, in the circumstances, it was possible for him to act contrary to superior orders.

PARAGRAPH 2. — SEARCH FOR AND PROSECUTION OF PERSONS WHO HAVE COMMITTED GRAVE BREACHES

The obligation on each State to enact the legislation necessary implies that such legislation should extend to any person who has committed a grave breach, whether a national of that State or an enemy.

The obligation on the High Contracting Parties to search for persons accused of having committed grave breaches imposes an active duty on them. As soon as a Contracting Party realizes that there is on its territory a person who has committed such a breach, its duty is to ensure that the person concerned is arrested and prosecuted with all despatch. The necessary police action should be taken spontaneously, therefore, and not merely in pursuance of a request from another State. The court proceedings should be carried out in a uniform manner, whatever the nationality of the accused. Nationals, friends, enemies, all should be subject to the same rules of procedure and judged by the same courts. There is therefore no question of setting up special tribunals to try war criminals of enemy nationality.

Extradition is restricted by the domestic law of the country which detains the accused person. Indeed, a rider is deliberately added: " in accordance with the provisions of its own legislation ". Moreover, a special condition is attached to extradition : the Contracting Party which requests the handing over of an accused person must make out a *prima facie* case against him. There is a similar clause in most of the national laws and international treaties concerning extradition. The exact interpretation of " *prima facie* case " will in general depend on national law but it may be stated as a general principle that it implies a case which in the country requested to extradite would involve prosecution before the courts.

Most national laws and international treaties on the subject preclude the extradition of accused who are nationals of the State detaining them. In such cases, Article 129 quite clearly implies that the State detaining the accused person must bring him before its own courts.

Furthermore, this paragraph does not exclude handing over the accused to an international criminal court whose competence has been recognized by the Contracting Parties. On that point, the Diplomatic Conference specially wished to reserve the future position and not impede the progress of international law [1].

PARAGRAPH 3. — SUPPRESSION OF OTHER BREACHES

Article 130 defines the grave breaches of the Convention, but under the terms of this paragraph the Contracting Parties must also suppress all other " acts contrary to the provisions of the present Convention ". The wording is not very precise. The expression " faire cesser " used in the French text may be interpreted in different ways. In the opinion of the International Committee, it covers everything which can be done by a State to avoid acts contrary to the Convention being committed or repeated. The Special Committee of the Joint Committee had first of all proposed the wording " prendre les mesures nécessaires pour la suppression de ". During the discussions in the Joint Committee, the word " suppression " was kept in the English text, whereas in the French text the word " redressement " was used. Finally, the Diplomatic Conference in plenary session adopted the wording " faire cesser " but kept the word " suppression " in the English text [2]. However, there is no doubt that what is primarily meant is the repression of breaches other than the grave breaches listed, and only in the second place administrative measures to ensure respect for the provisions of the Convention.

Other grave breaches of the same character as those listed in Article 130 can easily be imagined. This shows that all breaches of the Convention should be repressed by national legislation. The Contracting Parties which have taken measures to repress the various grave breaches of the Convention and have fixed an appropriate penalty in each case should at least insert in their legislation a general clause providing for the punishment of other breaches. Furthermore, under the terms of the present paragraph, the authorities of the

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[1] See *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. II-B, pp. 114-115. The Netherlands considered it necessary to enact a special law on extradition for war crimes (Law No. 215 of May 19, 1954), explicitly defining the conditions under which extradition may be requested and granted.

[2] This word corresponds approximately to the French word " répression " (not to the French " suppression "). Thus the English and French texts are not in entire agreement.

Contracting Parties should give all those subordinate to them instructions in conformity with the Convention and should institute judicial or disciplinary punishment for breaches of the Convention.

PARAGRAPH 4. — PROCEDURAL GUARANTEES

The procedural guarantees listed in the Convention reproduce and develop those contained in the 1929 Convention (Articles 60-67) [1].

The intervention of the Protecting Power and its right to be present at the hearings and to ensure that the accused persons are properly defended were mentioned in that Convention. It is by virtue of those provisions that in the post-war years the International Committee of the Red Cross has been able, in the absence of Protecting Powers, to intervene in the case of many prisoners accused of war crimes. It has even been called upon sometimes to assist them in legal proceedings. Some countries, such as France, have given the Committee certain facilities for carrying out such activities. The experience gained has shown the need for persons accused of war crimes to have certain procedural guarantees and the right of free defence. These guarantees are needed in particular when the accused person is tried by an enemy court. For that reason, in the draft it submitted to the Diplomatic Conference, the International Committee suggested a special article to deal with the matter. At first the proposal met with some objections ; many of the delegates thought that it should be left to the national legislation of each country to settle the point. It was pointed out, furthermore, that most of the accused tried by the enemy were prisoners of war and that, therefore, Article 85 would automatically give them the benefit of adequate guarantees in view of their prisoner-of-war status. The French Delegation, however, realizing the importance of applying the same system to all accused, whatever their personal status, proposed during the discussion held in the Joint Committee that the present paragraph should be adopted. The Joint Committee's approval was endorsed by the Conference [2].

In referring to the rules contained in Article 105 and those following, the Diplomatic Conference took a wise decision. Rather than establish a new law, it preferred to refer back to an existing law, already tried and tested, which constitutes a real safeguard for the accused.

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[1] See below, pp. 735-739.

[2] With regard to the procedural guarantees afforded to prisoners of war by the present Convention, see Articles 87, 99, 101, 103, 105 and 106.

In connection with this paragraph, it may still be wondered whether persons accused of war crimes can and should be tried during hostilities. The International Committee of the Red Cross has pointed out on several occasions, notably before the meeting of Government Experts in Geneva in 1947, how difficult it is for an accused person who is to be tried by a military tribunal to prepare his defence during hostilities. How, indeed, could he bring proof which might lessen or even disprove his responsibility ? Cases clear enough for verdict to be passed before the end of hostilities will doubtless remain an exception.

ARTICLE 130. — PENAL SANCTIONS : II. GRAVE BREACHES [1]

Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention : wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, compelling a prisoner of war to serve in the forces of the hostile Power, or wilfully depriving a prisoner of war of the rights of fair and regular trial prescribed in this Convention.

The idea of defining grave breaches in the Convention itself must be laid to the credit of the experts convened in 1947 by the International Committee of the Red Cross. If repression of grave breaches was to be universal, it was necessary to determine what constituted them. There are, however, violations which would constitute minor offences or mere disciplinary faults and as such they could not be punished to the same degree. *Protected persons* are defined by Article 4. The word " property " was introduced into this Article in error, having been included rightly in the corresponding Article (Article 147) of the Fourth Convention.

A. *Wilful killing.* — " Wilful killing " would appear to cover faults of omission. Of course, the omission must have been wilful and intended to cause death. Persons who gave instructions for the food

[1] Article common to all four Conventions. See First Convention, Article 50 ; Second Convention, Article 51 ; Fourth Convention, Article 147.

The very term " grave breaches " gave rise to rather lengthy discussion. The USSR Delegation would have preferred the use of the words "serious crimes " or " war crimes ". Finally, the Conference showed its preference for the expression " grave breaches " although such breaches are called " crimes " in the penal legislation of almost all countries ; the choice of the words is justified by the fact that " crime " has a different meaning in different legislations.

rations of prisoners of war to be reduced to such a point that deficiency diseases causing death occurred would be held responsible. In the same way, any putting to death as a reprisal would certainly come within the definition of wilful killing, since reprisals are forbidden by Article 13.

On the other hand, cases in which prisoners of war are killed as a result of acts of war—for example the bombardment of a hospital—are perhaps in a different category ; the question is left open.

B. *Torture.* — The word torture refers here especially to the infliction of suffering on a person in order to obtain from that person, or from another person, confessions or information. Since judicial torture was abolished at the end of the XVIIIth century, this notion has disappeared from national penal codes. It is to be deplored that in fact, usually under special legislation, resort is still sometimes had to this odious practice. It is nevertheless important that practices which are authorized or tolerated by special legislation should not lead to any revival of judicial torture which was abolished a long time ago. If necessary, the national legislation should forbid any such practices [1].

C. *Inhuman treatment.* — The Convention provides, in Article 13, that prisoners of war must always be treated with humanity. The sort of treatment covered here would therefore be whatever is contrary to that general rule. It could not mean, it seems, solely treatment constituting an attack on physical integrity or health ; the aim of the Convention is certainly to grant prisoners of war in enemy hands a protection which will preserve their human dignity and prevent their being brought down to the level of animals. Certain measures, for example, which might cut prisoners of war off completely from the outside world and in particular from their families, or which would cause great injury to their human dignity, should be considered as inhuman treatment.

D. *Biological experiments.* — Biological experiments are injurious to body or health and as such are dealt with in most penal codes. The memory of the criminal practices of which certain prisoners were victim led to these acts being included in the list of grave breaches. The prohibition does not, however, deny a doctor the possibility of using new methods of treatment justified by medical reasons and based

[1] Article 17 expressly forbids the use of coercion during questioning.

only on concern to improve the state of health of the patient. It must be possible to use new medicaments offered by science, provided that they are administered only for therapeutic purposes.

This interpretation is fully in agreement with the provisions of Article 13.

E. *Wilfully causing great suffering.* — This refers to suffering inflicted as a punishment, in revenge or for some other motive, perhaps out of pure sadism, as apart from suffering which is the result of torture or biological experiments. In view of the fact that suffering in this case does not seem, to judge by the phrase which follows, to imply injury to body or health, it may be wondered if this is not a special offence not dealt with by national legislation. Since the Conventions do not specify that only physical suffering is meant, it can quite legitimately be held to cover moral suffering also.

F. *Serious injury to body or health.* — This is a concept quite normally encountered in penal codes, which usually take as a criterion of seriousness the length of time the victim is incapacitated for work.

G. *Compelling a prisoner of war to serve in the forces of the hostile Power.* — This is an offence *sui generis.* A French decree of August 8, 1944, treats this offence in the same way as illegal recruitment into the armed forces, which is covered by Article 92 of the French penal code. That procedure, however, scarcely seems satisfactory. Provisions of the penal codes punishing coercion could also be invoked, it would seem ; but again the fact that coercion is exercised by the authorities puts rather a different complexion on the case [1].

H. *Wilfully depriving a prisoner of war of the rights of fair and regular trial prescribed in this Convention.* — It is the Convention itself in many Articles which specifies the conditions in which prisoners of war may be tried before the courts. In other words, the breach mentioned here can be split into a number of different offences, for example : making a prisoner of war appear before an exceptional court without notifying the Protecting Power, without defending counsel, etc.

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[1] It may be recalled that the Hague Regulations of 1907, in Article 23, forbid a belligerent to compel the nationals of a hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war.

CONCLUSIONS

1. The ratification of the Third Geneva Convention of 1949 will necessitate in the great majority of States the enactment of additional penal laws applicable to all offenders, whatever their nationality and whatever the place where the offence has been committed.

2. It is desirable that this legislation should be in the form of a special law, defining the breaches and providing an adequate penalty for each.

3. If it is impossible to enact such special legislation, it will be necessary to resort to a simpler system which would include as a minimum :

(a) special clauses classing as offences with a definite penalty attached to each : torture ; inhuman treatment ; causing great suffering ; compelling a prisoner of war to serve in the forces of a hostile Power ; wilfully depriving a prisoner of war of the rights of fair and regular trial.

(b) A general clause providing that other breaches of the Convention will be punished by an average sentence, for example imprisonment for from five to ten years, in so far as they do not constitute offences or crimes to which more severe penalties are attached in the ordinary or military penal codes. This general clause should also provide that minor offences can be dealt with through disciplinary measures.

ARTICLE 131. — PENAL SANCTIONS : III. RESPONSIBILITIES OF THE CONTRACTING PARTIES [1]

No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article.

This provision naturally does not relate to the obligation to prosecute and punish those committing breaches of the Convention,

[1] Article common to all four Conventions. See First Convention, Article 51 ; Second Convention, Article 52 ; Fourth Convention, Article 148.

which Article 129 makes absolute. If, however, any doubt existed on that point, this Article would clear it up completely.

According to the comments on this provision by the Italian Delegation, which proposed it, the State remains responsible for breaches of the Convention and may not absolve itself from responsibility on the grounds that those who committed the breaches have been punished. For example, it remains liable to pay compensation.

For a better understanding of the sense of this provision, it should be compared with Article 3 of the Fourth Hague Convention of 1907, which states the same principle.

In our opinion, Article 131 is intended to prevent the vanquished from being compelled in an armistice agreement or a peace treaty to renounce all compensation due for breaches committed by persons in the service of the victor. As regards material compensation for breaches of the Convention, it is inconceivable, at least as the law stands today, that claimants should be able to bring a direct action for damages against the State in whose service the person committing the breaches was working. Only a State can make such claims on another State, and they form part, in general, of what is called " war reparations ". It would seem unjust for individuals to be punished while the State in whose name or on whose instructions they acted was released from all liability.

ARTICLE 132. — ENQUIRY PROCEDURE [1]

At the request of a Party to the conflict, an enquiry shall be instituted, in a manner to be decided between the interested Parties, concerning any alleged violation of the Convention.

If agreement has not been reached concerning the procedure for the enquiry, the Parties should agree on the choice of an umpire who will decide upon the procedure to be followed.

Once the violation has been established, the Parties to the conflict shall put an end to it and shall repress it with the least possible delay.

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[1] Article common to all Four Conventions. See First Convention, Article 52 ; Second Convention, Article 53 ; Fourth Convention, Article 149.

General Remarks and Historical Background

There was a provision of the same kind in the 1929 Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Article 30). The enquiry procedure envisaged left many loopholes and, in 1937, the International Committee had convened a Commission of Experts to revise and develop the text [1].

The Diplomatic Conference entrusted consideration of this Article to the Joint Committee which adopted the 1929 text with some modifications and decided to introduce it into all four Conventions. The changes proposed by the experts at their conference in 1937 were scarcely taken into account by the Diplomatic Conference.

It should be noted that this Article deals only with violations of a certain degree of seriousness which cause disagreement between the Parties. Indeed, for all other violations, the Protecting Power is certainly empowered to intervene. In the same way, if prisoners of war are wounded or killed by a sentry, by another prisoner of war or by any other person, an official enquiry under the terms of Article 121 must be held by the Detaining Power itself. Its results are communicated to the Protecting Power. The field of application of Article 149 is quite restricted, therefore, since by reason of the system of supervision laid down in Articles 8, 10 and 126, most of the cases of alleged violations will be dealt with by the supervisory bodies provided for in the Convention itself.

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[1] On the basis of its consultations, the International Committee put before the XVIIth International Red Cross Conference the following text for the First Convention :

" Article 41. — Procedure of enquiry

Independently of the procedure foreseen in Article 9, any High Contracting Party alleging a violation of the present Convention may demand the opening of an official enquiry.

This enquiry shall be carried out as soon as possible by a Commission instituted for each particular case, and comprising three neutral members selected from a list of qualified persons drawn up by the High Contracting Parties in time of peace, each Party nominating four such persons.

The plaintiff and defendant States shall each appoint one member of the Commission. The third member shall be designated by the other two, and should they disagree, by the President of the International Court of Justice or, should the latter be a national of a belligerent State, by the President of the International Committee of the Red Cross.

As soon as the enquiry is closed, the Commission shall report to the Parties concerned on the reality and nature of the alleged facts, and may make appropriate recommendations.

All facilities shall be extended by the High Contracting Parties to the Commission of enquiry in the fulfilment of its duties. Its members shall enjoy diplomatic privileges and immunities."

PARAGRAPH 1. — OPENING OF THE ENQUIRY

An enquiry is obligatory when a Party to the conflict requests it. The Parties concerned, however, must decide on the procedure to be followed in the enquiry. It is therefore probable that when asking for the opening of an enquiry, the Party to the conflict concerned will also propose the methods by which it should be conducted.

On several occasions in this Commentary emphasis has been laid on the difficulty in time of war of reaching agreement between belligerent States. The difficulty will be all the greater if the point at issue is a violation alleged to have been committed by one of the belligerents and the opening of an enquiry on its territory. Moreover, it should be pointed out that this Article, which dates back as far as the First 1929 Convention, has never been applied, to the best of the International Committee's knowledge [1].

PARAGRAPH 2. — ENQUIRY PROCEDURE

This applies to cases where the Parties concerned are unable to agree on the procedure to be followed. They must then agree on the choice of an umpire who will decide on a procedure. Again, agreement between the Parties becomes necessary. If such an agreement proves impossible, the Convention contains no obligatory provision. The most that could be done would be to invoke Resolution No. 1 of the Diplomatic Conference, which recommends that in the case of a dispute relating to the interpretation or application of the Conventions which cannot be settled by other means, the High Contracting Parties concerned should endeavour to agree between themselves to refer such dispute to the International Court of Justice.

In practice, the body which seems the best qualified to carry out the enquiry would quite naturally be the Protecting Power. If necessary, the diplomatic representatives of other neutral States already on the spot and able to act rapidly could also carry out an enquiry.

PARAGRAPH 3. — ACTION TO BE TAKEN ON THE FACTS DISCOVERED

As already stated, this can apply only to grave breaches raising important problems which it has not been possible to settle in the normal way through the Protecting Power or through the official enquiry carried out by the Detaining Power itself under Article 121.

[1] An attempt to apply Article 30 of the 1929 Convention was made during the Italo-Abyssinian conflict (1935-1936).

Under the terms of this paragraph, the body carrying out the enquiry must be enabled to discover the facts and therefore, in principle, to travel to the spot and check the facts reported. The Parties to the conflict undertake in this paragraph to put an end to the violation in the case of a permanent or continuous violation of the Convention and to punish those responsible. It should be noted, in this connection, that the obligation is already contained in Articles 129 and 130.

It would be possible also to set up two separate bodies, one to decide on questions of fact and the other to determine whether or not there has been a breach of the Convention. It may, in certain circumstances, prove extremely difficult to arrive at the facts, since if this enquiry procedure is followed, it means *a priori* that the Parties disagree on whether a breach has been committed or not.

SECTION II

FINAL PROVISIONS

The formal or diplomatic provisions which it is customary to place at the end of an international convention are grouped together under this heading [1]. They are similar in all four Geneva Conventions of 1949.

ARTICLE 133. — LANGUAGES [2]

The present Convention is established in English and in French. Both texts are equally authentic.

The Swiss Federal Council shall arrange for official translations of the Convention to be made in the Russian and Spanish languages.

PARAGRAPH 1. — AUTHENTIC TEXTS

Throughout the Diplomatic Conference of 1949 and earlier during the preparatory work, two versions of the same Convention were drawn up simultaneously, French and English, both being recognized on an equal footing as working languages. The 1929 Conventions, on the other hand, had been drawn up in French only, as French was still the leading diplomatic language at that time.

It is then laid down that both texts are equally authentic, carry the same weight and are equally valid. In the same way, ratifications and accessions will be valid for the two versions.

The solution thus adopted conforms to the most recent international practice. The consequence will be that the interpretation

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[1] For general remarks on the final provisions of multilateral conventions, see Michael BRANDON, "Final Clauses in Multilateral Conventions", *The International Law Quarterly*, October 1951, and the works quoted in that article. See also *Handbook of Final Clauses*, United Nations Secretariat, 1951.

[2] Article common to all four Conventions. See First Convention, Article 55 ; Second Convention, Article 54 ; Fourth Convention, Article 150.

of the Convention will be made easier, as the two texts can be compared and one will throw light on the other, but that there will be an awkward problem to solve when the two texts differ.

It is generally difficult to give exact expression to the same idea in different languages. Moreover, the Diplomatic Conference was unable to ensure that the two versions corresponded exactly. In order to overcome conflicting interpretations, the International Committee of the Red Cross had suggested, in its draft proposals, that where there was doubt as to the interpretation of a provision, the French version should be taken as the correct one. The suggestion was not adopted, however, by the Diplomatic Conference.

Where divergencies exist, those responsible for applying the Convention will have to find out what is known in municipal law as the intention of the legislator. In the case in point, it will be the joint will of the parties represented at the Conference. The method adopted will therefore have to be that of legal interpretation with the help of the Final Record of the Conference and the preliminary texts [1].

PARAGRAPH 2. — OFFICIAL TRANSLATIONS [2]

This provision too is an innovation so far as the Geneva Conventions are concerned, and has the particular advantage of avoiding the production of a variety of different versions in the numerous Spanish-speaking countries.

The Russian and Spanish versions are official in that the body which prepared them was specified in the Convention itself, but, unlike the French and English, they are not authentic, and the French and English versions would be regarded as correct in the event of any divergencies.

ARTICLE 134. — RELATION TO THE 1929 CONVENTION

The present Convention replaces the Convention of July 27, 1929, in relations between the High Contracting Parties.

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[1] This procedure is generally followed in countries which, Slike witzerland, promulgate their national laws in several languages, each version being equally authentic.

[2] There are also translations into German and Italian made by the Swiss Federal Council, not at the request of the Diplomatic Conference, but under an obligation of Swiss law.

The new Convention has mandatory force only as between the States party to it. The 1929 Convention therefore continues to bind, in their mutual relations, States which are party to it without being party to the 1949 Convention. In the same way, it will apply to relations between States when one is a party to the 1929 Convention only, the others being party to both the 1949 and the 1929 Conventions.

Two successive Conventions are thus in existence at the same time. Article 134 does not have the effect of abrogating the 1929 Convention. Even supposing a time came when the latter no longer bound any State at all, it would still preserve a latent existence. For, in the improbable event of a State denouncing the 1949 Convention, the 1929 Convention would become operative once more and again bind the denouncing Power in its relations with other States.

What would be the position with regard to two States, one of which was party to the 1949 Convention only and the other to the 1929 Convention only ? It would seem that they should consider themselves bound by the provisions common to the two Conventions. The 1949 Convention actually contains the whole substance of the 1929 Convention and is merely a revised and corrected version of the earlier instrument. It contains no contradictory provisions, but merely supplements the 1929 Convention [1].

ARTICLE 135. — RELATION TO THE HAGUE CONVENTION

In the relations between the Powers which are bound by the Hague Convention respecting the Laws and Customs of War on Land, whether that of July 29, 1899, or that of October 18, 1907, and which are parties to the present Convention, this last Convention shall be complementary to Chapter II of the Regulations annexed to the above-mentioned Conventions of The Hague.

This provision reproduces the text of Article 89 of the 1929 Convention, the authors of which had intended to *complement* Chapter II of the Hague Regulations, not to *replace* it. The Hague rules, which were a codification of principles recognized by all civilized nations, remained sacrosanct and the 1929 Convention should be considered as developing the principles set forth in the Regulations [2]. The latter

[1] See below, the comparative presentation of the 1929 and 1949 Conventions, p. 680 ff.

[2] See *Actes de la Conférence de 1929*, p. 521.

remark is no longer as relevant as it was in 1929; Article 4, which defines the persons entitled to the status of prisoner of war, makes the new Convention much more independent of the Hague Regulations than the 1929 instrument. It is nevertheless useful to emphasize that the two instruments are based on the same principles; the table below shows the provisions of the Hague Regulations and the corresponding Articles in the 1949 Convention.

Regulations concerning the Laws and Customs of War on Land annexed to the Fourth Convention of The Hague of October 18, 1907	*1949 Convention*
Article 4	
Paragraph 1: Responsibility for the treatment of prisoners of war	Article 12
Paragraph 2: Humane treatment	Article 13
Paragraph 3: Personal property of prisoners of war	Article 18
Article 5	
Restrictions on movement	Article 21, paragraph 1
Article 6	
Paragraph 1: Authorization to compel prisoners of war to work, provided such work is not connected with the operations of war	Articles 49 and 50
Paragraph 2: Authorization to work for private persons [1]	Article 57
Paragraphs 3 and 4: Working pay	Article 62
Paragraph 5: Utilization of wages	Articles 28, 58, 66
Article 7	
Paragraph 1: General obligation of maintenance of prisoners of war	Article 15
Paragraph 2: Food, lodging, clothing	Articles 25, 26, 27
Article 8	
Paragraph 1: Applicable legislation	Article 82
Paragraph 2: Unsuccessful escape	Article 92
Paragraph 3: Successful escape	Article 91

[1] See below, p. 640, Note 1.

Regulations of The Hague of 1907	*1949 Convention*
Article 9	
Questioning of prisoners of war	Article 17
Article 10	
Paragraph 1 : Conditions for release on parole	Article 21, paragraphs 2 and 3
Paragraph 2 : Obligations of the Government on which a prisoner released on parole depends	Article 21, paragraph 2
Article 11	
Right of decision by a prisoner of war or Detaining Power with regard to release on parole	Article 21, paragraph 2
Article 12 [1]	
Right of the Detaining Power to bring before the courts prisoners of war released on parole and recaptured bearing arms	—[1]
Article 13	
Right to be treated as prisoners of war for persons who follow armed forces without directly belonging to them	Article 4, paragraph A (4)
Article 14	
Institution, organization and functions of enquiry offices	Article 122
Article 15	
Relief societies	Article 125
Article 16	
Paragraph 1 : Free postage for letters, money orders and parcels by post	Articles 74 and 124
Paragraph 2 : Exemption from customs, carriage and transport charges for relief shipments	Article 74

[1] See the last paragraph of the commentary on the present Article, p. 640 below.

Regulations of The Hague of 1907	*1949 Convention*
Article 17	
Pay of officers	Article 60
Article 18	
Exercise of religion	Article 34
Article 19	
Wills, death certificates, burial	Article 120
Article 20	
Repatriation	Article 118

In fact, the only point on which the provisions of the new Convention differ from those of the Hague Regulations is that of the treatment of prisoners of war as compared with the armed forces of the Detaining Power. Here, there has been definite progress, which calls for some comment ; whereas the Hague Regulations provide in regard to working pay (Article 6) and quarters, food and clothing (Article 7) that prisoners of war are to be treated on the same footing as the troops of the Detaining Power, the new Convention abandons this principle of assimilation and sets different rules. Food and clothing must be sufficient, taking into account the habitual diet of prisoners of war and the climate of the region where they are detained (Articles 26 and 27). In the same way, the Convention fixes a minimum rate of working pay (one-quarter of one Swiss franc per day) regardless of the amount paid to the armed forces of the Detaining Power.

It should also be noted that whereas the Hague Regulations authorized the Detaining Power to confine prisoners of war as a security measure, such action is now permitted only because of health considerations (Article 21).

Out of a total of seventeen Articles in Chapter II of the 1907 Hague Regulations, three (Articles 10, 11 and 12) were devoted to release on parole. This system, which was introduced in replacement of the ransom system, has diminished in importance ; since the 1914-1918 war, the stipulation that any prisoner of war repatriated during the hostilities must not take up arms again has more often been embodied in agreements between the belligerents with a view to exchanging prisoners of war than offered to individual prisoners. Thus, it was the Powers which undertook the obligation, not the prisoners of war who were released.

The fact that the Hague Regulations are *complemented* but not replaced means that those of their provisions which are not included in the present Convention remain in force [1].

ARTICLE 136. — SIGNATURE [2]

The present Convention, which bears the date of this day, is open to signature until February 12, 1950, in the name of the Powers represented at the Conference which opened at Geneva on April 21, 1949; furthermore, by Powers not represented at that Conference, but which are parties to the Convention of July 27, 1929.

The procedure resorted to in order to make the Geneva Conventions a part of positive international law is the one normally adopted and is in two stages : namely, the conclusion of the treaty and its entry into force [3]. The first stage is complete when representatives of the Parties have drawn up a final text [4] and when that text has been signed [5] in the name of at least two States. It is the act of signature which is the subject of the present Article. The procedure for bringing the Convention into force is dealt with in the subsequent Articles.

Article 136 begins by laying down that the Convention is to bear the date of the day of signature, viz. August 12, 1949. It should be noted that the other three Geneva Conventions drawn up by the Diplomatic Conference of 1949 bear the same date.

The Article then gives States represented at the Conference an opportunity of having the Convention signed in their name up to February 12, 1950, i.e. within a period of six months [6]. The States which were not represented at the Geneva Conference may not therefore sign the Convention, but they may accede to it.

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[1] For instance, Article 6 of the Hague Regulations : *prisoners may be authorized to work . . . on their own account* ; Article 12 : *prisoners of war liberated on parole and recaptured bearing arms . . . can be brought before the courts.*

[2] Article common to all four Conventions. See First Convention, Article 56 ; Second Convention, Article 55 ; Fourth Convention, Article 151.

[3] Certain writers consider, however, that a treaty is not actually " concluded " until it enters into force.

[4] Attention should be drawn here to the words introducing the Convention : " The undersigned . . . have agreed as follows : ".

[5] When signatures are given *ad referendum* they are subject to confirmation.

[6] Eighteen States signed the Convention on August 12, 1949. Twenty-seven did so on December 8 of the same year at a ceremony organized for the purpose by the Swiss Federal Council, and sixteen did so later, within the time limit laid down.

As will be seen in the discussion of the next Article, States are not bound by the Convention until they have ratified it, but the act of signature marks the agreement of their Plenipotentiaries to a text which cannot thereafter be altered. The importance of that act cannot therefore be disregarded. Moreover, the Swiss Federal Council assumes its responsibilities as depositary of the Geneva Conventions as from the date of signature.

It should also be mentioned that some delegations made reservations at the time of signature [1].

ARTICLE 137. — RATIFICATION [2]

The present Convention shall be ratified as soon as possible and the ratifications shall be deposited at Berne.

A record shall be drawn up of the deposit of each instrument of ratification and certified copies of this record shall be transmitted by the Swiss Federal Council to all the Powers in whose name the Convention has been signed, or whose accession has been notified.

PARAGRAPH 1. — RATIFICATION AND DEPOSIT

Ratification is the formal act by which a Power finally accepts the text of the Convention which has been signed at an earlier stage by its plenipotentiaries. This act, carried out by the body competent under the municipal law of each country, can alone give the Convention obligatory force and make it binding on the State concerned.

Ratification is made effective by the deposit with the Swiss Federal Council of a communication called the instrument of ratification, which is the expression of the will of the State concerned towards the other States [3].

The statement that the Convention " shall be ratified as soon as possible " is a pressing recommendation to each country to hasten the procedure.

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[1] For the text of those reservations, see *Final Record of the Diplomatic Conference of Geneva of 1949*, Vol. I, pp. 342-357. Such reservations will not remain in force, however, unless they are confirmed when the instrument of ratification is deposited.

[2] Article common to all four Conventions. See First Convention, Article 57 ; Second Convention, Article 56 ; Fourth Convention, Article 152.

[3] It is only the deposit of the ratification which is valid under international law and not the authorization to ratify which, under the law of the majority of countries, must be given to the Government by Parliament.

In accordance with normal practice, provision has not been made for the direct exchange of ratifications between signatory countries, but for their deposit with a government which is made responsible for receiving them and for notifying receipt. This task has been entrusted to the Swiss Federal Council, the traditional depositary of the Geneva Conventions.

PARAGRAPH 2. — RECORD AND NOTIFICATION

Paragraph 2 lays down that the Swiss Federal Council is to draw up a record of the deposit of each instrument of ratification, and transmit a certified copy of that record to all signatory and acceding Powers.

Both the record and the copies will mention any reservation which may accompany the ratification, for the information of the other States.

In so far as it is possible to follow rules in such a controversial matter, the absence of an objection to a reservation on the part of a State to which it is thus communicated may be taken as denoting assent.

The effect of an objection by a State party or signatory to the Convention to a reservation made by another party is at present under discussion. Those in favour of the traditional system claim that such an objection prevents the Power making the reservation from participating in the Convention. On the other hand, those who follow the system in force in Pan-American affairs claim that the objection only prevents the Convention from entering into force as between the party making the reservation and the State objecting to that reservation. The International Court of Justice, in an opinion given in connection with the Genocide Convention, recommended a compromise solution, by referring to the idea that the entering of a reservation not expressly agreed to by the other signatory States does not deprive the author of that reservation of the right to participate in the Convention provided that the reservation remains compatible with the object of the Convention.

In any case, it seems consistent with humanitarian spirit to consider that the present Convention binds together all the parties thereto in respect of all those provisions which have not been the subject of a reservation.

Similarly, it is obvious that a reservation which is accepted, expressly or tacitly, will affect only the relations which the State

making it maintains with other contracting Powers, and not the relations of those Powers among themselves.

As stated above, a reservation made at the time of signature is valid only if it is confirmed at the time of ratification.

ARTICLE 138. — ENTRY INTO FORCE [1]

The present Convention shall come into force six months after not less than two instruments of ratification have been deposited.

Thereafter, it shall come into force for each High Contracting Party six months after the deposit of the instrument of ratification.

PARAGRAPH 1. — FIRST TWO RATIFICATIONS

The text says " *not less than* two instruments of ratification " to meet the improbable case of several States having ratified on the same day.

The Convention will, of course, enter into force at that juncture only between the first two States which ratify the Convention, and then only after six months have elapsed from the date on which the second ratification was deposited.

That date marks an event of some importance, however; it is the date on which the Convention becomes an integral part of international law. Without the two ratifications, it would never be more than an historical document. Then only will it become possible for a non-signatory State to become party to the Convention by acceding to it [2].

When the Convention enters into force in a country, it does not follow that it is immediately applicable, since according to Articles 2 and 3 provision is only made for implementation in cases of armed conflict. Certain Articles may nevertheless be applicable in peacetime: for example, Article 127 (dissemination of the Convention), Articles 128-131 (translations, rules of application, and penal sanctions), and Article 123 (creation of a Central Agency).

The number of ratifications required before the Convention can enter into force has been reduced to a minimum, to make it possible

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[1] Article common to all four Conventions. See First Convention, Article 58; Second Convention, Article 57; Fourth Convention, Article 153.

[2] See commentary on Article 139.

for non-signatory Powers to accede to this universal humanitarian Convention as soon as possible.

The six months which must elapse in the case of each State [1] before its ratification or accession takes effect should give it time to take such preliminary steps, particularly legislative and administrative measures, as are necessary in view of the new obligations it has assumed.

The present Convention actually entered into force on October 21, 1950, Switzerland having ratified it on March 31, 1950, and Yugoslavia on April 21 of the same year.

PARAGRAPH 2. — OTHER RATIFICATIONS

The Convention will enter into force, for each State which subsequently ratifies it, six months after the deposit of the instrument of ratification. From that date, the State in question will be bound by the Convention in its relations with all Powers which have ratified it not less than six months before. Thereafter, it will become bound in its relations with other Powers six months after each of them has ratified the Convention.

ARTICLE 139. — ACCESSION [2]

From the date of its coming into force, it shall be open to any Power in whose name the present Convention has not been signed, to accede to this Convention.

Accession is the method by which any Power which has not signed the Convention may become party to it.

No limitation or condition is imposed except that the Convention must have already entered into force. The invitation is addressed to all States, whether or not they are parties to one of the earlier Conventions. The Geneva Conventions, which draw their strength from their universality, are treaties open to all [3].

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[1] In practice, the waiting period will be longer in the single case of the first State to ratify the Convention, since it will be determined by the date of the second ratification.

[2] Article common to all four Conventions. See First Convention, Article 60 ; Second Convention, Article 59 ; Fourth Convention, Article 155.

[3] The Geneva Convention of 1906, however, gave all Contracting Powers the right to oppose the accession of any other Power (Article 32, third paragraph).

Accession is exactly the same in its effects as ratification, to which it is equivalent in all respects.

An accession can, however, take place only after the entry into force of the Convention, that is to say six months after the first two instruments of ratification have been deposited. The Convention has thus been open to accession since October 21, 1950.

ARTICLE 140. — NOTIFICATION OF ACCESSIONS [1]

Accessions shall be notified in writing to the Swiss Federal Council, and shall take effect six months after the date on which they are received.

The Swiss Federal Council shall communicate the accessions to all the Powers in whose name the Convention has been signed or whose accession has been notified.

Contrary to former practice, accession today works on the same principles as ratification. Thus accessions will take effect six months after the date on which they are received by the Swiss Federal Council which, in this case also, is named as depositary and has the task of communicating accessions to the other Powers.

Article 140 does not state, as Article 137 did for ratifications, that the Federal Council must draw up a record of the deposit of each accession, or that it must transmit a copy of that record to the other Powers. There is no reason, however, why the formalities should not be the same for accessions as for ratifications.

If reservations are made on accession, they will be treated in the same way as reservations on ratification [2].

ARTICLE 141. — IMMEDIATE EFFECT [3]

The situations provided for in Articles 2 and 3 shall give immediate effect to ratifications deposited and accessions notified by the Parties to the conflict before or after the beginning of hostilities or occupation. The Swiss Federal Council shall communicate by the quickest method any ratifications or accessions received from Parties to the conflict.

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[1] Article common to all four Conventions. See First Convention, Article 61 ; Second Convention, Article 60 ; Fourth Convention, Article 156.

[3] See commentary on Article 137.

[2] Article common to all four Conventions. See First Convention, Article 62 ; Second Convention, Article 61 ; Fourth Convention, Article 157.

Should war or armed conflict break out, the entry into force of the Convention obviously cannot be subject to the six months waiting period which follows ratification or accession under normal peacetime conditions.

Ratification or accession will therefore take effect immediately as far as the country or countries affected by such events are concerned. The Convention will enter into force from the outbreak of hostilities or the beginning of occupation if the ratification has already been deposited, or from the date of the deposit of the ratification if it is deposited later.

The 1929 Conventions contained a similar provision, but only referred to " a state of war ". The 1949 text refers to Articles 2 and 3, since an essential object of these two new Articles is to define the situations in which the Convention is to be applied—namely cases of declared war or of any other armed conflict, even if a state of war is not recognized by one of the Parties (Article 2, paragraph 1) [1], the total or partial occupation of a territory even if it meets with no armed resistance (Article 2, paragraph 2), and, lastly, armed conflicts not of an international character (Article 3).

The Federal Council is to communicate ratifications or accessions to signatory States " by the quickest method ". Grave events demand urgent measures. The customary procedure, as laid down in Article 137, paragraph 2, is in that case no longer required. Suitable means such as a telegram will be used.

ARTICLE 142. — DENUNCIATION [2]

Each of the High Contracting Parties shall be at liberty to denounce the present Convention.

The denunciation shall be notified in writing to the Swiss Federal Council, which shall transmit it to the Governments of all the High Contracting Parties.

The denunciation shall take effect one year after the notification thereof has been made to the Swiss Federal Council. However, a denuncia-

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[1] The ratification or accession of a Power will also take effect immediately where its opponent in the conflict is a Power which is not party to the Convention, even if that Power refuses to apply the provisions of the Convention (Article 2, paragraph 3).

[2] Article common to all four Conventions. See First Convention, Article 63 ; Second Convention, Article 62 ; Fourth Convention, Article 158.

tion of which notification has been made at a time when the denouncing Power is involved in a conflict shall not take effect until peace has been concluded, and until after operations connected with release and repatriation of the persons protected by the present Convention have been terminated.

The denunciation shall have effect only in respect of the denouncing Power. It shall in no way impair the obligations which the Parties to the conflict shall remain bound to fulfil by virtue of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity and the dictates of the public conscience.

PARAGRAPH 1. — RIGHT OF DENUNCIATION

This clause gives any Contracting Power the right to withdraw unilaterally from the community of States parties to the Convention. If there were no such provision, withdrawal would not be possible except by consent of the other Contracting Parties.

Since the Geneva Conventions first came into existence, no State has ever invoked this clause. It is inconceivable that a Power could ever repudiate such elementary rules of humanity and civilization.

Even if a State were to denounce the Convention, it would still be morally bound by the principles of that Convention, which are to-day the expression of valid international law in this sphere [1].

PARAGRAPH 2. — NOTIFICATION

Denunciations, like accessions, must be notified in writing to the Swiss Federal Council, in its capacity as depositary of the Geneva Conventions. The Federal Council will transmit them to the other High Contracting Parties.

PARAGRAPH 3. — NOTICE

A denunciation will not take effect immediately; under normal peace-time conditions, it will take effect only after one year has elapsed.

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[1] See the commentary on Article 135.

If the denouncing Power is involved in a conflict [1] the waiting period will be prolonged and the denunciation will not take effect until peace has been concluded [2], or even, where the case arises, until the release and repatriation of prisoners of war are completed [3]. This clause is the counterpart of the preceding Article ; it, too, is dictated by the best interests of the victims of war.

Although according to the actual letter of the Convention, the prolongation of the waiting period affects only denunciations notified in the course of conflicts, it may be assumed that the prolongation should also be applied whenever denunciation is notified less than one year before a conflict breaks out ; such a denunciation would then become effective only at the end of the conflict.

Paragraph 4. — Limitation of the consequences of denunciation

The fact that denunciation is effective only in respect of the denouncing Power is related to the omission of the *clausula si omnes* included in the Hague Conventions, which is confirmed by Article 2, paragraph 3, of the present Convention ; the reader should refer to the commentary on that provision.

The reminder that humanitarian principles continue to apply, despite denunciation, thus limiting the consequences of the latter, originated in a proposal by the XVIIth International Red Cross Conference.

The provision takes its whole significance from the fact that the Convention contains no Preamble, in which it could have been more suitably embodied. Its affinity to the eighth paragraph of the Preamble to the Fourth Hague Convention of 1907—the so-called Martens clause—is evident [4].

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[1] The word " conflict " must obviously be understood in its broadest sense ; it covers the various situations described in Articles 2 and 3.

[2] The wording used shows clearly that it is the formal conclusion of the peace treaty which is meant and not merely the ending of military operations. In cases of conflicts not of an international character, it will mean the effective re-establishment of a state of peace.

[3] This provision may be compared with Article 5.

[4] See above, p. 47.

ARTICLE 143. — REGISTRATION WITH THE UNITED NATIONS [1]

The Swiss Federal Council shall register the present Convention with the Secretariat of the United Nations. The Swiss Federal Council shall also inform the Secretariat of the United Nations of all ratifications, accessions and denunciations received by it with respect to the present Convention.

It is now laid down that the Geneva Convention of 1949 is to be registered with the Secretariat of the United Nations, just as it was provided previously that the Convention of 1929 was to be deposited in the archives of the League of Nations. States Members of the United Nations are, indeed, obliged to have the international treaties which they conclude registered [2], and there is always the possibility that a dispute regarding the application or interpretation of the Convention may be brought before the International Court of Justice, as a resolution of the Diplomatic Conference of 1949 in fact recommends [3]. Registration with the United Nations also helps to make treaties more widely known.

The obligation to register the Convention is not, however, a condition of its validity, which results solely from the procedure laid down in Articles 137 to 140.

It is naturally the Swiss Federal Council which has to arrange for the registration of the Convention with the Secretariat of the United Nations, just as it has to inform the Secretariat of any ratifications, accessions and denunciations which it receives.

[1] Article common to all four Conventions. See First Convention, Article 64; Second Convention, Article 63; Fourth Convention, Article 159.

[2] See Article 18 of the Covenant of the League of Nations and Article 102 of the United Nations Charter.

[3] See Resolution 1 below.

ANNEX I

MODEL AGREEMENT[1] CONCERNING DIRECT REPATRIATION AND ACCOMMODATION IN NEUTRAL COUNTRIES OF WOUNDED AND SICK PRISONERS OF WAR

(see Article 110)

I. Principles for Direct Repatriation and Accommodation in Neutral Countries

A. Direct Repatriation

The following shall be repatriated direct :

1. All prisoners of war suffering from the following disabilities as the result of trauma : loss of limb, paralysis, articular or other disabi-

[1] Article 110 relating to the repatriation and accommodation in a neutral country of wounded and sick prisoners of war will, if need be, be supplemented by special agreements laying down the practical procedure to be followed. These agreements, which will depend very much on circumstances, cannot be concluded in advance and may encounter considerable obstacles. In order to provide a firm basis for negotiation and, where necessary, to make up for any absence of agreement, the Convention proposes a model agreement to the Parties to the conflict. Regardless whether a special agreement is actually concluded, the Convention requires the Parties to respect all the principles set forth in the Model Agreement. The Model Agreement is therefore more than a reference document ; it constitutes a minimum of agreement between the Parties so long as no special arrangement is concluded between them.

A similar Model Agreement was annexed to the 1929 Convention ; in the present Annex, however, items I.A.(1) (*a*), (*b*), (*c*), and (*d*) and (2) are new. The interpretation of such a text is a matter for specialists, but some indications as to interpretation are given in the section entitled " General Observations " at the end of the Model Agreement. In particular, it is stated that the provisions of the Model Agreement must be interpreted and applied *in as broad a spirit as possible*, and also they must be interpreted and applied *in a similar manner in all countries Party to the conflict*, in order to ensure the utmost equality of treatment of prisoners of war. Lastly, although detailed, the list of cases referred to in the Annex is not exhaustive. In all cases for which no express provision is made, the attitude of the Mixed Medical Commissions must be guided by the spirit of Article 110 and the general spirit of the Model Agreement.

lities, when this disability is at least the loss of a hand or a foot, or the equivalent of the loss of a hand or a foot.

Without prejudice to a more generous interpretation, the following shall be considered as equivalent to the loss of a hand or a foot :

(a) Loss of a hand or of all the fingers, or of the thumb and forefinger of one hand ; loss of a foot, or of all the toes and metatarsals of one foot.

(b) Ankylosis, loss of osseous tissue, cicatricial contracture preventing the functioning of one of the large articulations or of all the digital joints of one hand.

(c) Pseudarthrosis of the long bones.

(d) Deformities due to fracture or other injury which seriously interfere with function and weight-bearing power.

2. All wounded prisoners of war whose condition has become chronic, to the extent that prognosis appears to exclude recovery—in spite of treatment—within one year from the date of the injury, as, for example, in case of :

(a) Projectile in the heart, even if the Mixed Medical Commission should fail, at the time of their examination, to detect any serious disorders.

(b) Metallic splinter in the brain or the lungs, even if the Mixed Medical Commission cannot, at the time of examination, detect any local or general reaction.

(c) Osteomyelitis, when recovery cannot be foreseen in the course of the year following the injury, and which seems likely to result in ankylosis of a joint, or other impairments equivalent to the loss of a hand or a foot.

(d) Perforating and suppurating injury to the large joints.

(e) Injury to the skull, with loss or shifting of bony tissue.

(f) Injury or burning of the face with loss of tissue and functional lesions.

(g) Injury to the spinal cord.

(h) Lesion of the peripheral nerves, the sequelae of which are equivalent to the loss of a hand or foot, and the cure of which

requires more than a year from the date of injury, for example : injury to the brachial or lumbosacral plexus, the median or sciatic nerves, likewise combined injury to the radial and cubital nerves or to the lateral popliteal nerve (N. peroneus communis) and medial popliteal nerve (N. tibialis) ; etc. The separate injury of the radial (musculo-spiral), cubital, lateral or medial popliteal nerves shall not, however, warrant repatriation except in case of contractures or of serious neurotrophic disturbance.

(i) Injury to the urinary system, with incapacitating results.

3. All sick prisoners of war whose condition has become chronic to the extent that prognosis seems to exclude recovery—in spite of treatment—within one year from the inception of the disease, as, for example, in case of :

(a) Progressive tuberculosis of any organ which, according to medical prognosis, cannot be cured, or at least considerably improved, by treatment in a neutral country.

(b) Exudate pleurisy.

(c) Serious diseases of the respiratory organs of non-tubercular etiology, presumed incurable, for example : serious pulmonary emphysema, with or without bronchitis ; chronic asthma * ; chronic bronchitis * lasting more than one year in captivity ; bronchiectasis * ; etc.

(d) Serious chronic affections of the circulatory system, for example ; valvular lesions and myocarditis *, which have shown signs of circulatory failure during captivity, even though the Mixed Medical Commission cannot detect any such signs at the time of examination ; affections of the pericardium and the vessels (Buerger's disease, aneurisms of the large vessels) ; etc.

(e) Serious chronic affections of the digestive organs, for example : gastric or duodenal ulcer ; sequelae of gastric operations performed in captivity ; chronic gastritis, enteritis or colitis, having lasted more than one year and seriously affecting the general condition ; cirrhosis of the liver ; chronic cholecystopathy * ; etc.

* The decision of the Mixed Medical Commission shall be based to a great extent on the records kept by camp physicians and surgeons of the same nationality as the prisoners of war, or on an examination by medical specialists of the Detaining Power.

(f) Serious chronic affections of the genito-urinary organs, for example : chronic diseases of the kidney with consequent disorders ; nephrectomy because of a tubercular kidney ; chronic pyelitis or chronic cystitis ; hydronephrosis or pyonephrosis ; chronic grave gynæcological conditions ; normal pregnancy and obstetrical disorder, where it is impossible to accommodate in a neutral country ; etc.

(g) Serious chronic diseases of the central and peripheral nervous system, for example : all obvious psychoses and psychoneuroses, such as serious hysteria, serious captivity psychoneurosis, etc., duly verified by a specialist * ; any epilepsy duly verified by the camp physician * ; cerebral arteriosclerosis ; chronic neuritis lasting more than one year ; etc.

(h) Serious chronic diseases of the neuro-vegetative system, with considerable diminution of mental or physical fitness, noticeable loss of weight and general asthenia.

(i) Blindness of both eyes, or of one eye when the vision of the other is less than 1 in spite of the use of corrective glasses ; diminution of visual acuity in cases where it is impossible to restore it by correction to an acuity of ½ in at least one eye * ; other grave ocular affections, for example : glaucoma, iritis, choroiditis ; trachoma ; etc.

(k) Auditive disorders, such as total unilateral deafness, if the other ear does not discern the ordinary spoken word at a distance of one metre * ; etc.

(l) Serious affections of metabolism, for example : diabetes mellitus requiring insulin treatment ; etc.

(m) Serious disorders of the endocrine glands, for example : thyrotoxicosis ; hypothyrosis ; Addison's disease ; Simmonds' cachexia ; tetany ; etc.

(n) Grave and chronic disorders of the blood-forming organs.

(o) Serious cases of chronic intoxication, for example : lead poisoning, mercury poisoning, morphinism, cocainism, alcoholism ; gas or radiation poisoning ; etc.

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* The decision of the Mixed Medical Commission shall be based to a great extent on the records kept by camp physicians and surgeons of the same nationality as the prisoners of war, or on an examination by medical specialists of the Detaining Power.

(p) Chronic affections of locomotion, with obvious functional disorders, for example: arthritis deformans; primary and secondary progressive chronic polyarthritis; rheumatism with serious clinical symptoms; etc.

(q) Serious chronic skin diseases, not amenable to treatment.

(r) Any malignant growth.

(s) Serious chronic infectious diseases, persisting for one year after their inception, for example: malaria with decided organic impairment, amoebic or bacillary dysentery with grave disorders; tertiary visceral syphilis resistant to treatment; leprosy; etc.

(t) Serious avitaminosis or serious inanition.

B. Accommodation in neutral countries

The following shall be eligible for accommodation in a neutral country:

1. All wounded prisoners of war who are not likely to recover in captivity, but who might be cured or whose condition might be considerably improved by accommodation in a neutral country.
2. Prisoners of war suffering from any form of tuberculosis, of whatever organ, and whose treatment in a neutral country would be likely to lead to recovery or at least to considerable improvement, with the exception of primary tuberculosis cured before captivity.
3. Prisoners of war suffering from affections requiring treatment of the respiratory, circulatory, digestive, nervous, sensory, genito-urinary, cutaneous, locomotive organs, etc., if such treatment would clearly have better results in a neutral country than in captivity.
4. Prisoners of war who have undergone a nephrectomy in captivity for a non-tubercular renal affection; cases of osteomyelitis, on the way to recovery or latent; diabetes mellitus not requiring insulin treatment; etc.
5. Prisoners of war suffering from war or captivity neuroses.

   Cases of captivity neurosis which are not cured after three months of accommodation in a neutral country, or which after that length of time are not clearly on the way to complete cure, shall be repatriated.

6. All prisoners of war suffering from chronic intoxication (gases, metals, alkaloids, etc.), for whom the prospects of cure in a neutral country are especially favourable.

7. All women prisoners of war who are pregnant or mothers with infants and small children.

The following cases shall not be eligible for accommodation in a neutral country:

1. All duly verified chronic psychoses.

2. All organic or functional nervous affections considered to be incurable.

3. All contagious diseases during the period in which they are transmissible, with the exception of tuberculosis.

II. General Observations

1. The conditions given shall, in a general way, be interpreted and applied in as broad a spirit as possible.

   Neuropathic and psychopathic conditions caused by war or captivity, as well as cases of tuberculosis in all stages, shall above all benefit by such liberal interpretation. Prisoners of war who have sustained several wounds, none of which, considered by itself, justifies repatriation, shall be examined in the same spirit, with due regard for the psychic traumatism due to the number of their wounds.

2. All unquestionable cases giving the right to direct repatriation (amputation, total blindness or deafness, open pulmonary tuberculosis, mental disorder, malignant growth, etc.) shall be examined and repatriated as soon as possible by the camp physicians or by military medical commissions appointed by the Detaining Power.

3. Injuries and diseases which existed before the war and which have not become worse, as well as war injuries which have not prevented subsequent military service, shall not entitle to direct repatriation.

4. The provisions of this Annex shall be interpreted and applied in a similar manner in all countries party to the conflict. The Powers

and authorities concerned shall grant to Mixed Medical Commissions all the facilities necessary for the accomplishment of their task.

5. The examples quoted under (I) above represent only typical cases. Cases which do not correspond exactly to these provisions shall be judged in the spirit of the provisions of Article 110 of the present Convention, and of the principles embodied in the present Agreement.

ANNEX II

REGULATIONS CONCERNING MIXED MEDICAL COMMISSIONS

(see Article 112)

ARTICLE 1. — COMPOSITION

The Mixed Medical Commissions provided for in Article 112 of the Convention shall be composed of three members, two of whom shall belong to a neutral country, the third being appointed by the Detaining Power. One of the neutral members shall take the chair.

As already provided for in Article 69 of the 1929 Convention, the Commissions are to be composed of three members.

It should be noted, however, that during the Second World War it was sometimes impossible to find on the spot a sufficient number of neutral practitioners qualified to constitute Mixed Medical Commissions. In such cases, the belligerent Powers agreed to set up either a Medical Commission of doctors of the Detaining Power only, or Commissions consisting of one neutral practitioner (with two votes) and one medical officer of the belligerent Power [1]. This point is now settled by Article 13 of the present Regulations [2].

ARTICLE 2. — APPOINTMENT OF NEUTRAL MEMBERS

The two neutral members shall be appointed by the International Committee of the Red Cross, acting in agreement with the Protecting Power, at the request of the Detaining Power. They may be domiciled either in their country of origin, in any other neutral country, or in the territory of the Detaining Power.

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[1] See *Report on the Meeting of Neutral Members of the Mixed Medical Commissions*, p. 3.

[2] See below, p. 662.

The present provision, which states that the neutral members shall be appointed by the International Committee of the Red Cross, was not included in the 1929 Convention. In many cases during the Second World War, however, the belligerent countries asked the International Committee to make such appointments. The place of residence of the members appointed does not matter provided it is not in a country at war with the Detaining Power ; as a general rule, the two neutral members of the Commission should belong to the same country [1].

Article 5 below provides, as an alternative solution, that the neutral members may be appointed by the Protecting Power.

ARTICLE 3. — PROCEDURE

The neutral members shall be approved by the Parties to the conflict concerned, who shall notify their approval to the International Committee of the Red Cross and to the Protecting Power. Upon such notification, the neutral members shall be considered as effectively appointed.

The appointment of the neutral members must be approved by the Detaining Power and also by the Power of origin. The notification of approval addressed to the Protecting Power should be sent to the address previously indicated by the latter (see Article 104, paragraph 1). That addressed to the International Committee of the Red Cross may be sent either direct to its headquarters or to its delegation in the territory of the Detaining Power.

ARTICLE 4. — DEPUTY MEMBERS

Deputy members shall also be appointed in sufficient number to replace the regular members in case of need. They shall be appointed at the same time as the regular members or, at least, as soon as possible.

It is natural that deputy members should be appointed, in order to ensure that the Commissions can work as efficiently as possible and not be held up by difficulties which can well occur at any time. If possible, the deputy members will be of the same nationality as the members whom they would have to replace.

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[1] See *Actes de la Conférence de 1929*, p. 504.

ARTICLE 5. — ALTERNATIVE PROCEDURE FOR APPOINTMENT

If for any reason the International Committee of the Red Cross cannot arrange for the appointment of the neutral members, this shall be done by the Power protecting the interests of the prisoners of war to be examined.

The motive for this provision is the same as in the case of the appointment of deputy members, i.e. to ensure that in all circumstances the Mixed Medical Commissions can work as rapidly and effectively as possible. The attitude of the International Committee of the Red Cross must therefore be governed by prevailing circumstances, and if there is reason to believe that the necessary arrangements can be made more satisfactorily in that way, it must therefore desist from the procedure for appointments and leave the Protecting Power to act in its stead. It might also happen that the International Committee would be unable to make the necessary appointments.

ARTICLE 6. — PROFESSIONAL QUALIFICATIONS OF NEUTRAL MEMBERS

So far as possible, one of the two neutral members shall be a surgeon and the other a physician.

The experts who met at Geneva in 1945 considered that, from the medical point of view, it was fully as desirable to have a surgeon as a general practitioner on each Commission [1]. It was also recommended that military medical officers should be elected in preference to civilian practitioners, but no provision to that effect was included in the present Regulations.

It is desirable, on the other hand, in order to facilitate the appointment of Commissions, that the health services of neutral countries should draw up in advance, or upon the outbreak of a conflict, a list of qualified doctors prepared to serve on Mixed Medical Commissions. These lists would be kept available to the International Committee of the Red Cross and to Protecting Powers.

[1] See *Report on the Meeting of Neutral Members of the Mixed Medical Commissions*, p. 12.

ARTICLE 7. — STATUS OF THE COMMISSIONS

The neutral members shall be entirely independent of the Parties to the conflict, which shall grant them all facilities in the accomplishment of their duties.

The principle that the Commissions must be entirely independent of the Parties to the conflict has never been questioned and is now confirmed by the present Article. Independence cannot be complete, however, unless the members of the Commissions have all the necessary facilities for carrying out their task. The Detaining Power is therefore required not only to ensure that suitable arrangements are made for their maintenance, but also to provide transport and protection where necessary, or even to accord them diplomatic immunity.

Lastly, the authorities of the Detaining Power must take all appropriate measures so that the inspections can proceed with the utmost despatch and efficiency, both by making the necessary arrangements for visits and by ensuring that the necessary technical or scientific equipment is available.

ARTICLE 8. — TERMS OF SERVICE

By agreement with the Detaining Power, the International Committee of the Red Cross, when making the appointments provided for in Articles 2 and 4 of the present Regulations, shall settle the terms of service of the nominees.

The present Article states that the "terms of service" of the persons concerned are to be settled by the International Committee of the Red Cross, in agreement with the Detaining Power. This means that the salary, insurance (life, health, accident) and travelling expenses will normally be paid by the International Committee, which will then claim reimbursement from the Detaining Power. Moreover, the members of Commissions will wear the military uniform of their home country after prior notification of the Detaining Power by the International Committee [1].

[1] The latter point was the subject of a unanimous recommendation by the Meeting of Neutral Members ; see *Report on the Meeting of Neutral Members of the Mixed Medical Commissions*, p. 13.

ARTICLE 9. — COMMENCEMENT OF WORK

The Mixed Medical Commissions shall begin their work as soon as possible after the neutral members have been approved, and in any case within a period of three months from the date of such approval.

Article 112 of the Convention provides that Mixed Medical Commissions shall be appointed " upon the outbreak of hostilities ". The Commissions must begin their work within three months following the approval of the neutral members appointed (Article 3 above). The three-months period is a maximum.

The Detaining Power must take the initiative, since it is at its request that the International Committee appoints neutral members of the Commissions (Article 2). If the Detaining Power delays in making this request and then in giving its approval, a considerable time may elapse ; this would correspond neither to the spirit nor to the letter of the present clause, which provides that the Commissions must begin their work within three months of the outbreak of the conflict. The Detaining Power is therefore under a moral obligation to take action rapidly so that the time limit can be respected. One good solution would be for the medical associations of the various countries to come to an agreement in peace-time.

ARTICLE 10. — TASKS OF THE COMMISSIONS

The Mixed Medical Commissions shall examine all the prisoners designated in Article 113 of the Convention. They shall propose repatriation, rejection, or reference to a later examination. Their decisions shall be made by a majority vote.

The tasks of the Commissions are defined in Article 113, to which the present Article makes a reference. Mention should also be made of the prisoners of war referred to in Articles 114 and 115. In addition to the proposals mentioned, the Commissions should also be able to propose accommodation in a neutral country, if this is possible for the prisoners of war examined ; this will depend on the conclusion of agreements between the Detaining Power and the neutral country (Article 109, paragraph 2) [1]. This is clear from the wording of the model repatriation certificate (Annex IV E), to which the next Article refers.

[1] In this connection, one should note the difference in wording between the present Article, which states that the Medical Commissions shall *propose* repatriation, etc., and Article 11, which speaks of *decisions*. In fact the Commissions take decisions, for Article 12 expressly states that the Detaining Power is *required to carry out the decisions* of the Commissions.

ARTICLE 11. — COMMUNICATION OF DECISIONS

The decisions made by the Mixed Medical Commissions in each specific case shall be communicated, during the month following their visit, to the Detaining Power, the Protecting Power and the International Committee of the Red Cross. The Mixed Medical Commissions shall also inform each prisoner of war examined of the decision made, and shall issue to those whose repatriation has been proposed certificates similar to the model appended to the present Convention.

No particular form is specified for communicating the decisions of the Commission to the Detaining Power, the Protecting Power and the International Committee of the Red Cross. It may be made in the form of lists. On the other hand, a *repatriation certificate* similar to the model contained in Annex IV E must be issued to each prisoner of war declared eligible for repatriation. A similar certificate may also be issued to prisoners of war proposed for accommodation in a neutral country or for re-examination by the next Commission. In the latter case, the issue of a certificate to the prisoner of war would have the advantage of enabling him to prove to the detaining authorities his right to be examined by the next Commission.

ARTICLE 12. — OBLIGATIONS OF THE DETAINING POWER

The Detaining Power shall be required to carry out the decisions of the Mixed Medical Commissions within three months of the time when it receives due notification of such decisions.

The decisions of the Commissions are binding on the Detaining Power and must be carried out as rapidly as possible. The maximum time-limit of three months mentioned here is intended to enable the Detaining Power to make the best possible arrangements for repatriation.

ARTICLE 13. — ALTERNATIVE SOLUTION

If there is no neutral physician in a country where the services of a Mixed Medical Commission seem to be required, and if it is for any reason impossible to appoint neutral doctors who are resident in another country, the Detaining Power, acting in agreement with the Protecting Power, shall set up a Medical Commission which shall undertake the same duties as a Mixed Medical Commission, subject to the provisions of Articles 1, 2, 3, 4, 5 and 8 of the present Regulations.

As already mentioned in connection with Articles 3 and 4, the present Article covers the contingency in which it proves impossible to find a sufficient number of neutral doctors. In that case, with the agreement of the Protecting Power, the duties of the Mixed Medical Commissions will be carried out by doctors belonging to the Detaining Power. There is no express provision here for any action by the International Committee of the Red Cross, but it is understood that the Committee continues to have the general responsibilities conferred on it by the Convention, in particular by Article 9, which states: "The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross . . . may . . . undertake for the protection of prisoners of war . . ."

ARTICLE 14. — FUNCTIONS OF THE COMMISSIONS TO BE PERMANENT

Mixed Medical Commissions shall function permanently and shall visit each camp at intervals of not more than six months.

The six-months interval between visits mentioned here may seem very long since it concerns persons whose health and physical well-being are in principle seriously affected. It was established in the light of the experience of the Second World War, when there were millions of prisoners of war in innumerable camps, forming a tremendous task for the Mixed Medical Commissions. It is self-evident, however, that the interval of six months is a maximum; the fact that the Mixed Medical Commissions must function permanently is a clear indication that their activities must proceed virtually without interruption. If the prisoners to be examined are less numerous, the visits will be more frequent. Furthermore, there is nothing to prevent the establishment of several Mixed Medical Commissions for a single belligerent country, if the number of prisoners of war so requires.

ANNEX III

REGULATIONS CONCERNING COLLECTIVE RELIEF

(see Article 73) [1]

ARTICLE 1. — DISTRIBUTION

Prisoners' representatives shall be allowed to distribute collective relief shipments for which they are responsible, to all prisoners of war administered by their camp, including those who are in hospitals, or in prisons or other penal establishments.

Prisoners' representatives are authorized to distribute collective relief to all persons administered by their camp, that is to say, also to prisoners of war in labour detachments which do not constitute separate camps, unless such prisoners of war have their own prisoners' representative (Article 81, paragraph 4). Articles 98 and 108 make provision for the case of prisoners of war undergoing disciplinary punishment or confined to a prison or penitentiary establishment.

ARTICLE 2. — RULES FOR DISTRIBUTION

The distribution of collective relief shipments shall be effected in accordance with the instructions of the donors and with a plan drawn up by the prisoners' representatives. The issue of medical stores shall, however, be made for preference in agreement with the senior medical officers, and the latter may, in hospitals and infirmaries, waive the said instructions, if the needs of their patients so demand. Within the limits thus defined, the distribution shall always be carried out equitably.

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[1] At the beginning of the commentary on Article 73, reference was made to the reasons why the authors of the Convention embodied most of the principles governing the receipt and distribution of collective relief in annexed Regulations rather than in the Convention itself.

The prisoners' representative must draw up a distribution plan in accordance with the donors' instructions and, in the case of medicaments, in consultation with the medical officer, but distribution must always be equitable.

He must therefore organize the distribution of collective relief so as to apportion it to those who are less fortunate in receiving individual parcels, or who are less robust, in proportion to their needs. This general principle of equity is particularly relevant to the provisions of Article 7 below.

ARTICLE 3. — FREEDOM OF MOVEMENT

The said prisoners' representatives or their assistants shall be allowed to go to the points of arrival of relief supplies near their camps, so as to enable the prisoners' representatives or their assistants to verify the quality as well as the quantity of the goods received, and to make out detailed reports thereon for the donors.

Freedom of movement is referred to in Article 81, paragraph 2. It implies access to the necessary transport facilities to visit the places concerned. It is of course understood that the Detaining Power may send an escort with the prisoners' representatives. Shipments are under the care of the Detaining Power and the official transport authorities. From the moment when those authorities have completed their task, however, the prisoners' representatives must be able to carry out a check.

ARTICLE 4. — FACILITIES

Prisoners' representatives shall be given the facilities necessary for verifying whether the distribution of collective relief in all subdivisions and annexes of their camps has been carried out in accordance with their instructions.

Facilities are only provided for verifying the manner in which collective relief is distributed. This implies that the prisoners' representatives must be able to establish a checking procedure, by means of questionnaires, forms or in any other appropriate way.

ARTICLE 5. — ENQUIRIES AND REPORTS

Prisoners' representatives shall be allowed to fill up, and cause to be filled up by the prisoners' representatives of labour detachments or by the senior medical officers of infirmaries and hospitals, forms or questionnaires intended for the donors, relating to collective relief supplies (distribution, requirements, quantities, etc.). Such forms and questionnaires, duly completed, shall be forwarded to the donors without delay.

This provision is intended to enable the prisoners' representatives to ascertain the needs of prisoners of war, and to draw up reports on the distribution of relief supplies.

It is closely related to Article 81, paragraphs 2 and 4.

ARTICLE 6. — RIGHT TO BUILD UP RESERVE STOCKS

In order to secure the regular issue of collective relief to the prisoners of war in their camp, and to meet any needs that may arise from the arrival of new contingents of prisoners, prisoners' representatives shall be allowed to build up and maintain adequate reserve stocks of collective relief. For this purpose, they shall have suitable warehouses at their disposal; each warehouse shall be provided with two locks, the prisoners' representative holding the keys of one lock and the camp commander the keys of the other.

This clause will make it possible to avoid the difficulties which arose during the Second World War when certain Detaining Powers wanted to forbid the building up of reserve stocks. It goes without saying that those responsible for checking the distribution of relief supplies will also have the right to inspect warehouses containing reserve stocks of collective relief.

ARTICLE 7. — WITHDRAWAL OF CLOTHING

When collective consignments of clothing are available each prisoner of war shall retain in his possession at least one complete set of clothes. If a prisoner has more than one set of clothes, the prisoners' representative shall be permitted to withdraw excess clothing from those with the largest number of sets, or particular articles in excess of one, if this is necessary

in order to supply prisoners who are less well provided. He shall not, however, withdraw second sets of underclothing, socks or footwear, unless this is the only means of providing for prisoners of war with none.

The present Article goes farther than Article 2, authorizing the prisoners' representative to withdraw certain articles of clothing from prisoners of war if other prisoners of war are in need. It was necessary to give the prisoners' representative the necessary authority to do so because of the difficulties sometimes raised by prisoners of war themselves during the Second World War in this connection. It will be noted that the authority conferred on the prisoners' representative by this provision is broader than that in any other Article of the Convention.

ARTICLE 8. — PURCHASE OF RELIEF SUPPLIES IN THE TERRITORY OF THE DETAINING POWER

The High Contracting Parties, and the Detaining Powers in particular, shall authorize, as far as possible and subject to the regulations governing the supply of the population, all purchases of goods made in their territories for the distribution of collective relief to prisoners of war. They shall similarly facilitate the transfer of funds and other financial measures of a technical or administrative nature taken for the purpose of making such purchases.

The authorization and facilities referred to by the present Article must be granted by all the High Contracting Parties, within certain limits and subject to certain conditions ; this provision will therefore be more easily applicable and broader in scope in those countries which are only affected slightly if at all by the war, and therefore are not compelled to the same extent to take strict measures in regard to economy, finance and supplies. The general obligation instituted by the present Article, as regards purchases for the distribution of collective relief, is nevertheless a noteworthy innovation.

ARTICLE 9. — OTHER MEANS OF DISTRIBUTION

The foregoing provisions shall not constitute an obstacle to the right of prisoners of war to receive collective relief before their arrival in a camp or in the course of transfer, nor to the possibility of representatives of the Protecting Power, the International Committee of the Red Cross,

or any other body giving assistance to prisoners which may be responsible for the forwarding of such supplies, ensuring the distribution thereof to the addressees by any other means that they may deem useful.

This Article provides for direct action by the Protecting Power, the International Committee of the Red Cross or any other body giving assistance to prisoners of war, in order to distribute relief supplies. It thus makes it possible to distribute relief supplies to prisoners of war in all circumstances, that is to say even when for any reason they are not in a camp or are deprived of the services of a prisoners' representative. The method of distribution of collective supplies established under Article 73 and the present Regulations applies essentially to the normal situation of prisoners of war, but it was desirable to prevent the Detaining Power from using those provisions as a pretext for refusing relief to other prisoners of war. At the same time, it was necessary to enable the authorities distributing relief to resort, if need be, to a means of distribution other than that involving the prisoners' representative. As an example, one may recall the individual and direct distribution, by the roadside, of collective relief to long convoys of prisoners of war travelling on foot in Germany towards the end of the war.

ANNEX IV [1]

A. IDENTITY CARD *(see Article 4)* [2]

Hair	Eyes	Weight	Height
Official seal or imprint	Blood type Religion	Fingerprints (optional) (Left forefinger) (Right forefinger)	Any other mark of identification

NOTICE

This identity card is issued to persons who accompany the Armed Forces of but are not part of them.
The card must be carried at all times by the person to whom it is issued. If the bearer is taken prisoner, he shall at once hand the card to the Detaining Authorities, to assist in his identification.

Photograph of the bearer

(Name of the country and military authority issuing this card)

IDENTITY CARD

FOR A PERSON WHO ACCOMPANIES THE ARMED FORCES

Name .....

First names .....

Date and place of birth .....

Accompanies the Armed Forces as .....

Date of issue

Signature of bearer

.....

.....

Remarks. — This card should be made out for preference in two or three languages, one of which is in international use. Actual size of the card : 13 by 10 centimetres. It should be folded along the dotted line.

[1] With regard to identity cards and capture cards, see *Information Note No. 3*, International Committee of the Red Cross, May 1953, pp. 16-18.

[2] The model identity card proposed in the present annex is intended for persons who accompany the armed forces without actually being members thereof.

Pursuant to Article 4, paragraph A (4), the said card must be " similar " to the model.

It should be noted that provision is made for another identity card for persons who are under the jurisdiction of a Party to the conflict and are liable to become prisoners of war (Article 17, paragraph 3).

ANNEX IV

B. CAPTURE CARD *(see Article 70)* [1]

1. Front

PRISONER OF WAR MAIL

Postage free

CAPTURE CARD FOR PRISONER OF WAR

IMPORTANT

This card must be completed by each prisoner immediately after being taken prisoner and each time his address is changed (by reason of transfer to a hospital or to another camp).

This card is distinct from the special card which each prisoner is allowed to send to his relatives.

CENTRAL PRISONERS OF WAR AGENCY

INTERNATIONAL COMMITTEE OF THE RED CROSS

GENEVA

SWITZERLAND

2. Reverse side

Write legibly and in block letters

1. Power on which the prisoner depends .....

2. Name 3. First names (in full) 4. First name of father

.....

5. Date of birth ..... 6. Place of birth .....

7. Rank .....

8. Service number .....

9. Address of next of kin .....

*10. Taken prisoner on : (or)
Coming from (Camp No., hospital, etc.) .....

*11. *(a)* Good health—*(b)* Not wounded—*(c)* Recovered—*(d)* Convalescent—*(e)* Sick—*(f)* Slightly wounded—*(g)* Seriously wounded.

12. My present address is : Prisoner No. .....
Name of camp .....

13. Date ..... 14. Signature .....

* Strike out what is not applicable—Do not add any remarks—See explanations overleaf.

Remarks. — This form should be made out in two or three languages, particularly in the prisoner's own language and in that of the Detaining Power. Actual size : 15 by 10.5 centimetres.

[1] The capture card is essential for the work of the Central Prisoners of War Agency. In accordance with Article 70, within a week following capture, and in case of any change of address, every prisoner of war must be enabled to send this card. It is therefore essential that it should be transmitted without delay. Whereas the identity card already referred to must be " similar " to the model, the capture card is to be " similar, if possible, to the model annexed ", and the latter is based on the experience of the International Committee of the Red Cross. See *Information Note No. 2*, International Committee of the Red Cross, November 1952, pp. 8-10.

ANNEX IV

C. CORRESPONDENCE CARD AND LETTER *(see Article 71)*[1]

1. Front I. CARD.

PRISONER OF WAR MAIL

Postage free

POST CARD

To .....

Sender :

Name and first names .....

Place and date of birth .....

Prisoner of War No. .....

Name of camp .....

Country where posted .....

Place of Destination .....

Street .....

Country .....

Province or Department .....

2. Reverse side

NAME OF CAMP ..... Date .....

.....

.....

.....

.....

.....

.....

.....

.....

Write on the dotted lines only and as legibly as possible.

Remarks.—This form should be made out in two or three languages, particularly in the prisoner's own language and in that of the Detaining Power. Actual size of form : 15 by 10 centimetres.

---

[1] The model correspondence card and letter are also based on the experience of the International Committee of the Red Cross. Provision is made for them in Article 71, which states that such letters and cards " must be conveyed by the most rapid method " available.

The models correspond in size to the usual format for postal correspondence. The letter is to be folded in half, so that prisoners of war will write their message on the reverse side and fill in the information required on the front. It cannot be over-emphasized that it is to the advantage of both the Detaining Power and prisoners of war to conform to the models proposed.

See *Information Note No. 2*, International Committee of the Red Cross, November 1952, pp. 8-10.

ANNEX IV

C. CORRESPONDENCE CARD AND LETTER *(see Article 71)*

2. LETTER

PRISONER OF WAR MAIL

Postage free

To .....

.....

Place .....

Street .....

Country .....

Department or Province .....

Country where posted .....

Name of camp .....

Prisoner of War No. .....

Date and place of birth .....

Name and first names .....

Sender :

****

.....

Remarks.—This form should be made out in two or three languages, particularly in the prisoner's own language and in that of the Detaining Power. It should be folded along the dotted line, the tab being inserted in the slit (marked by a line of asterisks); it then has the appearance of an envelope. Overleaf, it is lined like the postcard above *(Annex IV C1)*; this space can contain about 250 words which the prisoner is free to write. Actual size of the folded form : 29 by 15 centimetres.

ANNEX IV

D. NOTIFICATION OF DEATH *(see Article 120)*[1]

(Title of responsible authority)

NOTIFICATION OF DEATH

Power on which the prisoner depended .....

Name and first names	.....
First name of father	.....
Place and date of birth	.....
Place and date of death	.....
Rank and service number (as given on identity disc)	.....
Address of next of kin	.....
Where and when taken prisoner	.....
Cause and circumstances of death	.....
Place of burial	.....
Is the grave marked and can it be found later by the relatives ?	.....
Are the personal effects of the deceased in the keeping of the Detaining Power or are they being forwarded together with this notification ?	.....
If forwarded, through what agency ?	.....
Can the person who cared for the deceased during sickness or during his last moments (doctor, nurse, minister of religion, fellow prisoner) give here or on an attached sheet a short account of the circumstances of the death and burial ?	.....

(Date, seal and signature of responsible authority.)

.....

Signature and address of two witnesses

.....

Remarks.—This form should be made out in two or three languages, particularly in the prisoner's own language and in that of the Detaining Power. Actual size of the form : 21 by 30 centimetres.

[1] The model notification of death given above must be used by the parties to the Convention, in accordance with Article 120, paragraph 2 ; it is therefore essential that all the items indicated should be included in forms drawn up by Detaining Powers. Any lists must also be consistent with the above model and must be certified by a responsible officer.

Such notifications must be transmitted " as rapidly as possible ".

ANNEX IV

E. REPATRIATION CERTIFICATE

(see Annex II, Article 11) [1]

REPATRIATION CERTIFICATE

Date :

Camp :

Hospital :

Surname :

First names :

Date of birth :

Rank :

Army number :

P. W. number :

Injury—Disease :

Decision of the Commission :

Chairman of the
Mixed Medical Commission :

A = direct repatriation

B = accommodation in a neutral country

NC = re-examination by next Commission

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[1] Provision is made for a repatriation certificate in Article 11 of the Regulations concerning Mixed Medical Commissions. It must be issued by such Commissions, immediately after the examination, to every prisoner of war found eligible for repatriation.

ANNEX V

MODEL REGULATIONS CONCERNING PAYMENTS SENT BY PRISONERS TO THEIR OWN COUNTRY

(see Article 63) [1]

(1) The notification referred to in the third paragraph of Article 63 will show :

(a) number as specified in Article 17, rank, surname and first names of the prisoner of war who is the payer ;

(b) the name and address of the payee in the country of origin ;

(c) the amount to be so paid in the currency of the country in which he is detained.

(2) The notification will be signed by the prisoner of war, or his witnessed mark made upon it if he cannot write, and shall be countersigned by the prisoners' representative.

(3) The camp commander will add to this notification a certificate that the prisoner of war concerned has a credit balance of not less than the amount registered as payable.

(4) The notification may be made up in lists, each sheet of such lists witnessed by the prisoners' representative and certified by the camp commander.

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[1] These regulations are given as an indication, as expressly provided in Article 63, paragraph 4.

RESOLUTIONS OF THE DIPLOMATIC CONFERENCE OF GENEVA, 1949

Resolution 1. — The Conference recommends that, in the case of a dispute relating to the interpretation or application of the present Conventions which cannot be settled by other means, the High Contracting Parties concerned endeavour to agree between themselves to refer such dispute to the International Court of Justice.

Resolution 2. — Whereas circumstances may arise in the event of the outbreak of a future international conflict in which there will be no Protecting Power with whose co-operation and under whose scrutiny the Conventions for the Protection of Victims of War can be applied ; and

whereas Article 10 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, Article 10 of the Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949, Article 10 of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949, and Article 11 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of August 12, 1949, provide that the High Contracting Parties may at any time agree to entrust to a body which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers by virtue of the aforesaid Conventions :

the Conference recommends that consideration be given as soon as possible to the advisability of setting up an international body, the functions of which shall be, in the absence of a Protecting Power, to fulfil the duties performed by Protecting Powers in regard to the application of the Conventions for the Protection of War Victims.

Resolution 3. — Whereas agreements may only with difficulty be concluded during hostilities ;

whereas Article 28 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the

Field of August 12, 1949, provides that the Parties to the conflict shall, during hostilities, make arrangements for relieving where possible retained personnel, and shall settle the procedure of such relief ;

whereas Article 31 of the same Convention provides that, as from the outbreak of hostilities, Parties to the conflict may determine by special arrangement the percentage of personnel to be retained, in proportion to the number of prisoners and the distribution of the said personnel in the camps,

the Conference requests the International Committee of the Red Cross to prepare a model agreement on the two questions referred to in the two Articles mentioned above and to submit it to the High Contracting Parties for their approval.

Resolution 4. — Whereas Article 21 of the Geneva Convention of July 27, 1929, for the Relief of the Wounded and Sick in Armies in the Field, concerning the identity documents to be carried by medical personnel, was only partially observed during the course of the recent war, thus creating serious difficulties for many members of such personnel,

the Conference recommends that States and National Red Cross Societies take all necessary steps in time of peace to have medical personnel duly provided with the badges and identity cards prescribed in Article 40 of the new Convention.

Resolution 5. — Whereas misuse has frequently been made of the Red Cross emblem,

the Conference recommends that States take strict measures to ensure that the said emblem, as well as other emblems referred to in Article 38 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, is used only within the limits prescribed by the Geneva Conventions, in order to safeguard their authority and protect their high significance.

Resolution 6. — Whereas the present Conference has not been able to raise the question of the technical study of means of communication between hospital ships, on the one hand, and warships and military aircraft on the other, since that study went beyond its terms of reference ;

whereas this question is of the greatest importance for the safety and efficient operation of hospital ships.

the Conference recommends that the High Contracting Parties will, in the near future, instruct a Committee of Experts to examine technical improvements of modern means of communication between hospital ships, on the one hand, and warships and military aircraft, on the other, and also to study the possibility of drawing up an International Code laying down precise regulations for the use of those means, in order that hospital ships may be assured of the maximum protection and be enabled to operate with the maximum efficiency.

Resolution 7. — The Conference, being desirous of securing the maximum protection for hospital ships, expresses the hope that all High Contracting Parties to the Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949, will arrange that, whenever conveniently practicable, such ships shall frequently and regularly broadcast particulars of their position, route and speed.

Resolution 8. — The Conference wishes to affirm before all nations :

that, its work having been inspired solely by humanitarian aims, its earnest hope is that, in the future, Governments may never have to apply the Geneva Conventions for the Protection of War Victims ;

that its strongest desire is that the Powers, great and small, may always reach a friendly settlement of their differences through co-operation and understanding between nations, so that peace shall reign on earth for ever.

Resolution 9. — Whereas Article 71 of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949, provides that prisoners of war who have been without news for a long period, or who are unable to receive news from their next of kin or to give them news by the ordinary postal route, as well as those who are at a great distance from their home, shall be permitted to send telegrams, the fees being charged against the prisoners of war's accounts with the Detaining Power or paid in the currency at their disposal, and that prisoners of war shall likewise benefit by these facilities in cases of urgency ; and

whereas to reduce the cost, often prohibitive, of such telegrams or cables, it appears necessary that some method of grouping messages should be introduced whereby a series of short specimen messages concerning personal health, health of relatives at home, schooling, finance, etc., could be drawn up and numbered, for use by prisoners of war in the aforesaid circumstances,

the Conference, therefore, requests the International Committee of the Red Cross to prepare a series of specimen messages covering these requirements and to submit them to the High Contracting Parties for their approval.

Resolution 10. — The Conference considers that the conditions under which a Party to a conflict can be recognized as a belligerent by Powers not taking part in this conflict, are governed by the general rules of international law on the subject and are in no way modified by the Geneva Conventions.

Resolution 11. — Whereas the Geneva Conventions require the International Committee of the Red Cross to be ready at all times and in all circumstances to fulfil the humanitarian tasks entrusted to it by these Conventions,

the Conference recognizes the necessity of providing regular financial support for the International Committee of the Red Cross.

TEXT OF THE GENEVA CONVENTION RELATIVE TO THE TREATMENT OF PRISONERS OF WAR OF AUGUST 12, 1949

with, for comparison, the

TEXT OF THE GENEVA CONVENTION RELATIVE TO THE TREATMENT OF PRISONERS OF WAR OF JULY 27, 1929

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PREAMBLE

[Names of heads of States] . . .
Recognizing that, in the extreme event of a war, it will be the duty of every Power to mitigate, as far as possible, the inevitable rigours thereof and to alleviate the condition of prisoners of war ;
Being desirous of developing the principles which have inspired the international conventions of The Hague, in particular the Convention concerning the Laws and Customs of War and the Regulations thereunto annexed ;

Have resolved to conclude a convention for that purpose and have appointed as their Plenipotentiaries : [designation of the Plenipotentiaries]

Who, having communicated their full powers, found in good and due form, have agreed as follows :

The undersigned, Plenipotentiaries of the Governments represented at the Diplomatic Conference held at Geneva from April 21 to August 12, 1949, for the purpose of revising the Convention concluded at Geneva on July 27, 1929, relative to the Treatment of Prisoners of War, have agreed as follows :

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PART I

GENERAL PROVISIONS

Article 82 (paragraph 1)

The provisions of the present Convention shall be respected by the High Contracting Parties in all circumstances.

Article 82 (paragraph 2)

In time of war, if one of the belligerents is not a party to the Convention, its provisions shall, nevertheless, remain binding as between the belligerents who are parties thereto.

Article 1

The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.

Article 2

In addition to the provisions which shall be implemented in peace-time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.

Article 3

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions :

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

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To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons :

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture ;

(b) taking of hostages ;

(c) outrages upon personal dignity, in particular, humiliating and degrading treatment ;

(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

Article 1

The present Convention shall apply without prejudice to the stipulations of Part VII :—

(1) to all persons referred to in Articles 1, 2 and 3 of the Regulations annexed to the Hague Convention of the 18th October, 1907, concerning the Laws and Customs of War on Land, who are captured by the enemy;

(2) to all persons belonging to the armed forces of belligerents who are captured by the enemy in the course of operations of maritime or aerial war, subject to such exceptions (derogations) as the

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 terri-

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conditions of such capture render inevitable. Nevertheless these exceptions shall not infringe the fundamental principles of the present Convention ; they shall cease from the moment when the captured persons shall have reached a prisoners-of-war camp.

Article 81

Persons who follow the armed forces without directly belonging thereto, such as correspondents, newspaper reporters, sutlers, or contractors, who fall into the hands of the enemy, and whom the latter think fit to detain, shall be entitled to be treated as prisoners of war, provided they are in possession of an authorization from the military authorities of the armed forces which they were following.

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tory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil 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

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	of the enemy and until their fina 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.
Article 83 (paragraphs 1 and 2) The High Contracting Parties reserve to themselves the right to conclude special conventions on all questions relating to prisoners of war concerning which they may consider it desirable to make special provision.	*Article 6* In addition to the agreements expressly provided for in Articles 10, 23, 28, 33, 60, 65, 66, 67, 72, 73, 75, 109, 110, 118, 119, 122 and 132, the High Contracting Parties may conclude other special agreements for all matters concerning which they may deem it suitable to make separate provision. No special agreement shall adversely affect the situation of prisoners of war, as defined by the present Convention, nor restrict the rights which it confers upon them.
Prisoners of war shall continue to enjoy the benefits of these agreements until their repatriation has been effected, subject to any provisions expressly to the contrary contained in the above-mentioned agreements or in subsequent agreements, and subject to any more favourable measures by one or the other of the belligerent Powers concerning the prisoners detained by that Power.	Prisoners of war shall continue to have the benefit of such agreements as long as the Convention is applicable to them, except where express provisions to the contrary are contained in the aforesaid or in subsequent agreements, or where more favourable measures have been taken with regard to them by one or other of the Parties to the conflict.
	Article 7 Prisoners of war may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreements referred to in the foregoing Article, if such there be.
Article 86 (paragraphs 1 and 3) The High Contracting Parties recognize that a guarantee of the regular application of the present Convention will be found in the possibility of collaboration between the Protecting Powers charged with the protection of the interests of the belligerents ; in this connection, the Protecting Powers	*Article 8* The present Convention shall be applied with the co-operation and under the scrutiny of the Protecting Powers whose duty it is to safeguard the interests of the Parties to the conflict. For this purpose, the Protecting Powers may appoint, apart from their diplomatic or consular

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may, apart from their diplomatic personnel, appoint delegates from among their own nationals or the nationals of other neutral Powers. The appointment of these delegates shall be subject to the approval of the belligerent with whom they are to carry out their mission.

Belligerents shall facilitate as much as possible the task of the representatives or recognized delegates of the Protecting Power. The military authorities shall be informed of their visits.

Article 88

The foregoing provisions do not constitute any obstacle to the humanitarian work which the International Committee of the Red Cross may perform for the protection of prisoners of war with the consent of the belligerents concerned.

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staff, delegates from amongst their own nationals or the nationals of other neutral Powers. The said delegates shall be subject to the approval of the Power with which they are to carry out their duties.

The Parties to the conflict shall facilitate to the greatest extent possible the task of the representatives or delegates of the Protecting Powers.

The representatives or delegates of the Protecting Powers shall not in any case exceed their mission under the present Convention. They shall, in particular, take account of the imperative necessities of security of the State wherein they carry out their duties.

Article 9

The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of prisoners of war and for their relief.

Article 10

The High Contracting Parties may at any time agree to entrust to an organization which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers by virtue of the present Convention.

When prisoners of war do not benefit or cease to benefit, no matter for what reason, by the activities of a Protecting Power or of an organization provided for in the first paragraph above, the Detaining Power shall request a neutral State, or such an organization, to undertake the functions performed under the present Convention by a Protecting Power designated by the Parties to a conflict.

If protection cannot be arranged accordingly, the Detaining Power shall request or shall accept, subject to the provisions of this Article, the offer of the services of a humanitarian

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organization, such as the International Committee of the Red Cross, to assume the humanitarian functions performed by Protecting Powers under the present Convention.

Any neutral Power or any organization invited by the Power concerned or offering itself for these purposes, shall be required to act with a sense of responsibility towards the Party to the conflict on which persons protected by the present Convention depend, and shall be required to furnish sufficient assurances that it is in a position to undertake the appropriate functions and to discharge them impartially.

No derogation from the preceding provisions shall be made by special agreements between Powers one of which is restricted, even temporarily, in its freedom to negotiate with the other Power or its allies by reason of military events, more particularly where the whole, or a substantial part, of the territory of the said Power is occupied.

Whenever in the present Convention mention is made of a Protecting Power, such mention applies to substitute organizations in the sense of the present Article.

Article 83 (paragraph 3)

In order to ensure the application, on both sides, of the provisions of the present Convention, and to facilitate the conclusion of the special conventions mentioned above, the belligerents may, at the commencement of hostilities, authorize meetings of representatives of the respective authorities charged with the administration of prisoners of war.

Article 87

In the event of dispute between the belligerents regarding the application of the provisions of the present Convention, the Protecting Powers shall, as far as possible, lend their good offices with the object of settling the dispute.

To this end, each of the Protecting Powers may, for instance, propose

Article 11

In cases where they deem it advisable in the interest of protected persons, particularly in cases of disagreement between the Parties to the conflict as to the application or interpretation of the provisions of the present Convention, the Protecting Powers shall lend their good offices with a view to settling the disagreement.

For this purpose, each of the Protecting Powers may, either at the invitation of one Party or on its own initiative, propose to the Parties to the conflict a meeting of their representatives, and in particular of the authorities responsible for prisoners of war, possibly on neutral territory suitably chosen. The Parties to the conflict shall be bound to give effect to the proposals made to them for this purpose. The Protecting Powers may,

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to the belligerents concerned that a conference of representatives of the latter should be held, on suitably chosen neutral territory. The belligerents shall be required to give effect to proposals made to them with this object. The Protecting Power may, if necessary, submit for the approval of the Powers in dispute the name of a person belonging to a neutral Power or nominated by the International Committee of the Red Cross, who shall be invited to take part in this conference.

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if necessary, propose for approval by the Parties to the conflict a person belonging to a neutral Power, or delegated by the International Committee of the Red Cross, who shall be invited to take part in such a meeting.

PART II

GENERAL PROTECTION OF PRISONERS OF WAR

Article 2 (paragraph 1)

Prisoners of war are in the power of the hostile Government, but not of the individuals or formation which captured them.

Article 12

Prisoners of war are in the hands of the enemy Power, but not of the individuals or military units who have captured them. Irrespective of the individual responsibilities that may exist, the Detaining Power is responsible for the treatment given them.

Prisoners of war may only be transferred by the Detaining Power to a Power which is a party to the Convention and after the Detaining Power has satisfied itself of the willingness and ability of such transferee Power to apply the Convention. When prisoners of war are transferred under such circumstances, responsibility for the application of the Convention rests on the Power accepting them while they are in its custody.

Nevertheless if that Power fails to carry out the provisions of the Convention in any important respect the Power by whom the prisoners of war were transferred shall, upon being notified by the Protecting Power, take effective measures to correct the situation or shall request the return of the prisoners of war. Such requests must be complied with.

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Article 2 (paragraphs 2 and 3)	*Article 13*
They shall at all times be humanely treated and protected, particularly against acts of violence, from insults and from public curiosity.	Prisoners of war must at all times be humanely treated. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited and will be regarded as a serious breach of the present Convention. In particular, no prisoner of war may be subjected to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical, dental or hospital treatment of the prisoner concerned and carried out in his interest. Likewise, prisoners of war must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity.
Measures of reprisal against them are forbidden.	Measures of reprisal against prisoners of war are prohibited.
Article 3	*Article 14*
Prisoners of war are entitled to respect for their persons and honour. Women shall be treated with all consideration due to their sex.	Prisoners of war are entitled in all circumstances to respect for their persons and their honour. Women shall be treated with all the regard due to their sex and shall in all cases benefit by treatment as favourable as that granted to men.
Prisoners retain their full civil capacity.	Prisoners of war shall retain the full civil capacity which they enjoyed at the time of their capture. The Detaining Power may not restrict the exercise, either within or without its own territory, of the rights such capacity confers except in so far as the captivity requires.
Article 4 (paragraph 1)	*Article 15*
The Detaining Power is required to provide for the maintenance of prisoners of war in its charge.	The Power detaining prisoners of war shall be bound to provide free of charge for their maintenance and for the medical attention required by their state of health.
Article 4 (paragraph 2)	*Article 16*
Differences of treatment between prisoners are permissible only if such differences are based on the military rank, the state of physical or mental health, the professional abilities, or	Taking into consideration the provisions of the present Convention relating to rank and sex, and subject to any privileged treatment which may be accorded to them by reason

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the sex of those who benefit from them.	of their state of health, age or professional qualifications, all prisoners of war shall be treated alike by the Detaining Power, without any adverse distinction based on race, nationality, religious belief or political opinions, or any other distinction founded on similar criteria.

PART III

CAPTIVITY

SECTION I

BEGINNING OF CAPTIVITY

Article 5

Every prisoner of war is required to declare, if he is interrogated on the subject, his true names and rank, or his regimental number.

If he infringes this rule, he exposes himself to a restriction of the privileges accorded to prisoners of his category.

Article 17

Every prisoner of war, when questioned on the subject, is bound to give only his surname, first names and rank, date of birth, and army, regimental, personal or serial number, or failing this, equivalent information.

If he wilfully infringes this rule he may render himself liable to a restriction of the privileges accorded to his rank or status.

Each Party to a conflict is required to furnish the persons under its jurisdiction who are liable to become prisoners of war, with an identity card showing the owner's surname, first names, rank, army, regimental, personal or serial number or equivalent information, and date of birth. The identity card may, furthermore, bear the signature or the fingerprints, or both, of the owner, and may bear, as well, any other information the Party to the conflict may wish to add concerning persons belonging to its armed forces. As far as possible the card shall measure 6.5×10 cm. and shall be issued in duplicate. The identity card shall be shown by the prisoner of war upon demand, but may in no case be taken away from him.

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No pressure shall be exerted on prisoners to obtain information regarding the situation in their armed forces or their country. Prisoners who refuse to reply may not be threatened, insulted, or exposed to unpleasantness or disadvantages of any kind whatsoever.

If, by reason of his physical or mental condition, a prisoner is incapable of stating his identity, he shall be handed over to the Medical Service.

Article 20 (second sentence)

The same principle shall be applied to questions.

Article 6

Paragraph 1

All personal effects and articles in personal use—except arms, horses, military equipment and military papers—shall remain in the possession of prisoners of war, as well as their metal helmets and gas-masks.

Paragraph 3

Their identity tokens, badges of rank, decorations and articles of value may not be taken from prisoners.

Paragraph 2

Sums of money carried by prisoners may only be taken from them on the order of an officer and after the amount has been recorded. A receipt shall be given for them. Sums thus impounded shall be placed to the account of each prisoner.

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No physical or mental torture, nor any other form of coercion may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to any unpleasant or disadvantageous treatment of any kind.

Prisoners of war who, owing to their physical or mental condition, are unable to state their identity shall be handed over to the medical service. The identity of such prisoners shall be established by all possible means, subject to the provisions of the preceding paragraph.

The questioning of prisoners of war shall be carried out in a language which they understand.

Article 18

All effects and articles of personal use, except arms, horses, military equipment and military documents, shall remain in the possession of prisoners of war, likewise their metal helmets and gas masks and like articles issued for personal protection. Effects and articles used for their clothing or feeding shall likewise remain in their possession, even if such effects and articles belong to their regulation military equipment.

At no time should prisoners of war be without identity documents. The Detaining Power shall supply such documents to prisoners of war who possess none.

Badges of rank and nationality, decorations and articles having above all a personal or sentimental value may not be taken from prisoners of war.

Sums of money carried by prisoners of war may not be taken away from them except by order of an officer, and after the amount and particulars of the owner have been recorded in a special register and an itemized receipt has been given, legibly inscribed with the name, rank and unit of the person issuing the said receipt. Sums in the currency of the Detaining Power, or

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	which are changed into such currency at the prisoner's request, shall be placed to the credit of the prisoner's account as provided in Article 64.
	The Detaining Power may withdraw articles of value from prisoners of war only for reasons of security; when such articles are withdrawn, the procedure laid down for sums of money impounded shall apply.
	Such objects, likewise the sums taken away in any currency other than that of the Detaining Power, and the conversion of which has not been asked for by the owners, shall be kept in the custody of the Detaining Power and shall be returned in their initial shape to prisoners of war at the end of their captivity.
Article 7	*Article 19*
As soon as possible after their capture, prisoners of war shall be evacuated to depôts sufficiently removed from the fighting zone for them to be out of danger.	Prisoners of war shall be evacuated as soon as possible after their capture, to camps situated in an area far enough from the combat zone for them to be out of danger.
Only prisoners who, by reason of their wounds or maladies, would run greater risks by being evacuated than by remaining may be kept temporarily in a dangerous zone.	Only those prisoners of war who, owing to wounds or sickness, would run greater risks by being evacuated than by remaining where they are, may be temporarily kept back in a danger zone.
Prisoners shall not be unnecessarily exposed to danger while awaiting evacuation from a fighting zone.	Prisoners of war shall not be unnecessarily exposed to danger while awaiting evacuation from a fighting zone.
	Article 20
The evacuation of prisoners on foot shall in normal circumstances be effected by stages of not more than 20 kilometres per day, unless the necessity for reaching water and food depôts requires longer stages.	The evacuation of prisoners of war shall always be effected humanely and in conditions similar to those for the forces of the Detaining Power in their changes of station.
	The Detaining Power shall supply prisoners of war who are being evacuated with sufficient food and potable water, and with the necessary clothing and medical attention. The Detaining Power shall take all suitable precautions to ensure their safety during evacuation, and shall establish as soon as possible a list of the prisoners of war who are evacuated.

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If prisoners of war must, during evacuation, pass through transit camps, their stay in such camps shall be as brief as possible.

SECTION II

INTERNMENT OF PRISONERS OF WAR

CHAPTER I

GENERAL OBSERVATIONS

Article 9 (paragraph 1)

Prisoners of war may be interned in a town, fortress, or other place, and may be required not to go beyond certain fixed limits. They may also be interned in fenced camps ; they shall not be confined or imprisoned except as a measure indispensable for safety or health, and only so long as circumstances exist which necessitate such a measure.

Article 21

The Detaining Power may subject prisoners of war to internment. It may impose on them the obligation of not leaving, beyond certain limits, the camp where they are interned, or if the said camp is fenced in, of not going outside its perimeter. Subject to the provisions of the present Convention relative to penal and disciplinary sanctions, prisoners of war may not be held in close confinement except where necessary to safeguard their health and then only during the continuation of the circumstances which make such confinement necessary.

Prisoners of war may be partially or wholly released on parole or promise, in so far as is allowed by the laws of the Power on which they depend. Such measures shall be taken particularly in cases where this may contribute to the improvement of their state of health. No prisoner of war shall be compelled to accept liberty on parole or promise.

Upon the outbreak of hostilities, each Party to the conflict shall notify the adverse Party of the laws and regulations allowing or forbidding its own nationals to accept liberty on parole or promise. Prisoners of war who are paroled or who have given their promise in conformity with the laws and regulations so notified, are bound on their personal honour scrupulously to fulfil, both towards the Power on which they depend and the

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	Power which has captured them, the engagements of their paroles or promises. In such cases, the Power on which they depend is bound neither to require nor to accept from them any service incompatible with the parole or promise given.
Article 9 (paragraphs 2 and 3) Prisoners captured in districts which are unhealthy or whose climate is deleterious to persons coming from temperate climates shall be removed as soon as possible to a more favourable climate. Belligerents shall as far as possible avoid bringing together in the same camp prisoners of different races or nationalities.	*Article 22* Prisoners of war may be interned only in premises located on land and affording every guarantee of hygiene and healthfulness. Except in particular cases which are justified by the interest of the prisoners themselves, they shall not be interned in penitentiaries. Prisoners of war interned in unhealthy areas, or where the climate is injurious for them, shall be removed as soon as possible to a more favourable climate. The Detaining Power shall assemble prisoners of war in camps or camp compounds according to their nationality, language and customs, provided that such prisoners shall not be separated from prisoners of war belonging to the armed forces with which they were serving at the time of their capture, except with their consent.
Article 9 (paragraph 4) No prisoner may at any time be sent to an area where he would be exposed to the fire of the fighting zone, or be employed to render by his presence certain points or areas immune from bombardment.	*Article 23* No prisoner of war may at any time be sent to, or detained in areas where he may be exposed to the fire of the combat zone, nor may his presence be used to render certain points or areas immune from military operations. Prisoners of war shall have shelters against air bombardment and other hazards of war, to the same extent as the local civilian population. With the exception of those engaged in the protection of their quarters against the aforesaid hazards, they may enter such shelters as soon as possible after the giving of the alarm. Any other protective measure taken in favour of the population shall also apply to them. Detaining Powers shall give the Powers concerned, through the inter-

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mediary of the Protecting Powers, all useful information regarding the geographical location of prisoner-of-war camps.

Whenever military considerations permit, prisoner-of-war camps shall be indicated in the daytime by the letters PW or PG, placed so as to be clearly visible from the air. The Powers concerned may, however, agree upon any other system of marking. Only prisoner-of-war camps shall be marked as such.

Article 24

Transit or screening camps of a permanent kind shall be fitted out under conditions similar to those described in the present Section, and the prisoners therein shall have the same treatment as in other camps.

CHAPTER II

QUARTERS, FOOD AND CLOTHING OF PRISONERS OF WAR

Article 10

Paragraph 1

Prisoners of war shall be lodged in buildings or huts which afford all possible safeguards as regards hygiene and salubrity.

Paragraph 3

As regards dormitories, their total area, minimum cubic air space, fittings and bedding material, the conditions shall be the same as for the depôt troops of the Detaining Power.

Paragraph 2

The premises must be entirely free from damp, and adequately heated and lighted. All precautions shall be taken against the danger of fire.

Article 25

Prisoners of war shall be quartered under conditions as favourable as those for the forces of the Detaining Power who are billeted in the same area. The said conditions shall make allowance for the habits and customs of the prisoners and shall in no case be prejudicial to their health.

The foregoing provisions shall apply in particular to the dormitories of prisoners of war as regards both total surface and minimum cubic space, and the general installations, bedding and blankets.

The premises provided for the use of prisoners of war individually or collectively, shall be entirely protected from dampness and adequately heated and lighted, in particular between dusk and lights out. All precautions must be taken against the danger of fire.

In any camps in which women prisoners of war, as well as men, are accommodated, separate dormitories shall be provided for them.

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Article 11	*Article 26*
Paragraph 1 The food ration of prisoners of war shall be equivalent in quantity and quality to that of the depôt troops.	The basic daily food rations shall be sufficient in quantity, quality and variety to keep prisoners of war in good health and to prevent loss of weight or the development of nutritional deficiencies. Account shall also be taken of the habitual diet of the prisoners. The Detaining Power shall supply prisoners of war who work with such additional rations as are necessary for the labour on which they are employed.
Paragraph 3 Sufficient drinking water shall be supplied to them. The use of tobacco shall be authorized. Prisoners may be employed in the kitchens.	Sufficient drinking water shall be supplied to prisoners of war. The use of tobacco shall be permitted. Prisoners of war shall, as far as possible, be associated with the preparation of their meals ; they may be employed for that purpose in the kitchens. Furthermore, they shall be given the means of preparing, themselves, the additional food in their possession.
Paragraph 2 Prisoners shall also be afforded the means of preparing for themselves such additional articles of food as they may possess.	Adequate premises shall be provided for messing.
Paragraph 4 All collective disciplinary measures affecting food are prohibited.	Collective disciplinary measures affecting food are prohibited.
Article 12	*Article 27*
Clothing, underwear and footwear shall be supplied to prisoners of war by the Detaining Power. The regular replacement and repair of such articles shall be assured. Workers shall also receive working kit wherever the nature of the work requires it.	Clothing, underwear and footwear shall be supplied to prisoners of war in sufficient quantities by the Detaining Power, which shall make allowance for the climate of the region where the prisoners are detained. Uniforms of enemy armed forces captured by the Detaining Power should, if suitable for the climate, be made available to clothe prisoners of war. The regular replacement and repair of the above articles shall be assured by the Detaining Power. In addition, prisoners of war who work shall receive appropriate clothing, wherever the nature of the work demands.
	Article 28
In all camps, canteens shall be installed at which prisoners shall be able to procure, at the local market price, food commodities and ordinary articles.	Canteens shall be installed in all camps, where prisoners of war may procure foodstuffs, soap and tobacco and ordinary articles in daily use. The tariff shall never be in excess of local market prices.

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The profits accruing to the administrations of the camps from the canteens shall be utilized for the benefit of the prisoners.	The profits made by camp canteens shall be used for the benefit of the prisoners; a special fund shall be created for this purpose. The prisoners' representative shall have the right to collaborate in the management of the canteen and of this fund. When a camp is closed down, the credit balance of the special fund shall be handed to an international welfare organization, to be employed for the benefit of prisoners of war of the same nationality as those who have contributed to the fund. In case of a general repatriation, such profits shall be kept by the Detaining Power, subject to any agreement to the contrary between the Powers concerned.

CHAPTER III

HYGIENE AND MEDICAL ATTENTION

Article 13	*Article 29*
Belligerents shall be required to take all necessary hygienic measures to ensure the cleanliness and salubrity of camps and to prevent epidemics.	The Detaining Power shall be bound to take all sanitary measures necessary to ensure the cleanliness and healthfulness of camps, and to prevent epidemics.
Prisoners of war shall have for their use, day and night, conveniences which conform to the rules of hygiene and are maintained in a constant state of cleanliness.	Prisoners of war shall have for their use, day and night, conveniences which conform to the rules of hygiene and are maintained in a constant state of cleanliness. In any camps in which women prisoners of war are accommodated, separate conveniences shall be provided for them.
In addition and without prejudice to the provision as far as possible of baths and shower-baths in the camps, the prisoners shall be provided with a sufficient quantity of water for their bodily cleanliness.	Also, apart from the baths and showers with which the camps shall be furnished, prisoners of war shall be provided with sufficient water and soap for their personal toilet and for washing their personal laundry; the necessary installations, facilities and time shall be granted them for that purpose.

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Article 14	*Article 30*
Paragraph 1 Each camp shall possess an infirmary, where prisoners of war shall receive attention of any kind of which they may be in need. If necessary, isolation establishments shall be reserved for patients suffering from infectious and contagious diseases.	Every camp shall have an adequate infirmary where prisoners of war may have the attention they require, as well as appropriate diet. Isolation wards shall, if necessary, be set aside for cases of contagious or mental disease.
Paragraph 5 Prisoners who have contracted a serious malady, or whose condition necessitates important surgical treatment, shall be admitted, at the expense of the Detaining Power, to any military or civil institution qualified to treat them.	Prisoners of war suffering from serious disease, or whose condition necessitates special treatment, a surgical operation or hospital care, must be admitted to any military or civil medical unit where such treatment can be given, even if their repatriation is contemplated in the near future. Special facilities shall be afforded for the care to be given to the disabled, in particular to the blind, and for their rehabilitation, pending repatriation. Prisoners of war shall have the attention, preferably, of medical personnel of the Power on which they depend and, if possible, of their nationality.
Paragraph 3 Belligerents shall be required to issue, on demand, to any prisoner treated, an official statement indicating the nature and duration of his illness and of the treatment received.	Prisoners of war may not be prevented from presenting themselves to the medical authorities for examination. The detaining authorities shall, upon request, issue to every prisoner who has undergone treatment an official certificate indicating the nature of his illness or injury, and the duration and kind of treatment received. A duplicate of this certificate shall be forwarded to the Central Prisoners of War Agency.
Paragraph 2 The expenses of treatment, including those of temporary remedial apparatus, shall be borne by the Detaining Power.	The costs of treatment, including those of any apparatus necessary for the maintenance of prisoners of war in good health, particularly dentures and other artificial appliances, and spectacles, shall be borne by the Detaining Power.
Article 15 Medical inspections of prisoners of war shall be arranged at least once a month. Their object shall be the supervision of the general state of	*Article 31* Medical inspections of prisoners of war shall be made at least once a month. They shall include the checking and the recording of the weight of

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health and cleanliness, and the detection of infectious and contagious diseases, particularly tuberculosis and venereal complaints.	each prisoner of war. Their purpose shall be, in particular, to supervise the general state of health, nutrition and cleanliness of prisoners and to detect contagious diseases, especially tuberculosis, malaria and venereal disease. For this purpose the most efficient methods available shall be employed, e.g. periodic mass miniature radiography for the early detection of tuberculosis.
	Article 32
	Prisoners of war who, though not attached to the medical service of their armed forces, are physicians, surgeons, dentists, nurses or medical orderlies, may be required by the Detaining Power to exercise their medical functions in the interests of prisoners of war dependent on the same Power. In that case they shall continue to be prisoners of war, but shall receive the same treatment as corresponding medical personnel retained by the Detaining Power. They shall be exempted from any other work under Article 49.

CHAPTER IV

MEDICAL PERSONNEL AND CHAPLAINS RETAINED TO ASSIST PRISONERS OF WAR

Article 14 (paragraph 4)	*Article 33*
It shall be permissible for belligerents mutually to authorize each other, by means of special agreements, to retain in the camps doctors and medical orderlies for the purpose of caring for their prisoner compatriots.	Members of the medical personnel and chaplains while retained by the Detaining Power with a view to assisting prisoners of war, shall not be considered as prisoners of war. They shall, however, receive as a minimum the benefits and protection of the present Convention, and shall also be granted all facilities necessary to provide for the medical care of, and religious ministration to prisoners of war.
	They shall continue to exercise their medical and spiritual functions for the benefit of prisoners of war, preferably those belonging to the armed forces upon which they depend, within the scope of the military laws

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and regulations of the Detaining Power and under the control of its competent services, in accordance with their professional etiquette. They shall also benefit by the following facilities in the exercise of their medical or spiritual functions :

(a) They shall be authorized to visit periodically prisoners of war situated in working detachments or in hospitals outside the camp. For this purpose, the Detaining Power shall place at their disposal the necessary means of transport.

(b) The senior medical officer in each camp shall be responsible to the camp military authorities for everything connected with the activities of retained medical personnel. For this purpose, Parties to the conflict shall agree at the outbreak of hostilities on the subject of the corresponding ranks of the medical personnel, including that of societies mentioned in Article 26 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949. This senior medical officer, as well as chaplains, shall have the right to deal with the competent authorities of the camp on all questions relating to their duties. Such authorities shall afford them all necessary facilities for correspondence relating to these questions.

(c) Although they shall be subject to the internal discipline of the camp in which they are retained, such personnel may not be compelled to carry out any work other than that concerned with their medical or religious duties.

During hostilities, the Parties to the conflict shall agree concerning the possible relief of retained personnel and shall settle the procedure to be followed.

None of the preceding provisions shall relieve the Detaining Power of its obligations with regard to prisoners of war from the medical or spiritual point of view.

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CHAPTER V

RELIGIOUS, INTELLECTUAL AND PHYSICAL ACTIVITIES

Article 16 (paragraph 1)

Prisoners of war shall be permitted complete freedom in the performance of their religious duties, including attendance at the services of their faith, on the sole condition that they comply with the routine and police regulations prescribed by the military authorities.

Article 34

Prisoners of war shall enjoy complete latitude in the exercise of their religious duties, including attendance at the service of their faith, on condition that they comply with the disciplinary routine prescribed by the military authorities.

Adequate premises shall be provided where religious services may be held.

Article 35

Chaplains who fall into the hands of the enemy Power and who remain or are retained with a view to assisting prisoners of war, shall be allowed to minister to them and to exercise freely their ministry amongst prisoners of war of the same religion, in accordance with their religious conscience. They shall be allocated among the various camps and labour detachments containing prisoners of war belonging to the same forces, speaking the same language or practising the same religion. They shall enjoy the necessary facilities, including the means of transport provided for in Article 33, for visiting the prisoners of war outside their camp. They shall be free to correspond, subject to censorship, on matters concerning their religious duties with the ecclesiastical authorities in the country of detention and with the international religious organizations. Letters and cards which they may send for this purpose shall be in addition to the quota provided for in Article 71.

Article 16 (paragraph 2)

Ministers of religion, who are prisoners of war, whatever may be their denomination, shall be allowed freely to minister to their co-religionists.

Article 36

Prisoners of war who are ministers of religion, without having officiated as chaplains to their own forces, shall be at liberty, whatever their denomination, to minister freely to the members of their community. For this purpose, they shall receive the same treatment as the chaplains retained by the Detaining Power. They shall not be obliged to do any other work.

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Article 37

When prisoners of war have not the assistance of a retained chaplain or of a prisoner of war minister of their faith, a minister belonging to the prisoners' or a similar denomination, or in his absence a qualified layman, if such a course is feasible from a confessional point of view, shall be appointed at the request of the prisoners concerned to fill this office. This appointment, subject to the approval of the Detaining Power, shall take place with the agreement of the community of prisoners concerned and, wherever necessary, with the approval of the local religious authorities of the same faith. The person thus appointed shall comply with all regulations established by the Detaining Power in the interests of discipline and military security.

Article 17

Belligerents shall encourage as much as possible the organization of intellectual and sporting pursuits by the prisoners of war.

Article 38

While respecting the individual preferences of every prisoner, the Detaining Power shall encourage the practice of intellectual, educational and recreational pursuits, sports and games amongst prisoners, and shall take the measures necessary to ensure the exercise thereof by providing them with adequate premises and necessary equipment.

Article 13 (paragraph 4)

They shall have facilities for engaging in physical exercises and obtaining the benefit of being out of doors.

Prisoners shall have opportunities for taking physical exercise including sports and games and for being out of doors. Sufficient open spaces shall be provided for this purpose in all camps.

CHAPTER VI

DISCIPLINE

Article 18

Paragraph 1

Each prisoners-of-war camp shall be placed under the authority of a responsible officer.

Article 39

Every prisoner-of-war camp shall be put under the immediate authority of a responsible commissioned officer belonging to the regular armed forces of the Detaining Power. Such officer shall have in his possession a copy of the present Convention; he shall

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	ensure that its provisions are known to the camp staff and the guard and shall be responsible, under the direction of his government, for its application.
Paragraph 2 In addition to external marks of respect required by the regulations in force in their own armed forces with regard to their nationals, prisoners of war shall be required to salute all officers of the Detaining Power.	Prisoners of war, with the exception of officers, must salute and show to all officers of the Detaining Power the external marks of respect provided for by the regulations applying in their own forces.
Paragraph 3 Officer prisoners of war shall be required to salute only officers of that Power who are their superiors or equals in rank.	Officer prisoners of war are bound to salute only officers of a higher rank of the Detaining Power; they must, however, salute the camp commander regardless of his rank.
Article 19 The wearing of badges and decorations shall be permitted.	*Article 40* The wearing of badges of rank and nationality, as well as of decorations, shall be permitted.
Article 84 The text of the present Convention and of the special conventions mentioned in the preceding article shall be posted, whenever possible, in the native language of the prisoners of war, in places where it may be consulted by all the prisoners. The text of these conventions shall be communicated, on their request, to prisoners who are unable to inform themselves of the text posted.	*Article 41* In every camp the text of the present Convention and its Annexes and the contents of any special agreement provided for in Article 6, shall be posted, in the prisoners' own language, at places where all may read them. Copies shall be supplied, on request, to the prisoners who cannot have access to the copy which has been posted.
Article 20 (first sentence) Regulations, orders, announcements and publications of any kind shall be communicated to prisoners of war in a language which they understand.	Regulations, orders, notices and publications of every kind relating to the conduct of prisoners of war shall be issued to them in a language which they understand. Such regulations, orders and publications shall be posted in the manner described above and copies shall be handed to the prisoners' representative. Every order and command addressed to prisoners of war individually must likewise be given in a language which they understand.

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	Article 42
	The use of weapons against prisoners of war, especially against those who are escaping or attempting to escape, shall constitute an extreme measure, which shall always be preceded by warnings appropriate to the circumstances.
CHAPTER VII	
RANK OF PRISONERS OF WAR	
Article 21 (paragraph 1)	*Article 43*
At the commencement of hostilities, belligerents shall be required reciprocally to inform each other of the titles and ranks in use in their respective armed forces, with the view of ensuring equality of treatment between the corresponding ranks of officers and persons of equivalent status.	Upon the outbreak of hostilities, the Parties to the conflict shall communicate to one another the titles and ranks of all the persons mentioned in Article 4 of the present Convention, in order to ensure equality of treatment between prisoners of equivalent rank. Titles and ranks which are subsequently created shall form the subject of similar communications. The Detaining Power shall recognize promotions in rank which have been accorded to prisoners of war and which have been duly notified by the Power on which these prisoners depend.
Article 21 (paragraph 2)	*Article 44*
Officers and persons of equivalent status who are prisoners of war shall be treated with due regard to their rank and age.	Officers and prisoners of equivalent status shall be treated with the regard due to their rank and age.
Article 22	
In order to ensure the service of officers' camps, soldier prisoners of war of the same armed forces, and as far as possible speaking the same language, shall be detached for service therein in sufficient number, having regard to the rank of the officers and persons of equivalent status.	In order to ensure service in officers' camps, other ranks of the same armed forces who, as far as possible, speak the same language, shall be assigned in sufficient numbers, account being taken of the rank of officers and prisoners of equivalent status. Such orderlies shall not be required to perform any other work.
Officers and persons of equivalent status shall procure their food and clothing from the pay to be paid to them by the Detaining Power. The management of a mess by officers themselves shall be facilitated in every way.	Supervision of the mess by the officers themselves shall be facilitated in every way.

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Article 45

Prisoners of war other than officers and prisoners of equivalent status shall be treated with the regard due to their rank and age.

Supervision of the mess by the prisoners themselves shall be facilitated in every way.

CHAPTER VIII

TRANSFER OF PRISONERS OF WAR AFTER THEIR ARRIVAL IN CAMP

Article 46

The Detaining Power, when deciding upon the transfer of prisoners of war, shall take into account the interests of the prisoners themselves, more especially so as not to increase the difficulty of their repatriation.

The transfer of prisoners of war shall always be effected humanely and in conditions not less favourable than those under which the forces of the Detaining Power are transferred. Account shall always be taken of the climatic conditions to which the prisoners of war are accustomed and the conditions of transfer shall in no case be prejudicial to their health.

The Detaining Power shall supply prisoners of war during transfer with sufficient food and drinking-water to keep them in good health, likewise with the necessary clothing, shelter and medical attention. The Detaining Power shall take adequate precautions especially in case of transport by sea or by air, to ensure their safety during transfer, and shall draw up a complete list of all transferred prisoners before their departure.

Article 25

Unless the course of military operations demands it, sick and wounded prisoners of war shall not be transferred if their recovery might be prejudiced by the journey.

Article 47

Sick or wounded prisoners of war shall not be transferred as long as their recovery may be endangered by the journey, unless their safety imperatively demands it.

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	If the combat zone draws closer to a camp, the prisoners of war in the said camp shall not be transferred unless their transfer can be carried out in adequate conditions of safety, or if they are exposed to greater risks by remaining on the spot than by being transferred.
Article 26 (paragraphs 1 and 2) In the event of transfer, prisoners of war shall be officially informed in advance of their new destination; they shall be authorised to take with them their personal effects, their correspondence and parcels which have arrived for them.	*Article 48* In the event of transfer, prisoners of war shall be officially advised of their departure and of their new postal address. Such notifications shall be given in time for them to pack their luggage and inform their next of kin. They shall be allowed to take with them their personal effects, and the correspondence and parcels which have arrived for them. The weight of such baggage may be limited, if the conditions of transfer so require, to what each prisoner can reasonably carry, which shall in no case be more than twenty-five kilograms per head.
All necessary arrangements shall be made so that correspondence and parcels addressed to their former camp shall be sent on to them without delay.	Mail and parcels addressed to their former camp shall be forwarded to them without delay. The camp commander shall take, in agreement with the prisoners' representative, any measures needed to ensure the transport of the prisoners' community property and of the luggage they are unable to take with them in consequence of restrictions imposed by virtue of the second paragraph of this Article.
Paragraph 4 Expenses incurred by the transfers shall be borne by the Detaining Power.	The costs of transfers shall be borne by the Detaining Power.

SECTION III

LABOUR OF PRISONERS OF WAR

Article 27 (paragraph 1) Belligerents may employ as workmen prisoners of war who are physically fit, other than officers and persons of equivalent status, according to their rank and their ability.	*Article 49* The Detaining Power may utilize the labour of prisoners of war who are physically fit, taking into account their age, sex, rank and physical aptitude, and with a view particularly

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	to maintaining them in a good state of physical and mental health.
Paragraph 3 Non-commissioned officers who are prisoners of war may be compelled to undertake only supervisory work, unless they expressly request remunerative occupation.	Non-commissioned officers who are prisoners of war shall only be required to do supervisory work. Those not so required may ask for other suitable work which shall, so far as possible, be found for them.
Paragraph 2 Nevertheless, if officers or persons of equivalent status ask for suitable work, this shall be found for them as far as possible.	If officers or persons of equivalent status ask for suitable work, it shall be found for them, so far as possible, but they may in no circumstances be compelled to work.
Article 31 Work done by prisoners of war shall have no direct connection with the operations of the war. In particular, it is forbidden to employ prisoners in the manufacture or transport of arms or munitions of any kind, or on the transport of material destined for combatant units.	*Article 50* Besides work connected with camp administration, installation or maintenance, prisoners of war may be compelled to do only such work as is included in the following classes : *(a)* agriculture ; *(b)* industries connected with the production or the extraction of raw materials, and manufacturing industries, with the exception of metallurgical, machinery and chemical industries ; public works and building operations which have no military character or purpose ; *(c)* transport and handling of stores which are not military in character or purpose ; *(d)* commercial business, and arts and crafts ; *(e)* domestic service ; *(f)* public utility services having no military character or purpose.
In the event of violation of the provisions of the preceding paragraph, prisoners are at liberty, after performing or commencing to perform the order, to have their complaints presented through the intermediary of the prisoners' representatives whose functions are described in Articles 43 and 44, or, in the absence of a prisoners' representative, through the intermediary of the representatives of the Protecting Power.	Should the above provisions be infringed, prisoners of war shall be allowed to exercise their right of complaint, in conformity with Article 78.

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	Article 51 Prisoners of war must be granted suitable working conditions, especially as regards accommodation, food, clothing and equipment; such conditions shall not be inferior to those enjoyed by nationals of the Detaining Power employed in similar work; account shall also be taken of climatic conditions. The Detaining Power, in utilizing the labour of prisoners of war, shall ensure that in areas in which prisoners are employed, the national legislation concerning the protection of labour and, more particularly, the regulations for the safety of workers, are duly applied. Prisoners of war shall receive training and be provided with the means of protection suitable to the work they will have to do and similar to those accorded to the nationals of the Detaining Power. Subject to the provisions of Article 52, prisoners may be submitted to the normal risks run by these civilian workers.
Article 32 (paragraph 2) Conditions of work shall not be rendered more arduous by disciplinary measures.	Conditions of labour shall in no case be rendered more arduous by disciplinary measures.
Article 32 (paragraph 1) It is forbidden to employ prisoners of war on unhealthy or dangerous work.	*Article 52* Unless he be a volunteer, no prisoner of war may be employed on labour which is of an unhealthy or dangerous nature. No prisoner of war shall be assigned to labour which would be looked upon as humiliating for a member of the Detaining Power's own forces. The removal of mines or similar devices shall be considered as dangerous labour.
Article 30 (first sentence) The duration of the daily work of prisoners of war, including the time of the journey to and from work, shall not be excessive and shall in no case exceed that permitted for civil workers of the locality employed on the same work.	*Article 53* The duration of the daily labour of prisoners of war, including the time of the journey to and fro, shall not be excessive, and must in no case exceed that permitted for civilian workers in the district, who are nationals of the Detaining Power and employed on the same work.

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Second sentence Each prisoner shall be allowed a rest of twenty-four consecutive hours each week, preferably on Sunday.	Prisoners of war must be allowed, in the middle of the day's work, a rest of not less than one hour. This rest will be the same as that to which workers of the Detaining Power are entitled, if the latter is of longer duration. They shall be allowed, in addition, a rest of twenty-four consecutive hours every week, preferably on Sunday or the day of rest in their country of origin. Furthermore, every prisoner who has worked for one year shall be granted a rest of eight consecutive days, during which his working pay shall be paid him. If methods of labour such as piece work are employed, the length of the working period shall not be rendered excessive thereby.
	Article 54 The working pay due to prisoners of war shall be fixed in accordance with the provisions of Article 62 of the present Convention. Prisoners of war who sustain accidents in connection with work, or who contract a disease in the course, or in consequence of their work, shall receive all the care their condition may require. The Detaining Power shall furthermore deliver to such prisoners of war a medical certificate enabling them to submit their claims to the Power on which they depend, and shall send a duplicate to the Central Prisoners of War Agency provided for in Article 123.
Article 27 (paragraph 4) During the whole period of captivity, belligerents are required to admit prisoners of war who are victims of accidents at work to the benefit of provisions applicable to workmen of the same category under the legislation of the Detaining Power. As regards prisoners of war to whom these legal provisions could not be applied by reason of the legislation of that Power, the latter undertakes to recommend to its legislative body all proper measures for the equitable compensation of the victims.	
Article 29 No prisoner of war may be employed on work for which he is physically unsuited.	*Article 55* The fitness of prisoners of war for work shall be periodically verified by medical examinations, at least once a month. The examinations shall have particular regard to the nature of the work which prisoners of war are required to do. If any prisoner of war considers himself incapable of working, he shall be permitted to appear before the medical authorities of his camp. Physicians or surgeons may recommend that the prisoners who are, in their opinion, unfit for work be exempted therefrom.

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Article 33

Conditions governing labour detachments shall be similar to those of prisoners-of-war camps, particularly as concerns hygienic conditions, food, care in case of accidents or sickness, correspondence, and the reception of parcels.

Every labour detachment shall be attached to a prisoners' camp. The commandant of this camp shall be responsible for the observance in the labour detachment of the provisions of the present Convention.

Article 28

The Detaining Power shall assume entire responsibility for the maintenance, care, treatment and the payment of the wages of prisoners of war working for private individuals.

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Article 56

The organization and administration of labour detachments shall be similar to those of prisoner-of-war camps.

Every labour detachment shall remain under the control of and administratively part of a prisoner-of-war camp. The military authorities and the commander of the said camp shall be responsible, under the direction of their government, for the observance of the provisions of the present Convention in labour detachments.

The camp commander shall keep an up-to-date record of the labour detachments dependent on his camp, and shall communicate it to the delegates of the Protecting Power, of the International Committee of the Red Cross, or of other agencies giving relief to prisoners of war, who may visit the camp.

Article 57

The treatment of prisoners of war who work for private persons, even if the latter are responsible for guarding and protecting them, shall not be inferior to that which is provided for by the present Convention. The Detainning Power, the military authorities and the commander of the camp to which such prisoners belong shall be entirely responsible for the maintenance, care, treatment, and payment of the working pay of such prisoners of war.

Such prisoners of war shall have the right to remain in communication with the prisoners' representatives in the camps on which they depend.

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SECTION IV

FINANCIAL RESOURCES OF PRISONERS OF WAR

Article 24 (paragraph 1)

At the commencement of hostilities, belligerents shall determine by common accord the maximum amount of cash which prisoners of war of various ranks and categories shall be permitted to retain in their possession. Any excess withdrawn or withheld from a prisoner, and any deposit of money effected by him, shall be carried to his account, and may not be converted into another currency without his consent.

Article 34 (paragraph 3)

These agreements shall also specify the portion which may be retained by the camp administration, the amount which shall belong to the prisoner of war and the manner in which this amount shall be placed at his disposal during the period of his captivity.

Article 58

Upon the outbreak of hostilities, and pending an arrangement on this matter with the Protecting Power, the Detaining Power may determine the maximum amount of money in cash or in any similar form, that prisoners may have in their possession. Any amount in excess, which was properly in their possession and which has been taken or withheld from them, shall be placed to their account, together with any monies deposited by them, and shall not be converted into any other currency without their consent.

If prisoners of war are permitted to purchase services or commodities outside the camp against payment in cash, such payments shall be made by the prisoner himself or the camp administration who will charge them to the accounts of the prisoners concerned. The Detaining Power will establish the necessary rules in this respect.

Article 59

Cash which was taken from prisoners of war, in accordance with Article 18, at the time of their capture, and which is in the currency of the Detaining Power, shall be placed to their separate accounts, in accordance with the provisions of Article 64 of the present Section.

The amounts, in the currency of the Detaining Power, due to the conversion of sums in other currencies that are taken from the prisoners of war at the same time, shall also be credited to their separate accounts.

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Article 23 (paragraphs 1 and 2)

Subject to any special arrangements made between the belligerent Powers, and particularly those contemplated in Article 24, officers and persons of equivalent status who are prisoners of war shall receive from the Detaining Power the same pay as officers of corresponding rank in the armed forces of that Power, provided, however, that such pay does not exceed that to which they are entitled in the armed forces of the country in whose service they have been. This pay shall be paid to them in full, once a month if possible, and no deduction therefrom shall be made for expenditure devolving upon the Detaining Power, even if such expenditure is incurred on their behalf.

An agreement between the belligerents shall prescribe the rate of exchange applicable to this payment; in default of such agreement, the rate of exchange adopted shall be that in force at the moment of the commencement of hostilities.

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Article 60

The Detaining Power shall grant all prisoners of war a monthly advance of pay, the amount of which shall be fixed by conversion, into the currency of the said Power, of the following amounts:

Category I: Prisoners ranking below sergeants: eight Swiss francs.

Category II: Sergeants and other non-commissioned officers, or prisoners of equivalent rank: twelve Swiss francs.

Category III: Warrant officers and commissioned officers below the rank of major or prisoners of equivalent rank: fifty Swiss francs.

Category IV: Majors, lieutenant-colonels, colonels or prisoners of equivalent rank: sixty Swiss francs.

Category V: General officers or prisoners of war of equivalent rank: seventy-five Swiss francs.

However, the Parties to the conflict concerned may by special agreement modify the amount of advances of pay due to prisoners of the preceding categories.

Furthermore, if the amounts indicated in the first paragraph above would be unduly high compared with the pay of the Detaining Power's armed forces or would, for any reason, seriously embarrass the Detaining Power, then, pending the conclusion of a special agreement with the Power on which the prisoners depend to vary the amounts indicated above, the Detaining Power:

(a) shall continue to credit the accounts of the prisoners with the amounts indicated in the first paragraph above;

(b) may temporarily limit the amount made available from these advances of pay to prisoners of war for their own use, to sums which are reasonable, but which, for

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Article 34 (paragraph 2)

Prisoners employed on other work [1] shall be entitled to a rate of pay, to be fixed by agreements between the belligerents.

Paragraph 4

Pending the conclusion of the said agreements, remuneration of the work of prisoners shall be fixed according to the following standards :—

(a) Work done for the State shall be paid for according to the rates in force for soldiers of the national forces doing the same work, or, if no such rates exist, according to a tariff corresponding to the work executed.

(b) When the work is done for other public administrations or for private individuals, the conditions shall be settled in agreement with the military authorities.

Paragraph 1

Prisoners of war shall not receive pay for work in connection with the

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Category I, shall never be inferior to the amount that the Detaining Power gives to the members of its own armed forces.

The reasons for any limitations will be given without delay to the Protecting Power.

Article 61

The Detaining Power shall accept for distribution as supplementary pay to prisoners of war sums which the Power on which the prisoners depend may forward to them, on condition that the sums to be paid shall be the same for each prisoner of the same category, shall be payable to all prisoners of that category depending on that Power, and shall be placed in their separate accounts, at the earliest opportunity, in accordance with the provisions of Article 64. Such supplementary pay shall not relieve the Detaining Power of any obligation under this Convention.

Article 62

Prisoners of war shall be paid a fair working rate of pay by the detaining authorities direct. The rate shall be fixed by the said authorities, but shall at no time be less than one-fourth of one Swiss franc for a full working day. The Detaining Power shall inform prisoners of war, as well as the Power on which they depend, through the intermediary of the Protecting Power, of the rate of daily working pay that it has fixed.

Working pay shall likewise be paid by the detaining authorities to prisoners of war permanently detailed

[1] Work other than that in connection with the camp administration.

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administration, internal arrangement and maintenance of camps.

Article 24 (paragraph 3)

During the continuance of the latter [1], facilities shall be accorded to them for the transfer of these amounts, wholly or in part, to banks or private individuals in their country of origin.

[1] Captivity

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to duties or to a skilled or semi-skilled occupation in connection with the administration, installation or maintenance of camps, and to the prisoners who are required to carry out spiritual or medical duties on behalf of their comrades.

The working pay of the prisoners' representative, of his advisers, if any, and of his assistants, shall be paid out of the fund maintained by canteen profits. The scale of this working pay shall be fixed by the prisoners' representative and approved by the camp commander. If there is no such fund, the detaining authorities shall pay these prisoners a fair working rate of pay.

Article 63

Prisoners of war shall be permitted to receive remittances of money addressed to them individually or collectively.

Every prisoner of war shall have at his disposal the credit balance of his account as provided for in the following Article, within the limits fixed by the Detaining Power, which shall make such payments as are requested. Subject to financial or monetary restrictions which the Detaining Power regards as essential, prisoners of war may also have payments made abroad. In this case payments addressed by prisoners of war to dependants shall be given priority.

In any event, and subject to the consent of the Power on which they depend, prisoners may have payments made in their own country, as follows : the Detaining Power shall send to the aforesaid Power through the Protecting Power, a notification giving all the necessary particulars concerning the prisoners of war, the beneficiaries of the payments, and the amount of the sums to be paid, expressed in the Detaining Power's currency. The said notification shall be signed by the prisoners and countersigned by the camp commander. The Detaining Power shall debit the prisoners' account by a corresponding amount ; the sums thus debited shall

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Article 26 (paragraph 3)

The sums credited to the account of transferred prisoners shall be transmitted to the competent authority of their new place of residence.

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be placed by it to the credit of the Power on which the prisoners depend.

To apply the foregoing provisions, the Detaining Power may usefully consult the Model Regulations in Annex V of the present Convention.

Article 64

The Detaining Power shall hold an account for each prisoner of war, showing at least the following :

(1) The amounts due to the prisoner or received by him as advances of pay, as working pay or derived from any other source ; the sums in the currency of the Detaining Power which were taken from him ; the sums taken from him and converted at his request into the currency of the said Power.

(2) The payments made to the prisoner in cash, or in any other similar form ; the payments made on his behalf and at his request ; the sums transferred under Article 63, third paragraph.

Article 65

Every item entered in the account of a prisoner of war shall be countersigned or initialled by him, or by the prisoners' representative acting on his behalf.

Prisoners of war shall at all times be afforded reasonable facilities for consulting and obtaining copies of their accounts, which may likewise be inspected by the representatives of the Protecting Powers at the time of visits to the camp.

When prisoners of war are transferred from one camp to another, their personal accounts will follow them. In case of transfer from one Detaining Power to another, the monies which are their property and are not in the currency of the Detaining Power will follow them. They shall be given certificates for any other monies standing to the credit of their accounts.

The Parties to the conflict concerned may agree to notify to each other at specific intervals through the Protecting Power, the amount of the accounts of the prisoners of war.

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Article 34 (paragraph 5) The pay which remains to the credit of a prisoner shall be remitted to him on the termination of his captivity. In case of death, it shall be remitted through the diplomatic channel to the heirs of the deceased.	*Article 66* On the termination of captivity, through the release of a prisoner of war or his repatriation, the Detaining Power shall give him a statement, signed by an authorized officer of that Power, showing the credit balance then due to him. The Detaining Power shall also send through the Protecting Power to the government upon which the prisoner of war depends, lists giving all appropriate particulars of all prisoners of war whose captivity has been terminated by repatriation, release, escape, death or any other means, and showing the amount of their credit balances. Such lists shall be certified on each sheet by an authorized representative of the Detaining Power. Any of the above provisions of this Article may be varied by mutual agreement between any two Parties to the conflict.
Article 24 (paragraph 2) The credit balances of their accounts shall be paid to the prisoners of war at the end of their captivity.	The Power on which the prisoner of war depends shall be responsible for settling with him any credit balance due to him from the Detaining Power on the termination of his captivity.
Article 23 (paragraph 3) All advances made to prisoners of war by way of pay shall be reimbursed, at the end of hostilities, by the Power in whose service they were.	*Article 67* Advances of pay, issued to prisoners of war in conformity with Article 60, shall be considered as made on behalf of the Power on which they depend. Such advances of pay, as well as all payments made by the said Power under Article 63, third paragraph, and Article 68, shall form the subject of arrangements between the Powers concerned, at the close of hostilities.
	Article 68 Any claim by a prisoner of war for compensation in respect of any injury or other disability arising out of work shall be referred to the Power on which he depends, through the Protecting Power. In accordance with Article 54, the Detaining Power will, in all cases, provide the prisoner of war concerned with a statement showing the nature of the injury or

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disability, the circumstances in which it arose and particulars of medical or hospital treatment given for it. This statement will be signed by a responsible officer of the Detaining Power and the medical particulars certified by a medical officer.

Any claim from a prisoner of war for compensation in respect of personal effects, monies or valuables impounded by the Detaining Power under Article 18 and not forthcoming on his repatriation, or in respect of loss alleged to be due to the fault of the Detaining Power or any of its servants, shall likewise be referred to the Power on which he depends. Nevertheless, any such personal effects required for use by the prisoners of war whilst in captivity shall be replaced at the expense of the Detaining Power. The Detaining Power will, in all cases, provide the prisoner of war with a statement, signed by a responsible officer, showing all available information regarding the reasons why such effects, monies or valuables have not been restored to him. A copy of this statement will be forwarded to the Power on which he depends through the Central Agency for Prisoners of War provided for in Article 123.

SECTION V

RELATIONS OF PRISONERS OF WAR WITH THE EXTERIOR

Article 35

On the commencement of hostilities, belligerents shall publish the measures prescribed for the execution of the provisions of the present section.

Article 69

Immediately upon prisoners of war falling into its power, the Detaining Power shall inform them and the Powers on which they depend, through the Protecting Power, of the measures taken to carry out the provisions of the present Section. They shall likewise inform the parties concerned of any subsequent modifications of such measures.

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Article 36 (paragraph 2)

Not later than one week after his arrival in camp, and similarly in case of sickness, each prisoner shall be enabled to send a postcard to his family informing them of his capture and the state of his health. The said postcards shall be forwarded as quickly as possible and shall not be delayed in any manner.

Article 8 (paragraphs 1 —last sentence—and 2)

As soon as possible, every prisoner shall be enabled to correspond personally with his family, in accordance with the conditions prescribed in Article 36 and the following articles.

As regards prisoners captured at sea, the provisions of the present article shall be observed as soon as possible after arrival in port.

Article 36 (paragraph 1)

Each of the belligerents shall fix periodically the number of letters and postcards which prisoners of war of different categories shall be permitted to send per month, and shall notify that number to the other belligerent. These letters and cards shall be sent by post by the shortest route. They may not be delayed or withheld for disciplinary motives.

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Article 70

Immediately upon capture, or not more than one week after arrival at a camp, even if it is a transit camp, likewise in case of sickness or transfer to hospital or another camp, every prisoner of war shall be enabled to write direct to his family, on the one hand, and to the Central Prisoners of War Agency provided for in Article 123, on the other hand, a card similar, if possible, to the model annexed to the present Convention, informing his relatives of his capture, address and state of health. The said cards shall be forwarded as rapidly as possible and may not be delayed in any manner.

Article 71

Prisoners of war shall be allowed to send and receive letters and cards. If the Detaining Power deems it necessary to limit the number of letters and cards sent by each prisoner of war, the said number shall not be less than two letters and four cards monthly, exclusive of the capture cards provided for in Article 70, and conforming as closely as possible to the models annexed to the present Convention. Further limitations may be imposed only if the Protecting Power is satisfied that it would be in the interests of the prisoners of war concerned to do so owing to difficulties of translation caused by the Detaining Power's inability to find sufficient qualified linguists to carry out the necessary censorship. If limitations must be placed on the correspondence addressed to prisoners of war, they may be ordered only by the Power on which the prisoners depend, possibly at the request of the Detaining Power. Such letters and cards must be conveyed by the most rapid method at the disposal of the Detaining Power; they may not be delayed or retained for disciplinary reasons.

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Article 38 (paragraph 3) Prisoners may, in cases of recognized urgency, be authorized to send telegrams on payment of the usual charges.	Prisoners of war who have been without news for a long period, or who are unable to receive news from their next of kin or to give them news by the ordinary postal route, as well as those who are at a great distance from their homes, shall be permitted to send telegrams, the fees being charged against the prisoners of war's accounts with the Detaining Power or paid in the currency at their disposal. They shall likewise benefit by this measure in cases of urgency.
Article 36 (paragraph 3) As a general rule, the correspondence of prisoners shall be written in their native language. Belligerents may authorize correspondence in other languages.	As a general rule, the correspondence of prisoners of war shall be written in their native language. The Parties to the conflict may allow correspondence in other languages. Sacks containing prisoner-of-war mail must be securely sealed and labelled so as clearly to indicate their contents, and must be addressed to offices of destination.
Article 37 Prisoners of war shall be authorized to receive individually postal parcels containing foodstuffs and other articles intended for consumption or clothing. The parcels shall be delivered to the addressees and a receipt given.	*Article 72* Prisoners of war shall be allowed to receive by post or by any other means individual parcels or collective shipments containing, in particular, foodstuffs, clothing, medical supplies and articles of a religious, educational or recreational character which may meet their needs, including books, devotional articles, scientific equipment, examination papers, musical instruments, sports outfits and materials allowing prisoners of war to pursue their studies or their cultural activities.
Article 39 (paragraph 1) Prisoners of war shall be permitted to receive individually consignments of books which may be subject to censorship.	
Paragraph 2 (first sentence) Representatives of the Protecting Powers and of duly recognized and authorized relief societies may send works and collections of books to the libraries of prisoners' camps.	Such shipments shall in no way free the Detaining Power from the obligations imposed upon it by virtue of the present Convention.

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Article 38 (paragraphs 1 and 2)

Letters and remittances of money or valuables, as well as postal parcels addressed to prisoners of war, or despatched by them, either directly or through the intermediary of the information bureaux mentioned in

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The only limits which may be placed on these shipments shall be those proposed by the Protecting Power in the interest of the prisoners themselves, or by the International Committee of the Red Cross or any other organization giving assistance to the prisoners, in respect of their own shipments only, on account of exceptional strain on transport or communications.

The conditions for the sending of individual parcels and collective relief shall, if necessary, be the subject of special agreements between the Powers concerned, which may in no case delay the receipt by the prisoners of relief supplies. Books may not be included in parcels of clothing and foodstuffs. Medical supplies shall, as a rule, be sent in collective parcels.

Article 73

In the absence of special agreements between the Powers concerned on the conditions for the receipt and distribution of collective relief shipments, the rules and regulations concerning collective shipments, which are annexed to the present Convention, shall be applied.

The special agreements referred to above shall in no case restrict the right of prisoners' representatives to take possession of collective relief shipments intended for prisoners of war, to proceed to their distribution or to dispose of them in the interest of the prisoners.

Nor shall such agreements restrict the right of representatives of the Protecting Power, the International Committee of the Red Cross or any other organization giving assistance to prisoners of war and responsible for the forwarding of collective shipments, to supervise their distribution to the recipients.

Article 74

All relief shipments for prisoners of war shall be exempt from import, customs and other dues.

Correspondence, relief shipments and authorized remittances of money addressed to prisoners of war or des-

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Article 77, shall be exempt from all postal charges in the countries of origin and destination and in the countries through which they pass.

Presents and relief in kind intended for prisoners of war shall also be exempt from all import or other duties, as well as any charges for carriage on railways operated by the State.

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patched by them through the post office, either direct or through the Information Bureaux provided for in Article 122 and the Central Prisoners of War Agency provided in Article 123, shall be exempt from any postal dues, both in the countries of origin and destination, and in intermediate countries.

If relief shipments intended for prisoners of war cannot be sent through the post office by reason of weight or for any other cause, the cost of transportation shall be borne by the Detaining Power in all the territories under its control. The other Powers party to the Convention shall bear the cost of transport in their respective territories.

In the absence of special agreements between the Parties concerned, the costs connected with transport of such shipments, other than costs covered by the above exemption, shall be charged to the senders.

The High Contracting Parties shall endeavour to reduce, so far as possible, the rates charged for telegrams sent by prisoners of war, or addressed to them.

Article 75

Should military operations prevent the Powers concerned from fulfilling their obligation to assure the transport of the shipments referred to in Articles 70, 71, 72 and 77, the Protecting Powers concerned, the International Committee of the Red Cross or any other organization duly approved by the Parties to the conflict may undertake to ensure the conveyance of such shipments by suitable means (railway wagons, motor vehicles, vessels or aircraft, etc.). For this purpose, the High Contracting Parties shall endeavour to supply them with such transport and to allow its circulation, especially by granting the necessary safe-conducts.

Such transport may also be used to convey :

(a) correspondence, lists and reports exchanged between the Central Information Agency referred to in Article 123 and the National Bureaux referred to in Article 122 ;

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	(b) correspondence and reports relating to prisoners of war which the Protecting Powers, the International Committee of the Red Cross or any other body assisting the prisoners, exchange either with their own delegates or with the Parties to the conflict. These provisions in no way detract from the right of any Party to the conflict to arrange other means of transport, if it should so prefer, nor preclude the granting of safe-conducts, under mutually agreed conditions, to such means of transport. In the absence of special agreements, the costs occasioned by the use of such means of transport shall be borne proportionally by the Parties to the conflict whose nationals are benefited thereby.
Article 40 (paragraph 1) The censoring of correspondence shall be accomplished as quickly as possible.	*Article 76* The censoring of correspondence addressed to prisoners of war or despatched by them shall be done as quickly as possible. Mail shall be censored only by the despatching State and the receiving State, and once only by each.
The examination of postal parcels shall, moreover, be effected under such conditions as will ensure the preservation of any foodstuffs which they may contain, and, if possible, be done in the presence of the addressee or of a representative duly recognized by him.	The examination of consignments intended for prisoners of war shall not be carried out under conditions that will expose the goods contained in them to deterioration; except in the case of written or printed matter, it shall be done in the presence of the addressee, or of a fellow-prisoner duly delegated by him. The delivery to prisoners of individual or collective consignments shall not be delayed under the pretext of difficulties of censorship.
Article 39 (paragraph 2, second sentence) The transmission of such consignments to libraries may not be delayed under pretext of difficulties of censorship.	
Article 40 (paragraph 2) Any prohibition of correspondence ordered by the belligerents, for military or political reasons, shall only be of a temporary character and shall also be for as brief a time as possible.	Any prohibition of correspondence ordered by Parties to the conflict, either for military or political reasons, shall be only temporary and its duration shall be as short as possible.

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Article 41	*Article 77*
Belligerents shall accord all facilities for the transmission of documents destined for prisoners of war or signed by them, in particular powers of attorney and wills.	The Detaining Powers shall provide all facilities for the transmission, through the Protecting Power or the Central Prisoners of War Agency provided for in Article 123, of instruments, papers or documents intended for prisoners of war or despatched by them, especially powers of attorney and wills.
They shall take the necessary measures to secure, in case of need, the legalization of signatures of prisoners.	In all cases they shall facilitate the preparation and execution of such documents on behalf of prisoners of war; in particular, they shall allow them to consult a lawyer and shall take what measures are necessary for the authentication of their signatures.

SECTION VI

RELATIONS BETWEEN PRISONERS OF WAR AND THE AUTHORITIES

CHAPTER I

COMPLAINTS OF PRISONERS OF WAR RESPECTING THE CONDITIONS OF CAPTIVITY

Article 42

Prisoners of war shall have the right to bring to the notice of the military authorities, in whose hands they are, their petitions concerning the conditions of captivity to which they are subjected.

They shall also have the right to communicate with the representatives of the Protecting Powers in order to draw their attention to the points on which they have complaints to make with regard to the conditions of captivity.

Article 78

Prisoners of war shall have the right to make known to the military authorities in whose power they are, their requests regarding the conditions of captivity to which they are subjected.

They shall also have the unrestricted right to apply to the representatives of the Protecting Powers either through their prisoners' representative or, if they consider it necessary, direct, in order to draw their attention to any points on which they may have complaints to make regarding their conditions of captivity.

These requests and complaints shall not be limited nor considered to be a part of the correspondence quota

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Such petitions and complaints shall be transmitted immediately. Even though they are found to be groundless, they shall not give rise to any punishment.	referred to in Article 71. They must be transmitted immediately. Even if they are recognized to be unfounded, they may not give rise to any punishment. Prisoners' representatives may send periodic reports on the situation in the camps and the needs of the prisoners of war to the representatives of the Protecting Powers.

CHAPTER II

PRISONERS OF WAR REPRESENTATIVES

Article 43 (paragraph 1) In any locality where there may be prisoners of war, they shall be authorized to appoint representatives to represent them before the military authorities and the Protecting Powers.	*Article 79* In all places where there are prisoners of war, except in those where there are officers, the prisoners shall freely elect by secret ballot, every six months, and also in case of vacancies, prisoners' representatives entrusted with representing them before the military authorities, the Protecting Powers, the International Committee of the Red Cross and any other organization which may assist them. These prisoners' representatives shall be eligible for re-election.
Paragraph 4 In camps of officers and persons of equivalent status the senior officer prisoner of the highest rank shall be recognised as intermediary between the camp authorities and the officers and similar persons who are prisoners. For this purpose he shall have the power to appoint an officer prisoner to assist him as interpreter in the course of conferences with the authorities of the camp.	In camps for officers and persons of equivalent status or in mixed camps, the senior officer among the prisoners of war shall be recognised as the camp prisoners' representative. In camps for officers, he shall be assisted by one or more advisers chosen by the officers; in mixed camps, his assistant shall be chosen from among the prisoners of war who are not officers and shall be elected by them. Officer prisoners of war of the same nationality shall be stationed in labour camps for prisoners of war, for the purpose of carrying out the camp administration duties for which the prisoners of war are responsible. These officers may be elected as prisoners' representatives under the first paragraph of this Article. In such a case the assistants to the prisoners' representatives shall be chosen from among those prisoners of war who are not officers.

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Paragraph 2 Such appointments shall be subject to the approval of the military authorities.	Every representative elected must be approved by the Detaining Power before he has the right to commence his duties. Where the Detaining Power refuses to approve a prisoner of war elected by his fellow prisoners of war, it must inform the Protecting Power of the reason for such refusal. In all cases the prisoners' representative must have the same nationality, language and customs as the prisoners of war whom he represents. Thus, prisoners of war distributed in different sections of a camp, according to their nationality, language or customs, shall have for each section their own prisoners' representative, in accordance with the foregoing paragraphs.
Paragraph 3 The prisoners' representatives shall be charged with the reception and distribution of collective consignments. Similarly, in the event of the prisoners deciding to organize amongst themselves a system of mutual aid, such organization shall be one of the functions of the prisoners' representatives. On the other hand, the latter may offer their services to prisoners to facilitate their relations with the relief societies mentioned in Article 78.	*Article 80* Prisoners' representatives shall further the physical, spiritual and intellectual well-being of prisoners of war. In particular, where the prisoners decide to organize amongst themselves a system of mutual assistance, this organization will be within the province of the prisoners' representative, in addition to the special duties entrusted to him by other provisions of the present Convention. Prisoners' representatives shall not be held responsible, simply by reason of their duties, for any offences committed by prisoners of war.
Article 44 (paragraph 1) When the prisoners' representatives are employed as workmen, their work as representatives of the prisoners of war shall be reckoned in the compulsory period of labour.	*Article 81* Prisoners' representatives shall not be required to perform any other work, if the accomplishment of their duties is thereby made more difficult. Prisoners' representatives may appoint from amongst the prisoners such assistants as they may require. All material facilities shall be granted them, particularly a certain freedom of movement necessary for the accomplishment of their duties (inspections of labour detachments, receipt of supplies, etc.). Prisoners' representatives shall be permitted to visit premises where prisoners of war are detained, and every prisoner of war shall have the

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Paragraph 2 All facilities shall be accorded to the prisoners' representatives for their correspondence with the military authorities and the Protecting Power. Such correspondence shall not be subject to any limitation.	right to consult freely his prisoners' representative. All facilities shall likewise be accorded to the prisoners' representatives for communication by post and telegraph with the detaining authorities, the Protecting Powers, the International Committee of the Red Cross and their delegates, the Mixed Medical Commissions and with the bodies which give assistance to prisoners of war. Prisoners' representatives of labour detachments shall enjoy the same facilities for communication with the prisoners' representatives of the principal camp. Such communications shall not be restricted, nor considered as forming a part of the quota mentioned in Article 71.
Paragraph 3 No prisoners' representative may be transferred without his having been allowed the time necessary to acquaint his successors with the current business.	Prisoners' representatives who are transferred shall be allowed a reasonable time to acquaint their successors with current affairs. In case of dismissal, the reasons therefor shall be communicated to the Protecting Power.

CHAPTER III

PENAL AND DISCIPLINARY SANCTIONS

(I) GENERAL PROVISIONS

Article 45	*Article 82*
Prisoners of war shall be subject to the laws, regulations, and orders in force in the armed forces of the Detaining Power. Any act of insubordination shall render them liable to the measures prescribed by such laws, regulations, and orders, except as otherwise provided in this Chapter.	A prisoner of war shall be subject to the laws, regulations and orders in force in the armed forces of the Detaining Power; the Detaining Power shall be justified in taking judicial or disciplinary measures in respect of any offence committed by a prisoner of war against such laws, regulations or orders. However, no proceedings or punishments contrary to the provisions of this Chapter shall be allowed. If any law, regulation or order of the Detaining Power shall declare acts committed by a prisoner of war to be punishable, whereas the same acts would not be punishable if committed by a member of the forces of the Detaining Power, such acts shall entail disciplinary punishments only.

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Article 52 (paragraph 1) Belligerents shall ensure that the competent authorities exercise the greatest leniency in considering the question whether an offence committed by a prisoner of war should be punished by disciplinary or by judicial measures.	*Article 83* In deciding whether proceedings in respect of an offence alleged to have been committed by a prisoner of war shall be judicial or disciplinary, the Detaining Power shall ensure that the competent authorities exercise the greatest leniency and adopt, wherever possible, disciplinary rather than judicial measures.
	Article 84 A prisoner of war shall be tried only by a military court, unless the existing laws of the Detaining Power expressly permit the civil courts to try a member of the armed forces of the Detaining Power in respect of the particular offence alleged to have been committed by the prisoner of war. In no circumstances whatever shall a prisoner of war be tried by a court of any kind which does not offer the essential guarantees of independence and impartiality as generally recognized, and, in particular, the procedure of which does not afford the accused the rights and means of defence provided for in Article 105.
	Article 85 Prisoners of war prosecuted under the laws of the Detaining Power for acts committed prior to capture shall retain, even if convicted, the benefits of the present Convention.
Article 52 (paragraph 3) A prisoner shall not be punished more than once for the same act or on the same charge.	*Article 86* No prisoner of war may be punished more than once for the same act or on the same charge.
Article 46 (paragraph 1) Prisoners of war shall not be subjected by the military authorities or the tribunals of the Detaining Power to penalties other than those which are prescribed for similar acts by members of the national forces.	*Article 87* Prisoners of war may not be sentenced by the military authorities and courts of the Detaining Power to any penalties except those provided for in respect of members of the armed forces of the said Power who have committed the same acts. When fixing the penalty, the courts or authorities of the Detaining Power

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	shall take into consideration, to the widest extent possible, the fact that the accused, not being a national of the Detaining Power, is not bound to it by any duty of allegiance, and that he is in its power as the result of circumstances independent of his own will. The said courts or authorities shall be at liberty to reduce the penalty provided for the violation of which the prisoner of war is accused, and shall therefore not be bound to apply the minimum penalty prescribed.
Paragraph 4 Collective penalties for individual acts are also prohibited.	Collective punishment for individual acts, corporal punishments, imprisonment in premises without daylight and, in general, any form of torture or cruelty, are forbidden.
Paragraph 3 All forms of corporal punishment, confinement in premises not lighted by daylight and, in general, all forms of cruelty whatsoever are prohibited.	
Article 49 (paragraph 1) No prisoner of war may be deprived of his rank by the Detaining Power.	No prisoner of war may be deprived of his rank by the Detaining Power, or prevented from wearing his badges.
Article 46 (paragraph 2) Officers, non-commissioned officers or private soldiers, prisoners of war, undergoing disciplinary punishment shall not be subjected to treatment less favourable than that prescribed, as regards the same punishment, for similar ranks in the armed forces of the Detaining Power.	*Article 88* Officers, non-commissioned officers and men who are prisoners of war undergoing a disciplinary or judicial punishment, shall not be subjected to more severe treatment than that applied in respect of the same punishment to members of the armed forces of the Detaining Power of equivalent rank. A woman prisoner of war shall not be awarded or sentenced to a punishment more severe, or treated whilst undergoing punishment more severely, than a woman member of the armed forces of the Detaining Power dealt with for a similar offence. In no case may a woman prisoner of war be awarded or sentenced to a punishment more severe, or treated whilst undergoing punishment more severely, than a male member of the armed forces of the Detaining Power dealt with for a similar offence.
Article 48 (paragraph 1) After undergoing the judicial or disciplinary punishment which have been inflicted on them, prisoners of war shall not be treated differently from other prisoners.	Prisoners of war who have served disciplinary or judicial sentences may not be treated differently from other prisoners of war.

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(II) DISCIPLINARY SANCTIONS	
Article 54 (paragraph 1) Imprisonment is the most severe disciplinary punishment which may be inflicted on a prisoner of war.	*Article 89* The disciplinary punishments applicable to prisoners of war are the following : (1) A fine which shall not exceed 50 per cent of the advances of pay and working pay which the prisoner of war would otherwise receive under the provisions of Articles 60 and 62 during a period of not more than thirty days. (2) Discontinuance of privileges granted over and above the treatment provided for by the present Convention. (3) Fatigue duties not exceeding two hours daily. (4) Confinement. The punishment referred to under (3) shall not be applied to officers. In no case shall disciplinary punishments be inhuman, brutal or dangerous to the health of prisoners of war.
Article 55 Subject to the provisions of the last paragraph of Article 11, the restrictions in regard to food permitted in the armed forces of the Detaining Power may be applied, as an additional penalty, to prisoners of war undergoing disciplinary punishment. Such restrictions shall, however, only be ordered if the state of the prisoner's health permits.	
Article 54 *(paragraphs 2, 3 and 4)* The duration of any single punishment shall not exceed thirty days.	*Article 90* The duration of any single punishment shall in no case exceed thirty days. Any period of confinement awaiting the hearing of a disciplinary offence or the award of disciplinary punishment shall be deducted from an award pronounced against a prisoner of war.
This maximum of thirty days shall, moreover, not be exceeded in the event of there being several acts for which the prisoner is answerable to discipline at the time when his case is disposed of, whether such acts are connected or not.	The maximum of thirty days provided above may not be exceeded, even if the prisoner of war is answerable for several acts at the same time when he is awarded punishment, whether such acts are related or not. The period between the pronouncing of an award of disciplinary punishment and its execution shall not exceed one month.

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Where, during the course of or after the termination of a period of imprisonment, a prisoner is sentenced to a fresh disciplinary penalty, a period of at least three days shall intervene between each of the periods of imprisonment, if one of such periods is of ten days or over.

Article 50 (paragraph 2)

Prisoners who, after succeeding in rejoining their armed forces or in leaving the territory occupied by the armed forces which captured them, are again taken prisoner shall not be liable to any punishment for their previous escape.

Article 50 (paragraph 1)

Escaped prisoners of war who are re-captured before they have been able to rejoin their own armed forces or to leave the territory occupied by the armed forces which captured them shall be liable only to disciplinary punishment.

Article 48 (paragraph 2)

Nevertheless, prisoners who have been punished as the result of an attempt to escape may be subjected to a special régime of surveillance, but this shall not involve the suppression of any of the safeguards accorded to prisoners by the present Convention.

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When a prisoner of war is awarded a further disciplinary punishment, a period of at least three days shall elapse between the execution of any two of the punishments, if the duration of one of these is ten days or more.

Article 91

The escape of a prisoner of war shall be deemed to have succeeded when :

(1) he has joined the armed forces of the Power on which he depends, or those of an allied Power ;

(2) he has left the territory under the control of the Detaining Power, or of an ally of the said Power ;

(3) he has joined a ship flying the flag of the Power on which he depends, or of an allied Power, in the territorial waters of the Detaining Power, the said ship not being under the control of the last named Power.

Prisoners of war who have made good their escape in the sense of this Article and who are recaptured, shall not be liable to any punishment in respect of their previous escape.

Article 92

A prisoner of war who attempts to escape and is recaptured before having made good his escape in the sense of Article 91 shall be liable only to a disciplinary punishment in respect of this act, even if it is a repeated offence.

A prisoner of war who is recaptured shall be handed over without delay to the competent military authority.

Article 88, fourth paragraph, notwithstanding, prisoners of war punished as a result of an unsuccessful escape may be subjected to special surveillance. Such surveillance must not affect the state of their health, must be undergone in a prisoner of war camp, and must not entail the suppression of any of the safeguards granted them by the present Convention.

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Article 51 (paragraph 1) Attempted escape, even if it is not a first offence, shall not be considered as an aggravation of the offence in the event of the prisoner of war being brought before the courts for crimes or offences against persons or property committed in the course of such attempt.	*Article 93* Escape or attempt to escape, even if it is a repeated offence, shall not be deemed an aggravating circumstance if the prisoner of war is subjected to trial by judicial proceedings in respect of an offence committed during his escape or attempt to escape.
Article 52 (paragraph 2) This provision[1] shall be observed in particular in appraising facts in connection with escape or attempted escape.	In conformity with the principle stated in Article 83, offences committed by prisoners of war with the sole intention of facilitating their escape and which do not entail any violence against life or limb, such as offences against public property, theft without intention of self-enrichment, the drawing up or use of false papers, the wearing of civilian clothing, shall occasion disciplinary punishment only.
Article 51 (paragraph 2) After an attempted or successful escape, the comrades of the escaped person who aided the escape shall incur only disciplinary punishment therefor.	Prisoners of war who aid or abet an escape or an attempt to escape shall be liable on this count to disciplinary punishment only.
	Article 94 If an escaped prisoner of war is recaptured, the Power on which he depends shall be notified thereof in the manner defined in Article 122, provided notification of his escape has been made.
	Article 95 A prisoner of war accused of an offence against discipline shall not be kept in confinement pending the hearing unless a member of the armed forces of the Detaining Power would be so kept if he were accused of a similar offence, or if it is essential in the interests of camp order and discipline. Any period spent by a prisoner of war in confinement awaiting the disposal of an offence against discipline shall be reduced to an absolute minimum and shall not exceed fourteen days.
Article 47 *Paragraph 1, second sentence* The period during which prisoners of war of whatever rank are detained in custody (pending the investigation of such offences) shall be reduced to a strict minimum.	

[1] See Article 52, paragraph 1, above, p. 727.

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	The provisions of Articles 97 and 98 of this Chapter shall apply to prisoners of war who are in confinement awaiting the disposal of offences against discipline.
Paragraph 1, first sentence A statement of the facts in cases of acts constituting a breach of discipline, and particularly an attempt to escape, shall be drawn up in writing without delay.	*Article 96* Acts which constitute offences against discipline shall be investigated immediately.
Article 59 Without prejudice to the competency of the courts and the superior military authorities, disciplinary sentences may only be awarded by an officer vested with disciplinary powers in his capacity as Commandant of the camp or detachment, or by the responsible officer acting as his substitute.	Without prejudice to the competence of courts and superior military authorities, disciplinary punishment may be ordered only by an officer having disciplinary powers in his capacity as camp commander, or by a responsible officer who replaces him or to whom he has delegated his disciplinary powers. In no case may such powers be delegated to a prisoner of war or be exercised by a prisoner of war. Before any disciplinary award is pronounced, the accused shall be given precise information regarding the offences of which he is accused, and given an opportunity of explaining his conduct and of defending himself. He shall be permitted, in particular, to call witnesses and to have recourse, if necessary, to the services of a qualified interpreter. The decision shall be announced to the accused prisoner of war and to the prisoners' representative. A record of disciplinary punishments shall be maintained by the camp commander and shall be open to inspection by representatives of the Protecting Power.
Article 56 *(paragraphs 1, 2 and 3)* In no case shall prisoners of war be transferred to penitentiary establishments (prisons, penitentiaries, convict establishments, etc.) in order to undergo disciplinary sentence there. Establishments in which disciplinary sentences are undergone shall conform to the requirements of hygiene.	*Article 97* Prisoners of war shall not in any case be transferred to penitentiary establishments (prisons, penitentiaries, convict prisons, etc.) to undergo disciplinary punishment therein. All premises in which disciplinary punishments are undergone shall conform to the sanitary requirements set

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Facilities shall be afforded to prisoners undergoing sentence to keep themselves in a state of cleanliness.	forth in Article 25. A prisoner of war undergoing punishment shall be enabled to keep himself in a state of cleanliness, in conformity with Article 29.
Article 49 (paragraph 2)	
Prisoners on whom disciplinary punishment is inflicted shall not be deprived of the privileges attaching to their rank. In particular, officers and persons of equivalent status who suffer penalties entailing deprivation of liberty shall not be placed in the same premises as non-commissioned officers or private soldiers undergoing punishment.	Officers and persons of equivalent status shall not be lodged in the same quarters as non-commissioned officers or men. Women prisoners of war undergoing disciplinary punishment shall be confined in separate quarters from male prisoners of war and shall be under the immediate supervision of women.
	Article 98
	A prisoner of war undergoing confinement as a disciplinary punishment, shall continue to enjoy the benefits of the provisions of this Convention except in so far as these are necessarily rendered inapplicable by the mere fact that he is confined. In no case may he be deprived of the benefits of the provisions of Articles 78 and 126. A prisoner of war awarded disciplinary punishment may not be deprived of the prerogatives attached to his rank.
Article 56 (paragraph 4)	
Every day, such prisoners shall have facilities for taking exercise or for remaining out of doors for at least two hours.	Prisoners of war awarded disciplinary punishment shall be allowed to exercise and to stay in the open air at least two hours daily.
Article 58	
Prisoners of war undergoing disciplinary punishment shall be permitted, on their request, to present themselves for daily medical inspection. They shall receive such attention as the medical officers may consider necessary, and, if need be, shall be evacuated to the camp infirmary or to hospital.	They shall be allowed, on their request, to be present at the daily medical inspections. They shall receive the attention which their state of health requires and, if necessary, shall be removed to the camp infirmary or to a hospital.
Article 57	
Prisoners of war undergoing disciplinary punishment shall be permitted to read and write, and to send and receive letters. On the other hand, it shall be permissible not to deliver parcels and remittances of money to the adressees until the expiration of the sentence.	They shall have permission to read and write, likewise to send and receive letters. Parcels and remittances of money, however, may be withheld from them until the completion of the punishment; they shall meanwhile be entrusted to the prisoners' representative, who will hand

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If the undelivered parcels contain perishable foodstuffs, these shall be handed over to the infirmary or to the camp kitchen.	over to the infirmary the perishable goods contained in such parcels.

(III) Judicial Proceedings

Article 61 (paragraph 2)

No prisoner shall be compelled to admit that he is guilty of the offence of which he is accused.

Paragraph 1

No prisoner of war shall be sentenced without being given the opportunity to defend himself.

Article 99

No prisoner of war may be tried or sentenced for an act which is not forbidden by the law of the Detaining Power or by International Law, in force at the time the said act was committed.

No moral or physical coercion may be exerted on a prisoner of war in order to induce him to admit himself guilty of the act of which he is accused.

No prisoner of war may be convicted without having had an opportunity to present his defence and the assistance of a qualified advocate or counsel.

Article 100

Prisoners of war and the Protecting Powers shall be informed, as soon as possible, of the offences which are punishable by the death sentence under the laws of the Detaining Power.

Other offences shall not thereafter be made punishable by the death penalty without the concurrence of the Power upon which the prisoners of war depend.

The death sentence cannot be pronounced on a prisoner of war unless the attention of the court has, in accordance with Article 87, second paragraph, been particularly called to the fact that since the accused is not a national of the Detaining Power, he is not bound to it by any duty of allegiance, and that he is in its power as the result of circumstances independent of his own will.

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Article 66 (paragraph 2) The sentence shall not be carried out before the expiration of a period of at least three months from the date of the receipt of this communication by the Protecting Power.[1]	*Article 101* If the death penalty is pronounced on a prisoner of war, the sentence shall not be executed before the expiration of a period of at least six months from the date when the Protecting Power receives, at an indicated address, the detailed communication provided for in Article 107.
Article 63 A sentence shall only be pronounced on a prisoner of war by the same tribunals and in accordance with the same procedure as in the case of persons belonging to the armed forces of the Detaining Power.	*Article 102* A prisoner of war can be validly sentenced only if the sentence has been pronounced by the same courts according to the same procedure as in the case of members of the armed forces of the Detaining Power, and if, furthermore, the provisions of the present Chapter have been observed.
Article 47 (paragraphs 2 and 3) The judicial proceedings against a prisoner of war shall be conducted as quickly as circumstances will allow. The period during which prisoners shall be detained in custody shall be as short as possible.	*Article 103* Judicial investigations relating to a prisoner of war shall be conducted as rapidly as circumstances permit and so that his trial shall take place as soon as possible. A prisoner of war shall not be confined while awaiting trial unless a member of the armed forces of the Detaining Power would be so confined if he were accused of a similar offence, or if it is essential to do so in the interests of national security. In no circumstances shall this confinement exceed three months.
In all cases the period during which a prisoner is under arrest (awaiting punishment or trial) shall be deducted from the sentence, whether disciplinary or judicial, provided such deduction is permitted in the case of members of the national forces.	Any period spent by a prisoner of war in confinement awaiting trial shall be deducted from any sentence of imprisonment passed upon him and taken into account in fixing any penalty. The provisions of Articles 97 and 98 of this Chapter shall apply to a prisoner of war whilst in confinement awaiting trial.
Article 60 At the commencement of a judicial hearing against a prisoner of war, the Detaining Power shall notify the representative of the Protecting Power as soon as possible, and in any case before the date fixed for the opening of the hearing	*Article 104* In any case in which the Detaining Power has decided to institute judicial proceedings against a prisoner of war, it shall notify the Protecting Power as soon as possible and at least three weeks before the opening of the trial. This period of three weeks shall run as from the day on which such

[1] See Article 66, paragraph 1, below, p. 738.

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The said notification shall contain the following particulars:—

(a) Civil status and rank of the prisoner.

(b) Place of residence or detention.

(c) Statement of the charge or charges, and of the legal provisions applicable.

If it is not possible in this notification to indicate particulars of the court which will try the case, the date of the opening of the hearing and the place where it will take place, these particulars shall be furnished to the representative of the Protecting Power at a later date, but as soon as possible and in any case at least three weeks before the opening of the hearing.

Article 62

The prisoner of war shall have the right to be assisted by a qualified advocate of his own choice, and, if necessary, to have recourse to the offices of a competent interpreter. He shall be informed of his right by the Detaining Power in good time before the hearing.

Failing a choice on the part of the prisoner, the Protecting Power may procure an advocate for him. The Detaining Power shall, on the request of the Protecting Power, furnish to the latter a list of persons qualified to conduct the defence.

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notification reaches the Protecting Power at the address previously indicated by the latter to the Detaining Power.

The said notification shall contain the following information:

(1) Surname and first names of the prisoner of war, his rank, his army, regimental, personal or serial number, his date of birth, and his profession or trade, if any.

(2) Place of internment or confinement.

(3) Specification of the charge or charges on which the prisoner of war is to be arraigned, giving the legal provisions applicable.

(4) Designation of the court which will try the case, likewise the date and place fixed for the opening of the trial.

The same communication shall be made by the Detaining Power to the prisoners' representative.

If no evidence is submitted, at the opening of a trial, that the notification referred to above was received by the Protecting Power, by the prisoner of war and by the prisoners' representative concerned, at least three weeks before the opening of the trial, then the latter cannot take place and must be adjourned.

Article 105

The prisoner of war shall be entitled to assistance by one of his prisoner comrades, to defence by a qualified advocate or counsel of his own choice, to the calling of witnesses and, if he deems necessary, to the services of a competent interpreter. He shall be advised of these rights by the Detaining Power in due time before the trial.

Failing a choice by the prisoner of war, the Protecting Power shall find him an advocate or counsel, and shall have at least one week at its disposal for the purpose. The Detaining Power shall deliver to the said Power, on request, a list of persons qualified to present the defence. Failing a choice of an advocate or counsel by

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The representatives of the Protecting Power shall have the right to attend the hearing of the case.

The only exception to this rule is where the hearing has to be kept secret in the interests of the safety of the State. The Detaining Power would then notify the Protecting Power accordingly.

Article 64

Every prisoner of war shall have the right of appeal against any sentence against him in the same manner as persons belonging to the armed forces of the Detaining Power.

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the prisoner of war or the Protecting Power, the Detaining Power shall appoint a competent advocate or counsel to conduct the defence.

The advocate or counsel conducting the defence on behalf of the prisoner of war shall have at his disposal a period of two weeks at least before the opening of the trial, as well as the necessary facilities to prepare the defence of the accused. He may, in particular, freely visit the accused and interview him in private. He may also confer with any witnesses for the defence, including prisoners of war. He shall have the benefit of these facilities until the term of appeal or petition has expired.

Particulars of the charge or charges on which the prisoner of war is to be arraigned, as well as the documents which are generally communicated to the accused by virtue of the laws in force in the armed forces of the Detaining Power, shall be communicated to the accused prisoner of war in a language which he understands, and in good time before the opening of the trial. The same communication in the same circumstances shall be made to the advocate or counsel conducting the defence on behalf of the prisoner of war.

The representatives of the Protecting Power shall be entitled to attend the trial of the case, unless, exceptionally, this is held *in camera* in the interest of State security. In such a case the Detaining Power shall advise the Protecting Power accordingly.

Article 106

Every prisoner of war shall have, in the same manner as the members of the armed forces of the Detaining Power, the right of appeal or petition from any sentence pronounced upon him, with a view to the quashing or revising of the sentence or the reopening of the trial. He shall be fully informed of his right to appeal or petition and of the time limit within which he may do so.

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Article 65

Sentences pronounced against prisoners of war shall be communicated immediately to the Protecting Power.

Article 66 (paragraph 1)

If sentence of death is passed on a prisoner of war, a communication setting forth in detail the nature and the circumstances of the offence shall be addressed as soon as possible to the representative of the Protecting Power for transmission to the Power in whose armed forces the prisoner served.

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Article 107

Any judgment and sentence pronounced upon a prisoner of war shall be immediately reported to the Protecting Power in the form of a summary communication, which shall also indicate whether he has the right of appeal with a view to the quashing of the sentence or the re-opening of the trial. This communication shall likewise be sent to the prisoners' representative concerned. It shall also be sent to the accused prisoner of war in a language he understands, if the sentence was not pronounced in his presence. The Detaining Power shall also immediately communicate to the Protecting Power the decision of the prisoner of war to use or to waive his right of appeal.

Furthermore, if a prisoner of war is finally convicted or if a sentence pronounced against a prisoner of war in the first instance is a death sentence, the Detaining Power shall as soon as possible address to the Protecting Power a detailed communication containing :

(1) the precise wording of the finding and sentence ;

(2) a summarized report of any preliminary investigation and of the trial, emphasizing in particular the elements of the prosecution and the defence ;

(3) notification, where applicable, of the establishment where the sentence will be served.

The communications provided for in the foregoing sub-paragraphs shall be sent to the Protecting Power at the address previously made known to the Detaining Power.

Article 108

Sentences pronounced on prisoners of war after a conviction has become duly enforceable shall be served in the same establishments and under the same conditions as in the case of members of the armed forces of the Detaining Power. These conditions shall in all cases conform to the requirements of health and humanity.

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Article 67 No prisoner of war may be deprived of the benefit of the provisions of Article 42 of the present Convention as the result of a judgment or otherwise.	A woman prisoner of war on whom such a sentence has been pronounced shall be confined in separate quarters and shall be under the supervision of women. In any case, prisoners of war sentenced to a penalty depriving them of their liberty shall retain the benefit of the provisions of Articles 78 and 126 of the present Convention. Furthermore, they shall be entitled to receive and despatch correspondence, to receive at least one relief parcel monthly, to take regular exercise in the open air, to have the medical care required by their state of health, and the spiritual assistance they may desire. Penalties to which they may be subjected shall be in accordance with the provisions of Article 87, third paragraph.

PART IV

TERMINATION OF CAPTIVITY

SECTION I

DIRECT REPATRIATION AND ACCOMMODATION IN NEUTRAL COUNTRIES

Article 68 (paragraph 1) Belligerents shall be required to send back to their own country, without regard to rank or numbers, after rendering them in a fit condition for transport, prisoners of war who are seriously ill or seriously wounded.	*Article 109* Subject to the provisions of the third paragraph of this Article, Parties to the conflict are bound to send back to their own country, regardless of number or rank, seriously wounded and seriously sick prisoners of war, after having cared for them until they are fit to travel, in accordance with the first paragraph of the following Article.
Article 72 During the continuance of hostilities, and for humanitarian reasons, belligerents may conclude agreements with a view to the direct repatriation or accommodation in a neutral country of prisoners of war in good health who have been in captivity for a long time.	Throughout the duration of hostilities, Parties to the conflict shall endeavour, with the co-operation of the neutral Powers concerned, to make arrangements for the accommodation in neutral countries of the sick and wounded prisoners of war referred to in the second paragraph of the follow-

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ing Article. They may, in addition, conclude agreements with a view to the direct repatriation or internment in a neutral country of able-bodied prisoners of war who have undergone a long period of captivity.

No sick or injured prisoner of war who is eligible for repatriation under the first paragraph of this Article, may be repatriated against his will during hostilities.

Article 110

The following shall be repatriated direct :

(1) Incurably wounded and sick whose mental or physical fitness seems to have been gravely diminished.

(2) Wounded and sick who, according to medical opinion, are not likely to recover within one year, whose condition requires treatment and whose mental or physical fitness seems to have been gravely diminished.

(3) Wounded and sick who have recovered, but whose mental or physical fitness seems to have gravely and permanently diminished.

The following may be accommodated in a neutral country :

(1) Wounded and sick whose recovery may be expected within one year of the date of the wound or the beginning of the illness, if treatment in a neutral country might increase the prospects of a more certain and speedy recovery.

(2) Prisoners of war whose mental or physical health, according to medical opinion, is seriously threatened by continued captivity, but whose accommodation in a neutral country might remove such a threat.

The conditions which prisoners of war accommodated in a neutral country must fulfil in order to permit their repatriation shall be fixed, as shall likewise their status, by agreement between the Powers concerned. In general, prisoners of war who have been accommodated in a neutral

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Article 68 (paragraph 2)

Agreements between the belligerents shall therefore determine, as soon as possible, the forms of disablement or sickness requiring direct repatriation and cases which may necessitate accommodation in a neutral country. Pending the conclusion of such agreements, the belligerents may refer to the model draft agreement annexed to the present Convention.

Article 69

On the opening of hostilities, belligerents shall come to an understanding as to the appointment of mixed medical commissions. These commissions shall consist of three members, two of whom shall belong to a neutral country and one appointed by the Detaining Power ; one of the medical officers of the neutral country shall preside. These mixed medical commissions shall proceed to the examination of sick or wounded prisoners and shall make all appropriate decisions with regard to them.

The decisions of these commissions shall be decided by majority and shall be carried into effect as soon as possible.

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country, and who belong to the following categories, should be repatriated :

(1) Those whose state of health has deteriorated so as to fulfil the conditions laid down for direct repatriation ;

(2) Those whose mental or physical powers remain, even after treatment, considerably impaired.

If no special agreements are concluded between the Parties to the conflict concerned, to determine the cases of disablement or sickness entailing direct repatriation or accommodation in a neutral country, such cases shall be settled in accordance with the principles laid down in the Model Agreement concerning direct repatriation and accommodation in neutral countries of wounded and sick prisoners of war and in the Regulations concerning Mixed Medica Commissions annexed to the present Convention.

Article 111

The Detaining Power, the Power on which the prisoners of war depend, and a neutral Power agreed upon by these two Powers, shall endeavour to conclude agreements which will enable prisoners of war to be interned in the territory of the said neutral Power until the close of hostilities.

Article 112

Upon the outbreak of hostilities, Mixed Medical Commissions shall be appointed to examine sick and wounded prisoners of war, and to make all appropriate decisions regarding them. The appointment, duties and functioning of these Commissions shall be in conformity with the provisions of the Regulations annexed to the present Convention.

However, prisoners of war who, in the opinion of the medical authorities of the Detaining Power, are manifestly seriously injured or seriously sick, may be repatriated without having to be examined by a Mixed Medical Commission.

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Article 70

In addition to those prisoners of war selected by the medical officer of the camp, the following shall be inspected by the mixed medical commission mentioned in Article 69, with a view to their direct repatriation or accommodation in a neutral country :

(a) prisoners who make a direct request to that effect to the medical officer of the camp ;

(b) prisoners presented by the prisoners' representatives mentioned in Article 43, the latter acting on their own initiative or on the request of the prisoners themselves ;

(c) prisoners nominated by the Power in whose armed forces they served or by a relief society duly recognized and authorized by that Power.

Article 71

Prisoners of war who meet with accidents at work, unless the injury is self-inflicted, shall have the benefit of the same provisions as regards repatriation or accommodation in a neutral country.

Article 53

No prisoner who has been awarded any disciplinary punishment for an offence and who fulfils the conditions laid down for repatriation shall be retained on the ground that he has not undergone his punishment.

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Article 113

Besides those who are designated by the medical authorities of the Detaining Power, wounded or sick prisoners of war belonging to the categories listed below shall be entitled to present themselves for examination by the Mixed Medical Commissions provided for in the foregoing Article :

(1) Wounded and sick proposed by a physician or surgeon who is of the same nationality, or a national of a Party to the conflict allied with the Power on which the said prisoners depend, and who exercises his functions in the camp.

(2) Wounded and sick proposed by their prisoners' representative.

(3) Wounded and sick proposed by the Power on which they depend, or by an organization duly recognized by the said Power and giving assistance to the prisoners.

Prisoners of war who do not belong to one of the three foregoing categories may nevertheless present themselves for examination by Mixed Medical Commissions, but shall be examined only after those belonging to the said categories.

The physician or surgeon of the same nationality as the prisoners who present themselves for examination by the Mixed Medical Commission, likewise the prisoners' representative of the said prisoners, shall have permission to be present at the examination.

Article 114

Prisoners of war who meet with accidents shall, unless the injury is self-inflicted, have the benefit of the provisions of this Convention as regards repatriation or accommodation in a neutral country.

Article 115

No prisoner of war on whom a disciplinary punishment has been imposed and who is eligible for repatriation or for accommodation in a neutral country, may be kept back on the plea that he has not undergone his punishment.

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Prisoners qualified for repatriation against whom any prosecution for a criminal offence has been brought may be excluded from repatriation until the termination of the proceedings and until fulfilment of their sentence, if any; prisoners already serving a sentence of imprisonment may be retained until the expiry of the sentence.

Belligerents shall communicate to each other lists of those who cannot be repatriated for the reasons indicated in the preceding paragraph.

Article 73

The expenses of repatriation or transport to a neutral country of prisoners of war shall be borne, as from the frontier of the Detaining Power, by the Power in whose armed forces such prisoners served.

Article 74

No repatriated person shall be employed on active military service.

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Prisoners of war detained in connection with a judicial prosecution or conviction and who are designated for repatriation or accommodation in a neutral country, may benefit by such measures before the end of the proceedings or the completion of the punishment, if the Detaining Power consents.

Parties to the conflict shall communicate to each other the names of those who will be detained until the end of the proceedings or the completion of the punishment.

Article 116

The costs of repatriating prisoners of war or of transporting them to a neutral country shall be borne, from the frontiers of the Detaining Power, by the Power on which the said prisoners depend.

Article 117

No repatriated person may be employed on active military service.

Section II

RELEASE AND REPATRIATION OF PRISONERS OF WAR AT THE CLOSE OF HOSTILITIES

Article 75 (paragraph 1)

When belligerents conclude an armistice convention, they shall normally cause to be included therein provisions concerning the repatriation of prisoners of war. If it has not been possible to insert in that Convention such stipulations, the belligerents shall, nevertheless, enter into communication with each other on the question as soon as possible. In any case, the repatriation of prisoners shall be effected as soon as possible after the conclusion of peace.

Article 118

Prisoners of war shall be released and repatriated without delay after the cessation of active hostilities.

In the absence of stipulations to the above effect in any agreement concluded between the Parties to the conflict with a view to the cessation of hostilities, or failing any such agreement, each of the Detaining Powers shall itself establish and execute without delay a plan of repatriation in conformity with the principle laid down in the foregoing paragraph.

In either case, the measures adopted shall be brought to the knowledge of the prisoners of war.

The costs of repatriation of prisoners of war shall in all cases be equitably

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apportioned between the Detaining Power and the Power on which the prisoners depend. This apportionment shall be carried out on the following basis :

(a) If the two Powers are contiguous, the Power on which the prisoners of war depend shall bear the costs of repatriation from the frontiers of the Detaining Power.

(b) If the two Powers are not contiguous, the Detaining Power shall bear the costs of transport of prisoners of war over its own territory as far as its frontier or its port of embarkation nearest to the territory of the Power on which the prisoners of war depend. The Parties concerned shall agree between themselves as to the equitable apportionment of the remaining costs of the repatriation. The conclusion of this agreement shall in no circumstances justify any delay in the repatriation of the prisoners of war.

Article 119

Repatriation shall be effected in conditions similar to those laid down in Articles 46 to 48 inclusive of the present Convention for the transfer of prisoners of war, having regard to the provisions of Article 118 and to those of the following paragraphs.

On repatriation, any articles of value impounded from prisoners of war under Article 18, and any foreign currency which has not been converted into the currency of the Detaining Power, shall be restored to them. Articles of value and foreign currency which, for any reason whatever, are not restored to prisoners of war on repatriation, shall be despatched to the Information Bureau set up under Article 122.

Prisoners of war shall be allowed to take with them their personal effects, and any correspondence and parcels which have arrived for them. The weight of such baggage may be limited, if the conditions of repatriation so require, to what each prisoner

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	can reasonably carry. Each prisoner shall in all cases be authorized to carry at least twenty-five kilograms. The other personal effects of the repatriated prisoner shall be left in the charge of the Detaining Power which shall have them forwarded to him as soon as it has concluded an agreement to this effect, regulating the conditions of transport and the payment of the costs involved, with the Power on which the prisoner depends.
Article 75 (paragraphs 2 and 3) Prisoners of war who are subject to criminal proceedings for a crime or offence at common law may, however, be detained until the end of the proceedings, and, if need be, until the expiration of the sentence. The same applies to prisoners convicted for a crime or offence at common law.	Prisoners of war against whom criminal proceedings for an indictable offence are pending may be detained until the end of such proceedings, and, if necessary, until the completion of the punishment. The same shall apply to prisoners of war already convicted for an indictable offence. Parties to the conflict shall communicate to each other the names of any prisoners of war who are detained until the end of proceedings or until punishment has been completed.
By agreement between the belligerents, commissions may be instituted for the purpose of searching for scattered prisoners and ensuring their repatriation.	By agreement between the Parties to the conflict, commissions shall be established for the purpose of searching for dispersed prisoners of war and of assuring their repatriation with the least possible delay.

SECTION III

DEATH OF PRISONERS OF WAR

Article 76	*Article 120*
The wills of prisoners of war shall be received and drawn up under the same conditions as for soldiers of the national armed forces.	Wills of prisoners of war shall be drawn up so as to satisfy the conditions of validity required by the legislation of their country of origin, which will take steps to inform the Detaining Power of its requirements in this respect. At the request of the prisoner of war and, in all cases, after death, the will shall be transmitted without delay to the Protecting Power ; a certified copy shall be sent to the Central Agency.

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The same rules shall be followed as regards the documents relative to the certification of the death.

The belligerents shall ensure that prisoners of war who have died in captivity are honourably buried, and that the graves bear the necessary indications and are treated with respect and suitably maintained.

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Death certificates, in the form annexed to the present Convention, or lists certified by a responsible officer, of all persons who die as prisoners of war shall be forwarded as rapidly as possible to the Prisoner of War Information Bureau established in accordance with Article 122. The death certificates or certified lists shall show particulars of identity as set out in the third paragraph of Article 17, and also the date and place of death, the cause of death, the date and place of burial and all particulars necessary to identify the graves.

The burial or cremation of a prisoner of war shall be preceded by a medical examination of the body with a view to confirming death and enabling a report to be made and, where necessary, establishing identity.

The detaining authorities shall ensure that prisoners of war who have died in captivity are honourably buried, if possible according to the rites of the religion to which they belonged, and that their graves are respected, suitably maintained and marked so as to be found at any time. Wherever possible, deceased prisoners of war who depended on the same Power shall be interred in the same place.

Deceased prisoners of war shall be buried in individual graves unless unavoidable circumstances require the use of collective graves. Bodies may be cremated only for imperative reasons of hygiene, on account of the religion of the deceased or in accordance with his express wish to this effect. In case of cremation, the fact shall be stated and the reasons given in the death certificate of the deceased.

In order that graves may always be found, all particulars of burials and graves shall be recorded with a Graves Registration Service established by the Detaining Power. Lists of graves and particulars of the prisoners of war interred in cemeteries and elsewhere shall be transmitted to the Power on which such prisoners of war depended. Responsibility for the care of these graves and for records of any subsequent moves of the bodies shall rest

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on the Power controlling the territory, if a party to the present Convention. These provisions shall also apply to the ashes which shall be kept by the Graves Registration Service until proper disposal thereof in accordance with the wishes of the home country.

Article 121

Every death or serious injury of a prisoner of war caused or suspected to have been caused by a sentry, another prisoner of war, or any other person, as well as any death the cause of which is unknown, shall be immediately followed by an official enquiry by the Detaining Power.

A communication on this subject shall be sent immediately to the Protecting Power. Statements shall be taken from witnesses, especially from those who are prisoners of war, and a report including such statements shall be forwarded to the Protecting Power.

If the enquiry indicates the guilt of one or more persons, the Detaining Power shall take all measures for the prosecution of the person or persons responsible.

PART V

INFORMATION BUREAUX AND RELIEF SOCIETIES FOR PRISONERS OF WAR

Article 77 (paragraph 1)

At the commencement of hostilities, each of the belligerent Powers and the neutral Powers who have belligerents in their care, shall institute an official bureau to give information about the prisoners of war in their territory.

Article 122

Upon the outbreak of a conflict and in all cases of occupation, each of the Parties to the conflict shall institute an official Information Bureau for prisoners of war who are in its power. Neutral or non-belligerent Powers who may have received within their territory persons belonging to one of the categories referred to in Article 4, shall take the same action with respect to such persons. The Power concerned shall ensure that the Prisoners of War Information Bureau is pro-

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	vided with the necessary accommodation, equipment and staff to ensure its efficient working. It shall be at liberty to employ prisoners of war in such a Bureau under the conditions laid down in the Section of the present Convention dealing with work by prisoners of war.
Paragraph 2	Within the shortest possible period, each of the Parties to the conflict shall give its Bureau the information referred to in the fourth, fifth and sixth paragraphs of this Article regarding any enemy person belonging to one of the categories referred to in Article 4, who has fallen into its power. Neutral or non-belligerent Powers shall take the same action with regard to persons belonging to such categories whom they have received within their territory.
Each of the belligerent Powers shall inform its Information Bureau as soon as possible of all captures of prisoners effected by its armed forces, furnishing them with all particulars of identity at its disposal to enable the families concerned to be quickly notified, and stating the official addresses to which families may write to the prisoners.	
Article 8 *(paragraph 1—first two sentences)* Belligerents are required to notify each other of all captures of prisoners as soon as possible, through the intermediary of the Information Bureaux organized in accordance with Article 77. They are likewise required to inform each other of the official addresses to which letters from the prisoners' families may be addressed to the prisoners of war.	
Article 77 (paragraph 3) The Information Bureau shall transmit all such information immediately to the Powers concerned, on the one hand through the intermediary of the Protecting Powers, and on the other through the Central Agency contemplated in article 79.	The Bureau shall immediately forward such information by the most rapid means to the Powers concerned through the intermediary of the Protecting Powers and likewise of the Central Agency provided for in Article 123.
Paragraph 5 The Bureau shall note in this record, as far as possible, and subject to the provisions of article 5, the regimental number, names and surnames, date and place of birth, rank and unit of the prisoner, the surname of the father and name of the mother, the address of the person to be notified in case of accident, wounds, dates and places of capture, of internment, of wounds, of death, together with all other important particulars.	This information shall make it possible quickly to advise the next of kin concerned. Subject to the provisions of Article 17, the information shall include, in so far as available to the Information Bureau, in respect of each prisoner of war, his surname, first names, rank, army, regimental, personal or serial number, place and full date of birth, indication of the Power on which he depends, first name of the father and maiden name of the

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	mother, name and address of the person to be informed and the address to which correspondence for the prisoner may be sent.
Paragraph 4	The Information Bureau shall receive from the various departments concerned information regarding transfers, releases, repatriations, escapes, admissions to hospital, and deaths, and shall transmit such information in the manner described in the third paragraph above.
The Information Bureau, being charged with replying to all enquiries relative to prisoners of war, shall receive from the various services concerned all particulars respecting internments and transfers, releases on parole, repatriations, escapes, stays in hospitals, and deaths, together with all other particulars necessary for establishing and keeping up to date an individual record for each prisoner of war.	
Paragraph 6	Likewise, information regarding the state of health of prisoners of war who are seriously ill or seriously wounded shall be supplied regularly, every week if possible.
Weekly lists containing all additional particulars capable of facilitating the identification of each prisoner shall be transmitted to the interested Powers.	
Paragraph 7	
The individual record of a prisoner of war shall be sent after the conclusion of peace to the Power in whose service he was.	
	The Information Bureau shall also be responsible for replying to all enquiries sent to it concerning prisoners of war, including those who have died in captivity; it will make any enquiries necessary to obtain the information which is asked for if this is not in its possession.
	All written communications made by the Bureau shall be authenticated by a signature or a seal.
Paragraph 8	The Information Bureau shall furthermore be charged with collecting all personal valuables, including sums in currencies other than that of the Detaining Power and documents of importance to the next of kin, left by prisoners of war who have been repatriated or released, or who have escaped or died, and shall forward the said valuables to the Powers concerned. Such articles shall be sent by the Bureau in sealed packets which shall be accompanied by statements giving clear and full particulars of the
The Information Bureau shall also be required to collect all personal effects, valuables, correspondence, pay-books, identity tokens, etc., which have been left by prisoners of war who have been repatriated or released on parole, or who have escaped or died, and to transmit them to the countries concerned.	

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	identity of the person to whom the articles belonged, and by a complete list of the contents of the parcel. Other personal effects of such prisoners of war shall be transmitted under arrangements agreed upon between the Parties to the conflict concerned.
Article 79	*Article 123*
A Central Agency of information regarding prisoners of war shall be established in a neutral country. The International Red Cross Committee shall, if they consider it necessary, propose to the Powers concerned the organization of such an agency.	A Central Prisoners of War Information Agency shall be created in a neutral country. The International Committee of the Red Cross shall, if it deems necessary, propose to the Powers concerned the organization of such an Agency.
This agency shall be charged with the duty of collecting all information regarding prisoners which they may be able to obtain through official or private channels, and the agency shall transmit the information as rapidly as possible to the prisoners' own country or the Power in whose service they have been.	The function of the Agency shall be to collect all the information it may obtain through official or private channels respecting prisoners of war, and to transmit it as rapidly as possible to the country of origin of the prisoners of war or to the Power on which they depend. It shall receive from the Parties to the conflict all facilities for effecting such transmissions.
	The High Contracting Parties, and in particular those whose nationals benefit by the services of the Central Agency, are requested to give the said Agency the financial aid it may require.
These provisions shall not be interpreted as restricting the humanitarian work of the International Red Cross Committee.	The foregoing provisions shall in no way be interpreted as restricting the humanitarian activities of the International Committee of the Red Cross, or of the relief Societies provided for in Article 125.
Article 80	*Article 124*
Information Bureaux shall enjoy exemption from fees on postal matter as well as all the exemptions prescribed in article 38.	The national Information Bureaux and the Central Information Agency shall enjoy free postage for mail, likewise all the exemptions provided for in Article 74, and further, so far as possible, exemption from telegraphic charges or, at least, greatly reduced rates.
Article 78	*Article 125*
Societies for the relief of prisoners of war, regularly constituted in accordance with the laws of their country,	Subject to the measures which the Detaining Powers may consider essential to ensure their security or to meet

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and having for their object to serve as intermediaries for charitable purposes, shall receive from the belligerents, for themselves and their duly accredited agents, all facilities for the efficacious performance of their humane task within the limits imposed by military exigencies. Representatives of these societies shall be permitted to distribute relief in the camps and at the halting places of repatriated prisoners under a personal permit issued by the military authority, and on giving an undertaking in writing to comply with all routine and police orders which the said authority shall prescribe.

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any other reasonable need, the representatives of religious organizations, relief societies, or any other organization assisting prisoners of war, shall receive from the said Powers, for themselves and their duly accredited agents, all necessary facilities for visiting the prisoners, distributing relief supplies and material, from any source, intended for religious, educational or recreative purposes, and for assisting them in organizing their leisure time within the camps. Such societies or organizations may be constituted in the territory of the Detaining Power or in any other country, or they may have an international character.

The Detaining Power may limit the number of societies and organizations whose delegates are allowed to carry out their activities in its territory and under its supervision, on condition, however, that such limitation shall not hinder the effective operation of adequate relief to all prisoners of war.

The special position of the International Committee of the Red Cross in this field shall be recognized and respected at all times.

As soon as relief supplies or material intended for the above-mentioned purposes are handed over to prisoners of war, or very shortly afterwards, receipts for each consignment, signed by the prisoners' representative, shall be forwarded to the relief society or organization making the shipment. At the same time, receipts for these consignments shall be supplied by the administrative authorities responsible for guarding the prisoners.

PART VI

EXECUTION OF THE CONVENTION

SECTION I

GENERAL PROVISIONS

Article 86 (paragraph 2)

The representatives of the Protecting Power or their recognized delegates

Article 126

Representatives or delegates of the Protecting Powers shall have per-

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shall be authorized to proceed to any place, without exception, where prisoners of war are interned. They shall have access to all premises occupied by prisoners and may hold conversation with prisoners, as a general rule without witnesses, either personally or through the intermediary of interpreters.

Paragraph 3

Belligerents shall facilitate as much as possible the task of the representatives or recognized delegates of the Protecting Power. The military authorities shall be informed of their visits.

Paragraph 4

Belligerents may mutually agree to allow persons of the prisoners' own nationality to participate in the tours of inspection.

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mission to go to all places where prisoners of war may be, particularly to places of internment, imprisonment and labour, and shall have access to all premises occupied by prisoners of war; they shall also be allowed to go to the places of departure, passage and arrival of prisoners who are being transferred. They shall be able to interview the prisoners, and in particular the prisoners' representatives, without witnesses, either personally or through an interpreter.

Representatives and delegates of the Protecting Powers shall have full liberty to select the places they wish to visit. The duration and frequency of these visits shall not be restricted. Visits may not be prohibited except for reasons of imperative military necessity, and then only as an exceptional and temporary measure.

The Detaining Power and the Power on which the said prisoners of war depend may agree, if necessary, that compatriots of these prisoners of war be permitted to participate in the visits.

The delegates of the International Committee of the Red Cross shall enjoy the same prerogatives. The appointment of such delegates shall be submitted to the approval of the Power detaining the prisoners of war to be visited.

Article 127

The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to all their armed forces and to the entire population.

Any military or other authorities, who in time of war assume responsibilities in respect of prisoners of war, must possess the text of the Convention and be specially instructed as to its provisions.

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Article 85

The High Contracting Parties shall communicate to each other, through the intermediary of the Swiss Federal Council, the official translations of the present Convention, together with such laws and regulations as they may adopt to ensure the application of the present Convention.

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Article 128

The High Contracting Parties shall communicate to one another through the Swiss Federal Council and, during hostilities, through the Protecting Powers, the official translations of the present Convention, as well as the laws and regulations which they may adopt to ensure the application thereof.

Article 129

The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a *prima facie* case.

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.

In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following of the present Convention.

Article 130

Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering

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or serious injury to body or health, compelling a prisoner of war to serve in the forces of the hostile Power, or wilfully depriving a prisoner of war of the rights of fair and regular trial prescribed in this Convention.

Article 131

No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article.

Article 132

At the request of a Party to the conflict, an enquiry shall be instituted, in a manner to be decided between the interested Parties, concerning any alleged violation of the Convention.

If agreement has not been reached concerning the procedure for the enquiry, the Parties should agree on the choice of an umpire who will decide upon the procedure to be followed.

Once the violation has been established, the Parties to the conflict shall put an end to it and shall repress it with the least possible delay.

SECTION II

FINAL PROVISIONS

Article 133

The present Convention is established in English and in French. Both texts are equally authentic.

The Swiss Federal Council shall arrange for official translations of the Convention to be made in the Russian and Spanish languages.

Article 134

The present Convention replaces the Convention of July 27, 1929, in relations between the High Contracting Parties.

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Article 89

In the relations between the Powers who are bound either by the Hague Convention concerning the Laws and Customs of War on Land of the 29th July, 1899, or that of the 18th October, 1907, and are parties to the present Convention, the latter shall be complementary to Chapter 2 of the Regulations annexed to the above-mentioned Conventions of The Hague.

Article 90

The present Convention, which shall bear this day's date, may be signed up to the 1st February, 1930, on behalf of any of the countries represented at the Conference which opened at Geneva on the 1st July, 1929.

Article 91

The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at Berne.

In respect of the deposit of each instrument of ratification, a *procès-verbal* shall be drawn up, and a copy thereof, certified correct, shall be sent by the Swiss Federal Council to the Governments of all the countries on whose behalf the Convention has been signed or whose accession has been notified.

Article 92

The present Convention shall enter into force six months after at least two instruments of ratification have been deposited. Thereafter it shall enter into force for each High Contracting Party six months after the deposit of its instrument of ratification.

Article 93

As from the date of its entry into force, the present Convention shall be open to accession notified in respect of any country on whose behalf this Convention has not been signed.

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Article 135

In the relations between the Powers which are bound by the Hague Convention respecting the Laws and Customs of War on Land, whether that of July 29, 1899, or that of October 18, 1907, and which are parties to the present Convention, this last Convention shall be complementary to Chapter II of the Regulations annexed to the above-mentioned Conventions of The Hague.

Article 136

The present Convention, which bears the date of this day, is open to signature until February 12, 1950, in the name of the Powers represented at the Conference which opened at Geneva on April 21, 1949; furthermore, by Powers not represented at that Conference, but which are parties to the Convention of July, 27, 1929.

Article 137

The present Convention shall be ratified as soon as possible and the ratifications shall be deposited at Berne.

A record shall be drawn up of the deposit of each instrument of ratification and certified copies of this record shall be transmitted by the Swiss Federal Council to all the Powers in whose name the Convention has been signed, or whose accession has been notified.

Article 138

The present Convention shall come into force six months after not less than two instruments of ratification have been deposited.

Thereafter, it shall come into force for each High Contracting Party six months after the deposit of the instrument of ratification.

Article 139

From the date of its coming into force, it shall be open to any Power in whose name the present Convention has not been signed, to accede to this Convention.

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Article 94

Accessions shall be notified in writing to the Swiss Federal Council and shall take effect six months after the date on which they have been received.

The Swiss Federal Council shall notify the accessions to the Governments of all the countries on whose behalf the Convention has been signed or whose accession has been notified.

Article 95

A state of war shall give immediate effect to ratifications deposited and to accessions notified by the belligerent Powers before or after the commencement of hostilities. The communication of ratifications or accessions received from Powers in a state of war shall be effected by the Swiss Federal Council by the quickest method.

Article 96

Each of the High Contracting Parties shall have the right to denounce the present Convention. The denunciation shall only take effect one year after notification thereof has been made in writing to the Swiss Federal Council. The latter shall communicate this notification to the Governments of all the High Contracting Parties.

The denunciation shall only be valid in respect of the High Contracting Party which has made notification thereof.

Such denunciation shall, moreover, not take effect during a war in which the denouncing Power is involved. In this case, the present Convention shall continue binding, beyond the period of one year, until the conclusion of peace and, in any case, until operations of repatriation shall have terminated.

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Article 140

Accessions shall be notified in writing to the Swiss Federal Council, and shall take effect six months after the date on which they are received.

The Swiss Federal Council shall communicate the accessions to all the Powers in whose name the Convention has been signed or whose accession has been notified.

Article 141

The situations provided for in Articles 2 and 3 shall give immediate effect to ratifications deposited and accessions notified by the Parties to the conflict before or after the beginning of hostilities or occupation. The Swiss Federal Council shall communicate by the quickest method any ratifications or accessions received from Parties to the conflict.

Article 142

Each of the High Contracting Parties shall be at liberty to denounce the present Convention.

The denunciation shall be notified in writing to the Swiss Federal Council, which shall transmit it to the Governments of all the High Contracting Parties.

The denunciation shall take effect one year after the notification thereof has been made to the Swiss Federal Council. However, a denunciation of which notification has been made at a time when the denouncing Power is involved in a conflict shall not take effect until peace has been concluded, and until after operations connected with release and repatriation of the persons protected by the present Convention have been terminated.

The denunciation shall have effect only in respect of the denouncing Power. It shall in no way impair the obligations which the Parties to the conflict shall remain bound to fulfil by virtue of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity and the dictates of the public conscience.

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Article 97

A copy of the present Convention, certified to be correct, shall be deposited by the Swiss Federal Council in the archives of the League of Nations. Similarly, ratifications, accessions and denunciations notified to the Swiss Federal Council shall be communicated by them to the League of Nations.

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Article 143

The Swiss Federal Council shall register the present Convention with the Secretariat of the United Nations. The Swiss Federal Council shall also inform the Secretariat of the United Nations of all ratifications, accessions and denunciations received by it with respect to the present Convention.

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